

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to groups of affiliated companies which insure risks through separate individual insurance companies.

(c) This subchapter does not apply to the New Jersey Personal Automobile Insurance Plan or to private passenger automobile insurance written in a commercial lines rating system filed pursuant to N.J.S.A. 17:29AA-1 et seq. except to those eligible person risks that are assigned to an insurer pursuant to N.J.S.A. 17:29D-1i.

(d) Pursuant to N.J.S.A. 17:33B-31, insurers may use information provided by a rating organization or advisory organization, including, but not limited to, rules used to assign risks to a tier rating plan, classifications, rating rules and relativities. An insurer duly participating with a rating organization may make a reference filing to utilize rating and advisory organization rules used to assign risks to a tier rating plan, classifications, rating rules and relativities.

11:3-19A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Affiliated companies” means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey where one insurer controls, is controlled by, or is under common control with the other insurer.

“Applicant” means a person applying to an insurer for a policy of automobile insurance who is not currently a named insured under an existing policy of automobile insurance issued by that insurer.

“Commissioner” means the Commissioner of the Department of Banking and Insurance of the State of New Jersey.

“Department” means the New Jersey Department of Banking and Insurance.

“Insured” when used as a noun means a named insured or other person insured under a policy of automobile insurance and not a named insured under another automobile insurance policy.

“Insurer” means any person or persons, corporation, association, partnership, company, reciprocal exchange, group of affiliated companies, or other legal entity authorized or admitted to transact private passenger automobile insurance in this State.

“Personal private passenger automobile insurance” or “automobile insurance” means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

“Renew” means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same insurer, or by another insurer in a group of affiliated companies, pursuant to a tier rating plan file and approved in accordance with this subchapter.

“Risk” means the person or property exposed to loss or damage that is insured under an automobile insurance policy.

“Standard tier” refers to the tier that contains those named insureds with six or less motor vehicle record (MVR) points who do not meet the requirements for higher or lower rated tiers due to other risk characteristics. The initial standard tier rating factor is 1.000.

“Tier” refers to one or more underwriting rules, filed and approved pursuant to N.J.S.A. 17:29A-46.1, which defines and characterizes one or more mutually exclusive groups of insureds.

11:3-19A.3 General provisions

(a) Insurers that write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business under a tier rating plan, in accordance with N.J.S.A. 17:29A-46.1 and this subchapter. No insurer shall use or implement any underwriting rule for a tier rating plan not filed and approved as set forth herein.

(b) In determining the number of tiers in a multi-tier rating program, the insurer shall consider the following factors:

1. The homogeneity of risk characteristics;
2. The number of exposures for credibility determinations;
3. The experience of the insurer and its affiliates; and
4. Actuarial judgment.

(c) When requested by the Department, insurers shall demonstrate that the expected losses between the tiers will vary in accordance with the risk characteristics.

(d) The rating system associated with the various tiers shall comply with all existing statutes and rules governing private passenger automobile insurance and shall reflect all premium credits and premium discounts required by statute or rule. Pursuant to N.J.S.A. 17:33B–14.1, there shall be no differential in rates of the insured for a single speeding violation by the insured of less than 15 miles per hour.

(e) Each insurer shall provide a notice explaining the insurer's tier rating system and an applicant/insured's placement within the system upon:

1. An application for coverage;
2. The first renewal of any policy after an insured has adopted an approved tier rating plan; or
3. An insured's request.

(f) The placement of applicants and insureds at or within a tier and the movement of insureds between tiers shall be based on underwriting rules that comply with N.J.A.C. 11:3–19A.5(b), are mutually exclusive per tier, objective and not applied so as to violate any statute or regulation of the United States or the State of New Jersey.

(g) Underwriting rules shall be included in the insured's rule section of the manual. The underwriting rules shall clearly identify the rating tier to which the rules shall be applied and how the rules apply to new business, renewal business or both. All tables shall be clearly labeled.

(h) The ratemaking restrictions established in N.J.S.A. 17:29A–36 shall be applied to each tier within an insurer's rate making plan.

