

AUTOMOBILE INSURANCE

Subchapter 4, Personal Injury Protection Benefits; Medical Protocols; Diagnostic Tests, was adopted as new rules by R.1998 d.597, effective December 21, 1998, operative March 22, 1999. See: 30 N.J.R. 3211(a), 30 N.J.R. 3748(a), 30 N.J.R. 4401(a).

Subchapter 38, Towing and Storage Fee Schedule, was repealed by R.1999 d.1, effective January 4, 1999. See: 30 N.J.R. 2813(a), 31 N.J.R. 54(c).

Pursuant to Executive Order No. 66(1978), Chapter 3, Automobile Insurance, was readopted as R.2001 d.44, effective January 4, 2001, and Subchapter 2B, Market Transition Facility of New Jersey Payment Prioritization and Claims Payment Deferral, Subchapter 16A, Flex Rate Percentage Calculations for Private Passenger Automobile Insurance, Subchapter 19, Standard/Nonstandard Rating Plans, and Subchapter 42, Producer Assignment Program, were repealed by R.2001 d.44, effective January 4, 2001. See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Subchapter 17, Rate Intervenor Rules, was adopted as new rules by R.2001 d.270, effective August 6, 2001. See: 33 N.J.R. 1305(a), 33 N.J.R. 2694(a).

Subchapter 16B, Rate Process For Limited Rate Changes; Calculations for Private Passenger Automobile Insurance Rate Changes, was adopted as new rules, by R.2001 d.481, effective December 17, 2001. See: 33 N.J.R. 2574(a), 33 N.J.R. 4371(a).

Subchapter 3A, Reporting Requirements and Filing Deadlines, was adopted as new rules, by R.2003 d.95, effective March 3, 2003. See: 34 N.J.R. 3470(a), 35 N.J.R. 1289(a).

Subchapter 2A, Special Automobile Insurance Policy, was adopted as new rules, by R.2003 d.497, effective December 15, 2003. See: 35 N.J.R. 3519(b), 35 N.J.R. 5599(a).

Subchapter 47, Insurance Scenarios, was adopted as new rules, by R.2004 d.118, effective March 15, 2004. See: 35 N.J.R. 4434(a), 36 N.J.R. 1587(a).

Subchapter 35A, Private Passenger Automobile Insurance—Use of Alternate Underwriting Rules, was adopted as new rules, by R.2004 d.165, effective April 19, 2004. See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

Subchapter 16A, Private Passenger Automobile Insurance Territorial Rating Plans, was adopted as new rules, by R.2005 d.126, effective April 18, 2005. See: 36 N.J.R. 3979(a), 37 N.J.R. 1197(a).

Chapter 3, Automobile Insurance, was readopted by R.2006 d.243, effective June 7, 2006. See: Source and Effective Date. See, also, section annotations.

Subchapter 12, Automobile Rate Filers: Flattening of Premium Taxes and Assessments Made for Unsatisfied Claim and Judgment Fund, was renamed Automobile Rate Filers: Flattening of Premium Taxes, by R.2006 d.243, effective July 3, 2006. See: 37 N.J.R. 4162(a), 38 N.J.R. 2828(c).

Subchapter 17, Rate Intervenor Rules, was repealed by R.2006 d.243, effective July 3, 2006 (operative July 16, 2006). See: 37 N.J.R. 4162(a), 38 N.J.R. 2828(c).

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SUBCHAPTER 1. COMMERCIAL AUTOMOBILE
INSURANCE PLAN

11:3-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide the coverages described herein, subject to the conditions stated, for motor vehicles other than those vehicles subject to the New Jersey Personal Automobile Insurance Plan and any other private passenger vehicle that is owned by or driven by a person who meets the definition of an eligible person pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34;

2. To provide for the apportionment of insurance coverage for qualified applicants who are in good faith entitled to but are unable to procure the same, through the voluntary market; and

3. To establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey as defined within this subchapter for all risks qualified for coverage under the provisions of this subchapter.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.1996 d.502, effective October 21, 1996.

See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Amended by R.2003 d.415, effective October 20, 2003.