11:3–19A.4 Filing requirements for tier rating plans

(a) An insurer seeking to establish or to modify a tier rating plan shall file with the Commissioner the following items:

1. A complete set of underwriting rules containing the standards for each tier and the rating differentials between the tiers;
2. A narrative description of the plan, which shall include:
 - i. The percentage difference between tier rate levels;
 - ii. The insurer's plan for determining placement and renewal of an insured at a tier level; and
 - iii. If the plan is submitted by a group of affiliated companies, the identity of all individual insurance companies in the group that transact private passenger automobile insurance business in New Jersey and the tiers to be used by each;
3. Rating examples as set forth in the Appendix to this subchapter, incorporated herein by reference. Where a driver qualifies for more than one rating tier; the

insurer may provide the premium for different tiers together with the factors that might result in the placement of the insured in a lower tier; and

4. No later than 10 days prior to the effective date of the plan, copies of manual rate pages for each rate level together with rating examples and a copy of the notice explaining the insurer's tier rating system pursuant to N.J.A.C. 11:3–19A.3(e).

(b) In addition to the items contained in (a) above, insurers initially substituting a tier rating plan for a standard/nonstandard rating plan pursuant to N.J.A.C. 11:3–19, and insurers initially adopting a rating organization's loss cost tier rating plan, shall also file the following:

1. The expected distribution by tier of current exposures when placed within each tier and the rate effect, including the maximum and minimum individual rate change for each tier; and
2. Calculations demonstrating that the initial rating plan is revenue neutral by coverage in accordance with N.J.S.A. 17:29A–46.4.

(c) When a filer's rating system contains more than one tier, a percentage rate differential shall be applied to the base rates contained in the initial filed and approved tier rating plan.

11:3–19A.5 Standards of approval, disapproval or modification of underwriting rules and tier rating plans

(a) A tier rating plan shall be disapproved for any of the following reasons:

1. The plan does not comply with N.J.S.A. 17:29A–46.1 et seq. and this subchapter;
2. The plan does not provide that the insurer or affiliated companies shall insure all applicants and insureds defined as "eligible persons" in N.J.A.C. 11:3–34;
3. The plan assigns a vehicle insured under the policy to a higher than standard tier solely for the accumulation of six or less motor vehicle violation points by any named insured. For purposes of this subsection, any named insured also includes insureds that are principal operators of the vehicles based on the insurers manual rules. The motor vehicle points of a person who has more than six motor vehicle points and who is not a named insured or principal operator on any policy in the household may be used to place one vehicle in the household in a higher than standard tier. The motor vehicle points of a person who has six or fewer motor vehicle points and who is not a named insured or principal operator on any policy in the household shall not be used to place any policy in the household in a higher than standard tier;
4. The insurer failed to submit the items required to be filed pursuant to this subchapter; or

5. The plan fails to meet any of the standards for rating systems established by statute or administrative rule.

(b) Underwriting rules for tier placement in a tier rating plan shall meet the following standards:

1. No rule shall be based on the territory in which an insured resides or any other factor which the Commissioner finds to be a surrogate thereof;

2. Underwriting rules shall be based on a reasonable and demonstrable relationship between the risk characteristic of the driver(s) and vehicle(s) insured and the hazards insured against;

3. Underwriting rules shall be based on objective, specific and verifiable criteria. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.;

4. Underwriting rules shall not be based on the previous coverage of an insured or applicant by a substandard insurer in such a way that the insurer is relying upon application of the previous insurers underwriting rules and not its own;

5. Underwriting rules shall not be based on the nonrenewal of an insured prior to June 30, 1997 in accordance with N.J.S.A. 17:29C-7.1b or 7.1c except as permitted by N.J.A.C. 11:3-19A.7(f); and

6. Underwriting rules shall not be based on race, color, creed, religion, national origin or ancestry.

11:3-19A.6 Policy renewals and notice to insureds

(a) An insurer that has implemented a tier rating plan shall issue and renew its policies at the appropriate tier for which the risk qualifies in accordance with the insurer's approved underwriting rules.

1. The transfer of a risk from one company to another in accordance with an insurer's tier rating plan shall not be deemed to be nonrenewal of the policy as provided by N.J.S.A. 39:6A-2.

2. If the insured qualifies for a higher rated tier after having been insured at a lower rated tier, the insurer shall renew the insured at the higher rated tier after providing notice to the insured at the time of renewal advising the insured that he or she is being placed in a higher rated tier resulting in a greater premium.

(b) An insurer that has implemented a tier rating plan shall state on the policy declaration page, or some other writing accompanying the policy, the tier level that was used to rate the policy.

Amended by R.1998 d.591, effective December 21, 1998 (operative March 22, 1999).

See: 30 N.J.R. 3202(a), 30 N.J.R. 4390(b).

Rewrote (a).

11:3-19A.7 Underwriting rules for eligible persons

(a) All affiliated companies shall file for approval underwriting rules that provide that the affiliated companies will make an offer to renew any of its insureds who are defined as an "eligible person" in N.J.A.C. 11:3-34.

(b) All affiliated companies shall file for approval underwriting rules that provide the insurer shall not refuse to insure, refuse to renew or limit coverage available to any of its insured, or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure any person not defined as an "eligible person" in N.J.A.C. 11:3-34.

(d) Underwriting rules for eligible persons shall not provide that coverage will be declined based on whether a member of the insured household is not an "eligible person" as defined in N.J.A.C. 11:3-34 unless the member of the insured household accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purposes of this section:

1. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

2. When there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.

(e) Insurers may file for approval underwriting rules by which it cancels the policy during the policy term under a policy insuring an eligible person pursuant to N.J.S.A. 17:29A-7(A)(b) when the driver's license or motor vehicle registration of another named insured or person insured under the policy who either resides in the same household or customarily operates an automobile insured under the policy has been suspended or revoked. The Department shall approve such underwriting rules if they include the following provisions:

1. The underwriting rules provide for the cancellation of the policy when the driver's license or motor vehicle registration is suspended or revoked during the policy term for one or more of the following reasons:

i. Conviction of operating a motor vehicle under the influence of alcohol or drugs (N.J.S.A. 39:4-50.4);

ii. Conviction of refusal to submit to a chemical test (N.J.S.A. 2C:11-2);

iii. Conviction of vehicular homicide (N.J.S.A. 2C:11-2);

iv. Conviction of operating a motor vehicle while driving privilege is suspended (N.J.S.A. 39:3-40);

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

APPENDIX B

NOTE: YOU HAVE 90 DAYS FROM THE DATE ON WHICH A WRITTEN DENIAL OF AUTOMOBILE INSURANCE IS MADE TO FILE THIS APPEAL.

**NEW JERSEY DEPARTMENT OF
BANKING AND INSURANCE
AUTOMOBILE DECLINATION APPEAL**

Your Name: _____

Your Address: _____

Your Telephone Number: (____) _____

Insurance Company and/or Insurance Producer (agent or broker) that declined your application for automobile insurance coverage in the voluntary market (if producer, please provide the name and address):

Company _____

Producer _____

YOU MUST ATTACH A COPY OF THE DECLINATION (If you have not received a written declination from the insurance company or producer, you must request one within 90 days from the date you first applied for insurance.)

BASIS FOR YOUR APPEAL (Please indicate with an "X" those statements or reasons that apply and attach a copy of pertinent documentation supporting your appeal. Such documentation should include a certified motor vehicle driver "abstract", where appropriate, available from the Division of Motor Vehicles, 120 South Stockton Street, PO Box 142, Trenton, New Jersey 08666-0142. There is a \$5.00 fee for each copy of the DMV abstract.)

- ☐ I have not been convicted of Driving Under the Influence (N.J.S.A. 39:4-50) or of refusing to submit to a chemical test (N.J.S.A. 39:4-50.4(a)), or for a similar offense in another jurisdiction, or of a crime involving an automobile or theft of a motor vehicle.
- ☐ My driver's license is not suspended or revoked, nor has it been for any 12-month period in the preceding three years.
- ☐ I have not been convicted of insurance fraud or intent to defraud, or have not had an insurance claim (in excess of \$1,000) denied because of evidence of fraud within the five-year period immediately preceding application or renewal.
- ☐ My auto insurance has not been cancelled for nonpayment of premium within the last two years and I provide proof of payment OR I have had my policy cancelled for nonpayment AND I am able to pay the full annual premium for this policy.
- ☐ I am qualified as a member of a group or organization in which membership is required in order to obtain this insurance policy.

- ☐ I have fewer eligibility points accumulated than alleged in the declination letter as evidenced by the attached copy of my driving record.
- ☐ The accident record indicated in the declination letter is wrong as evidenced by the attached.
- ☐ No other person who is a member of the same household and who will drive the subject vehicle for 10 percent or more of the time is an ineligible person.
- ☐ Other (Specify and provide proof, if appropriate).

CERTIFICATION OF APPEAL

The information contained in this appeal is true and complete to the best of my knowledge and belief.

I UNDERSTAND THAT FILING THIS APPEAL DOES NOT PROVIDE ME WITH AUTOMOBILE INSURANCE. IF MY AUTO IS REGISTERED IN NEW JERSEY OR IS BEING DRIVEN, I HAVE OBTAINED OTHER AUTO INSURANCE.

Your Signature _____ Date _____

MAIL THIS COMPLETED FORM AND NECESSARY DOCUMENTATION TO:

New Jersey Department of Banking and Insurance
Division of Enforcement and Consumer Protection
PO Box 329
Trenton, New Jersey 08625-0329
Attn.: Auto Insurance Denial

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

**SUBCHAPTER 34. ELIGIBLE PERSONS
QUALIFICATIONS AND AUTOMOBILE
INSURANCE ELIGIBILITY POINTS
SCHEDULE**

11:3-34.1 Purpose

The purpose of this subchapter is to set forth the requirements for determining who can qualify as an "eligible person," and to provide the schedule for "automobile insurance eligibility points" pursuant to N.J.S.A. 17:33B-13 and 14.

Amended by R.1996 d.58, effective February 5, 1996.
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

11:3-34.2 Scope

The provisions of this subchapter apply to all insurers which write personal private passenger automobile insurance and all persons who are required to procure automobile insurance coverage in this State.

11:3-34.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“At-fault accident” is any accident involving a driver insured under the policy which resulted in a payment by the insurer of at least \$500.00, and for which the driver is at least proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33 ⅓ percent responsible for an accident involving three drivers; etc. An at-fault accident shall not include the following:

1. Involvement in an accident in which the motor vehicle owned or operated by the insured or other driver insured under the policy was lawfully parked;
2. Involvement in an accident in which the motor vehicle was struck by a hit and run driver, if such accident was reported to the proper authorities within 24 hours;
3. Involvement in an accident in connection with which neither the named insured nor any other driver insured under the policy was convicted of a moving traffic violation and the owner or operator of another vehicle involved in such accident was so convicted;
4. For physical damage losses other than collision;
5. For an accident in which the motor vehicle was struck in the rear by another vehicle and a driver insured under the policy has not been convicted of a moving violation in connection with the accident; or
6. For an accident occurring as a result of operation of any motor vehicle in response to an emergency if the operator at the time of the accident was responding to the call to duty as a paid or volunteer member of any police or fire department, first aid squad or any law enforcement agency.

“Automobile” means an automobile as defined in N.J.S.A. 39:6A-2.

“Automobile insurance” means insurance for an automobile including any or all of the following coverages: bodily injury liability, and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

“Automobile insurance eligibility points” means points calculated under the schedule promulgated by the Commissioner pursuant to this subchapter.

“Commissioner” means the Commissioner of Banking and Insurance of the State of New Jersey.

“Department” means the Department of Banking and Insurance of the State of New Jersey.

“State” means the State of New Jersey.

Public Notice: Receipt of petition for rulemaking and action on petition.

See: 28 N.J.R. 1565(b).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Case Notes

Insurer could not refuse renewal of automobile policy based upon eligibility points accumulated in “collision” where insured’s automobile was damaged by falling object. *Geist v. Selective Insurance Company*, 96 N.J.A.R.2d (INS) 75.

Driver’s automobile insurance application properly denied for two at-fault accidents. *Belmonte v. Department of Insurance*, 96 N.J.A.R.2d (INS) 51.

Insurer erred in finding insured more than 50 percent at fault for three-car accident where another driver was convicted of careless driving in connection with that collision. *Hoke v. National Consumer Insurance Company*, 96 N.J.A.R.2d (INS) 22.

Insurer could decline renewal of automobile policy based upon insured’s two at-fault accidents. *DiFrancesco v. Continental Casualty Company*, 96 N.J.A.R.2d (INS) 17.

Charge to which insured pleaded guilty in New York, operating a motor vehicle while under the influence, was substantially similar in nature to an offense in New Jersey and justified nonrenewal of automobile policy. *Chillemi v. Selective Insurance*, 95 N.J.A.R.2d (INS) 89.

At fault accident in which insured was involved was an event under automobile policy giving insurer right to decline renewal. *Wenzler v. ITT Hartford*, 95 N.J.A.R.2d (INS) 47.

Police report established five-point at fault accident which, when combined with six-point speeding violations, justified insurer in declining to renew automobile policy. *Fichera v. Liberty Mutual*, 95 N.J.A.R.2d (INS) 41.

Insured at-fault for automobile accident; insured could decline to renew insurance. *AMICA Mutual Insurance Co. v. Farley*, 93 N.J.A.R.2d (INS) 51.

11:3-34.4 Eligible person qualifications

(a) An “eligible person” is a person who is an owner or registrant of an automobile registered and principally garaged in this State or who is a resident and holds a valid New Jersey driver’s license to operate an automobile, but does not include any person:

1. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a or for an offense of a substantially similar nature committed in another jurisdiction;
2. Who has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle; or has been convicted of theft of a motor vehicle;
3. Whose driver’s license to operate an automobile is under suspension or revocation;

4. Who has been convicted, within the five-year period immediately preceding application for or renewal of a policy of automobile insurance, of fraud or intent to defraud involving an insurance claim or an application for insurance;

5. Who has been successfully denied, with the immediately preceding five years' payment by an insurer of a claim in excess of \$1,000 under an automobile insurance policy, if there was evidence of fraud or intent to defraud involving the automobile insurance claim or application. For the purpose of this section:

i. If the claim has been subject to litigation between the insurer and the insured in which the insurer defended against payment of the claim in whole or in part on grounds of fraud, it shall be conclusively presumed that the claim was successfully denied if judgment was entered for the insurer in the litigation; and conclusively presumed that the claim was not successfully denied if judgment was entered for the insured;

ii. If the claim has not been subject to litigation between the insurer and the insured, but the insurer denied the claim without payment by reason of fraud, it shall be presumed that the claim was successfully denied. This presumption may be overcome in an administrative proceeding pursuant to N.J.A.C. 11:3-33;

iii. If the incident was not reported to the New Jersey Office of Insurance Fraud Prosecutor pursuant to N.J.S.A. 17:33A-9 it shall be presumed that there was no evidence of fraud or intent to defraud;

6. Whose automobile insurance policy has been cancelled for nonpayment of premiums or financed premium with a lapse of coverage of at least 30 days, within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, "paid in full" shall not include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premium;

7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees;

8. Whose driving record for the three year period immediately preceding the application for or renewal of a policy of automobile insurance has an accumulation of nine or more automobile insurance eligibility points as determined in N.J.A.C. 11:3-34.5; or

9. Who is a named insured or who is insured under the same policy as a person whose driver's license is suspended or revoked and either:

i. The suspended or revoked driver has been convicted of a violation of N.J.S.A. 39:6B-2 within the previous three years; or

ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension.

(b) An "eligible person" includes a person who is an owner or registrant of an automobile registered in this State or who holds a valid New Jersey driver's license to operate an automobile and is domiciled in this State who is temporarily residing out-of-State and whose car may be principally garaged in another state while the person either is a full time student or is in the military service and is stationed out-of-State.

Emergency Amendment, R.1992 d.380, effective September 4, 1992 (expires November 3, 1992).

See: 24 N.J.R. 3420(a).

Text added to (a)6 to specify a lapse of at least 30 days.

Adopted Concurrent Proposal, R.1992 d.481, effective November 2, 1992.

See: 24 N.J.R. 3420(a), 24 N.J.R. 4396(a).

Provisions of Emergency Amendment R.1992 d.380 readopted with changes effective December 7, 1992.

Emergency Amendment R.1993 d.135, effective March 1, 1993. (Operative March 8, 1993) (expires April 30, 1993.)

See: 25 N.J.R. 1290(a).

Definition of eligible person added at (b).

Adopted Concurrent Proposal, R.1993 d.238, effective April 30, 1993.

See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

Amended by R.1996 d.246, effective June 3, 1996.

See: 27 N.J.R. 2048(a), 28 N.J.R. 3002(b).

Added (a)9.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Case Notes

Insured's nine ineligibility points justifies insured's nonrenewal of automobile policy. *Lawrence v. USAA Casualty Insurance Company*, 97 N.J.A.R.2d (INS) 3.

Nonrenewal of automobile insurance policy was upheld where insured motorist exceeded maximum number of automobile insurance eligibility points. *Woo v. State Farm Insurance Company*, 96 N.J.A.R.2d (INS) 99.

Insurer's nonrenewal of automobile policy justified when insured accumulates 10 eligibility points from two accidents for which insured is at fault. *Premi v. New Jersey Manufacturers Ins. Co.*, 96 N.J.A.R.2d (INS) 9.

Renewal of automobile policy for one period despite accumulation of points did not preclude nonrenewal in next period for same points. *Liberty Mutual v. Lee*, 95 N.J.A.R.2d (INS) 38.

Accident in which insured was at fault, when combined with two other accidents in period of coverage, justified nonrenewal for accumu-

lation of too many points. *New Jersey Manufacturers v. Sandor*, 95 N.J.A.R.2d (INS) 36.

Accumulation of nine or more points by member of insured's household justified nonrenewal of auto policy, *Pandola v. State Farm*, 95 N.J.A.R.2d (INS) 32.

Insured who was otherwise eligible for automobile insurance in voluntary market could obtain coverage for vehicles registered to her notwithstanding her husband's license suspension. *Kwok v. First Trenton*, 95 N.J.A.R.2d (INS) 29.

Decision not to renew automobile insurance policy was improper. *Capasso v. State Farm Indemnity Company*, 94 N.J.A.R.2d (INS) 59.

Eligibility points for accident prior to effective date of regulation not ex post facto violation. *Selective Insurance Company v. Diana*, 93 N.J.A.R.2d (INS) 58.

11:3-34.5 Automobile insurance eligibility points

(a) Automobile insurance eligibility points shall be accumulated as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions in accordance with the schedule set forth in the Appendix to this subchapter herein incorporated by reference.

(b) Automobile insurance eligibility points shall be deemed to accrue as follows:

1. Points for an at-fault accident shall accrue on the date that total payment by the insurer equals or exceeds \$500.00. An insurer may, at its option, use the date of the accident or date of first payment provided, however, that the insurer shall not underwrite or rate any policy based on the accident until total payment by the insurer equals or exceeds \$500.00; and further provided that the insurer shall use the optional date consistently in all cases.

2. Points for conviction of motor vehicle violations and other events that are set forth on an abstract of drivers license records available from the New Jersey Division of Motor Vehicles, or comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.

3. Points for each full year of court-imposed driver's license suspension within the preceding three years and points for each full year within the immediately preceding three years that a person has not held a driver's license shall accrue on the date of application for insurance.

(c) Automobile insurance eligibility points are cumulative and accrue for all offenses set forth on Schedules 1 and 2, except as noted on Schedule 1.

(d) Automobile insurance eligibility points set forth on Schedule 2 of the Appendix represent motor vehicle points established by the New Jersey Division of Motor Vehicles by rule, N.J.A.C. 13:19-10.1, which is hereby incorporated by reference. Any additions, deletions or modifications to N.J.A.C. 13:19-10.1 shall likewise be incorporated as of the effective date of amendment. Schedule 2 is included in the Appendix for convenience.

(e) The reference in Appendix Schedule 1 and Schedule 2 to provisions of the New Jersey Statutes Annotated is meant for convenience to assist in the quick identification of the nature of the event. If the event takes place in a state or province other than New Jersey, Schedule 1 and 2 should be consulted for identification of the specific misconduct committed and the assessment of the appropriate number of insurance eligibility points to be assessed.

(f) In addition to the motor vehicle violation and insurance eligibility points specifically enumerated on Schedule 2 of the Appendix pertaining to the New Jersey Turnpike, Atlantic City Expressway, and the Garden State Parkway, for any other motor vehicle violations that occur on the New Jersey Turnpike (N.J.A.C. 19:9), the Atlantic City Expressway (N.J.A.C. 19:2-2.1), the Garden State Parkway (N.J.A.C. 19:8) or for any other moving violation at any location, Schedules 1 and 2 shall be consulted for identification of the specific misconduct committed and the determination of the appropriate number of insurance eligibility points to be assessed.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Added (e).

Amended by R.2002 d.330, effective October 7, 2002.

See: 34 N.J.R. 368(a), 34 N.J.R. 3525(a).

Added (f).

Case Notes

Police report established five-point at fault accident which, when combined with six-point speeding violations, justified insurer in declining to renew automobile policy. *Fichera v. Liberty Mutual*, 95 N.J.A.R.2d (INS) 41.

Renewal of automobile policy for one period despite accumulation of points did not preclude nonrenewal in next period for same points. *Liberty Mutual v. Lee*, 95 N.J.A.R.2d (INS) 38.

Accident in which insured was at fault, when combined with two other accidents in period of coverage, justified nonrenewal for accumulation of too many points. *New Jersey Manufacturers v. Sandor*, 95 N.J.A.R.2d (INS) 36.

Accumulation of nine or more points by member of insured's household justified nonrenewal of auto policy, *Pandola v. State Farm*, 95 N.J.A.R.2d (INS) 32.

Accident resulting in payment of \$500 or more not recouped from another tort-feasor and not specifically excepted, and driver not excused under proportionate responsibility standard, was "at-fault accident" warranting eligibility points. *Amica Mutual Insurance Co. v. Kern*, 93 N.J.A.R.2d (INS) 55.

Insured at-fault for automobile accident; insured could decline to renew insurance. *AMICA Mutual Insurance Co. v. Farley*, 93 N.J.A.R.2d (INS) 51.

APPENDIX

Schedule of Automobile Insurance Eligibility Points

Schedule 1

N.J.S.A. Section Number If applicable	Event Description	DMV Event Identifier(s) If applicable	Points	N.J.S.A. Section Number	Offense	Points
39:4-50	Operating a motor vehicle under the influence of alcohol or drugs	0450; 3261	9	39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-50.4	Refusal to submit to a chemical test	4504	9	39:4-85	Improper passing on right or off roadway	4
2C:11-2	Vehicular homicide	C115	9	39:4-85.1	Wrong way on a one-way street	2
39:3-40	Operating a motor vehicle while driving privilege is suspended	0340	9	39:4-86	Improper passing in no passing zone	4
39:6B-2	Operating a motor vehicle without liability insurance	06B2	9	39:4-87	Failure to yield to overtaking vehicle	2
39:6A-15	Misrepresentation of insurance coverage	6A15	9	39:4-88	Failure to observe traffic lanes	2
	Each at fault accident		5	39:4-89	Tailgating	5
	* For each full year of a court imposed driver's license suspension within the preceding 3 years		3	39:4-90	Failure to yield at intersection	2
	* For each full year within the immediately preceding 3 years that a person has not held a driver's license		1	39:4-90.1	Failure to use proper entrances to limited access highways	2
	Involved in a fatal accident	EFTL; NFTL	4		Failure to yield to emergency vehicles	2
39:3-37	Obtaining a driver's license or registration through deception	0337; 0312; 05D5; 1312; MSNJ; MSOS	5	39:4-91 & 39:4-92	Reckless driving	5
39:3-38	Make or use counterfeit plate or plates other than issued	0338	5	39:4-96	Careless driving	2
39:3-38.1	Make, alter or counterfeit driver's license or registration	3381	5	39:4-97	Destruction of agricultural or recreational property	2
	Failure to verify insurance involved in an automobile accident	FVIA	2	39:4-97a	Slow speed blocking traffic	2
				39:4-97.1	Exceeding maximum speed 1-14 mph over limit	2
				39:4-98 & 39:4-99	Exceeding maximum speed 15-29 mph over limit	4
					Exceeding maximum speed 30 mph or more over limit	5
				39:4-105	Failure to stop for traffic light	2
				39:4-115	Improper turn at traffic light	3
				39:4-119	Failure to stop at flashing red signal	2
				39:4-122	Failure to stop for police whistle	2
				39:4-123	Improper right or left turn	3
				39:4-124	Improper turn from approved turning course	3
				39:4-125	Improper "U" turn	3
				39:4-126	Failure to give proper signal	2
				39:4-127	Improper backing or turning in street	2
				39:4-127.1	Improper crossing of railroad grade crossing	2
				39:4-127.2	Improper crossing of bridge	2
				39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
				39:4-128.1	Improper passing of school bus	5
				39:4-128.4	Improper passing of a frozen dessert truck	4
				39:4-129	Leaving the scene of an accident	
					No personal injury	2
					Personal injury	8
				39:4-144	Failure to observe "stop" or "yield" signs	2
				39:5D-4	Moving violation out-of-state	2

* Points for failure to hold a driver's license in the previous three years are not cumulative to points for driver's license suspension.

Schedule 2

N.J.S.A. Section Number	Offense	Points
27:23-29	Moving against traffic—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
27:23-29	Improper passing—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4
27:23-29	Unlawful use of median strip—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
39:3-20	Operating constructor vehicle in excess of 30 mph	3
39:4-14.3	Operating motorized bicycle on a restricted highway	2
39:4-14.3d	More than one person on a motorized bike	2
39:4-35	Failure to yield to pedestrian in crosswalk	2
39:4-36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4-41	Driving through a safety zone	2
39:4-52 & 39:5C-1	Racing on highway	5
39:4-55	Improper action or omission on grades and curves	2
39:4-57	Failure to observe direction of officer	2
39:4-66	Failure to stop vehicle before crossing sidewalk	2
39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4-71	Operating a motor vehicle on a sidewalk	2
39:4-80	Failure to obey direction of officer	2
39:4-81	Failure to observe traffic signals	2
39:4-82	Failure to keep right	2
39:4-82.1	Improper operating of vehicle on divided highway or divider	2
39:4-83	Failure to keep right at intersection	2

SUBCHAPTER 35. PRIVATE PASSENGER AUTOMOBILE INSURANCE UNDERWRITING RULES

11:3-35.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-46 which requires that personal private passenger automobile insurers file for approval their underwriting rules used to accept or reject new or renewal business or to assign risks to the standard or non-standard rate levels. Approval of underwriting rules shall serve to confirm that each insurer's business practices are consistent with law regarding the acceptance of new business, the renewal of current business and the assignment of a risk to an insurer's standard or non-standard rate level.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to affiliated companies which insure risks through different individual insurance companies.

(c) No private passenger automobile insurer shall make any filing pursuant to this subchapter after March 1, 1998.

Amended by R.1998 d.129, effective March 2, 1998.

See: 29 N.J.R. 5253(a), 30 N.J.R. 839(a).

Added a new (c).

11:3-35.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Affiliated companies” means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey and that are under both common ownership and common management.

“Automobile insurance eligibility points” means points accrued as provided in accordance with the schedule set forth in N.J.A.C. 11:3-34.

“Commissioner” means the Commissioner of Banking and Insurance of the State of New Jersey.

“Department” means the New Jersey Department of Banking and Insurance.

“Individual insurance company” means an insurance company licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless of whether it is one of a group of affiliated companies.

“Insurer” includes a group of affiliated companies.

“Renew” means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

11:3-35.3 General requirements and filing format

(a) All insurers which write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business to a tier in a tier rating plan in accordance with N.J.S.A. 17:29A-46.1 and 46.2 and this subchapter. No insurer shall use or implement any underwriting rule not filed and approved as set forth herein.

(b) Underwriting rules shall be submitted on 8½ by 11 inch paper using one side of the page. Each page shall be consecutively numbered. The first page shall show the filer’s company name, the filer’s identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s), and NAIC group number. The underwriting rules filing shall clearly identify the rate level to which the underwriting rules will be applied and whether the underwriting rules apply to new business, renewal business or both. All tables shall be clearly labeled.

(c) Underwriting rules shall meet the following standards:

1. No underwriting rule shall be based on the territory in which an insured resides.

2. An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristics of the driver(s) insured and the hazards insured against.

3. An underwriting rule shall be based on specific and verifiable measurements. No underwriting rule shall be based on subjective judgments such as “pride of ownership evident,” “poor attitude,” “unsatisfactory environment to conduct business,” etc.

4. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

5. No underwriting rule shall be based on whether the applicant or insured was previously insured as a non-standard or sub-standard risk, was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminated insurance.

6. No underwriting rule shall be based on whether the insured or a member of the insured’s household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount.

7. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

8. No underwriting rule shall be based on whether the insured has changed employment in the recent past, except that this provision shall not prohibit a rate discount to an insurer’s employees or agents.

9. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

In (a), substituted “a tier in a tier rating plan in accordance with N.J.S.A. 17:29A-46.1 and 46.2” for “the standard or non-standard rating plan, in accordance with N.J.S.A. 17:29A-46”.

11:3-35.4 Underwriting rules for eligible persons

(a) All insurers shall file for approval underwriting rules that provide that the insurer will make an offer to renew any

of its insureds who is defined as an “eligible person” in N.J.A.C. 11:3-34.