See: 35 N.J.R. 2391(a), 35 N.J.R. 4900(a).

In (a), inserted "other" preceding "private passenger vehicle" in 1, substituted "qualified" for "eligible" preceding "applicants" in 2 and substituted "qualified" for "eligible" preceding "for coverage" in 3.

11:3-1.2 Definitions

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

"Actively writing" means an insurer writing commercial automobile liability or physical damage insurance in this State in the voluntary or involuntary market. This includes new business and/or renewals.

"CAIP" or "Plan" means the Commercial Automobile Insurance Plan pursuant to this subchapter.

"CAIP manager" means the entity employed by the Governing Committee to manage and conduct the administrative affairs of the CAIP on a daily basis.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Emergency type vehicle" means any land vehicle, used to respond to distress calls, fires, or rescue, propelled by other than muscular power and not run upon rails or tracks. This term includes, but is not limited to, fire trucks, rescue trucks, police cars and ambulances.

"Gross participation" means a participant's Voluntary All Other Automobile Direct Written Premiums derived from information contained in the annual statement times a fraction, the numerator of which is the sum of the plan's total written premiums for that year and the Statewide total Voluntary All Other Automobile Direct Written Premiums which are eligible for depopulation credit for that policy year, and the denominator of which is the Statewide total Voluntary All Other Automobile Net Direct Written Premiums of all participants for that second prior year.

"Light truck" means a vehicle with a gross vehicle weight (G.V.W.) of 10,000 pounds or less.

"Motor vehicle" means any land vehicle propelled otherwise than by muscular power including trailers and semi-trailers, except such vehicles that run only upon rails or tracks.

"Net participation" means a participant's gross participation for that policy year less its business eligible for depopulation credit for that policy year.

"Net participation percentage" means a participant's net participation for that policy year in proportion to the comparable Statewide total net participation for all participants.

"Operating headquarters" means the chief place of business where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the location where the executive offices are, corporate decisions are made and corporate functions are performed.

"Participant" means an insurer licensed and authorized to write motor vehicle liability or physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical damage insurance.

"Personal injury protection" means those benefits as set forth at N.J.S.A. 39:6A-4.

"Policy year" means the exposure and premiums for all policies written during a calendar year and all losses attributable to policies written during the same calendar year.

"Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through any voluntary or residual market mechanism created by statute, and is owned by an individual or husband and wife; or owned jointly by two or more relatives other than husband and wife; or owned jointly by two or more resident individuals; or owned by a corporation, partnership or unincorporated association, governmental agency, or registered to a professional designation (that is, T/A, PA or P.C.) where such automobiles are furnished to individuals and are not used for business purposes.

“Actively writing” means an insurer writing private passenger automobile liability or physical damage insurance in this State in the voluntary or involuntary market. This includes new business and/or renewals.

An “affiliate” of, or a person “affiliated” with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or camper type vehicle used for recreational purposes, owned by an individual or jointly by individuals who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching; and solely for the purpose of this plan, a motorcycle as defined in N.J.S.A. 39:1-1. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets this definition, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

“Automobile insurance” means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of automobiles, including, but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance, and uninsured and underinsured motorist insurance.

“Automobile insurance urban enterprise zone” or “UEZ” means a geographic area identified by zip codes and designated by the Commissioner pursuant to N.J.A.C. 11:3-46.

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

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

“Insurer” means any person or persons, corporation, association, partnership, company, or other legal entity authorized to transact the business of private passenger automobile insurance in this State, except any residual market mechanism created by or pursuant to statute.

“LAD carrier” means a limited assignment distribution carrier which is a participating insurer which agrees to accept the assignments of another insurer pursuant to this subchapter and procedures set forth in the plan of operation.

“PAIP” means the Personal Automobile Insurance Plan established pursuant to this subchapter.

“Personal private passenger automobile insurance” means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

“Qualified eligible person” means a person who meets the definition of an eligible person at N.J.A.C. 11:3-34.4 but who has been denied an automobile insurance policy by an insurer permitted to use its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.

Amended by R.1993 d.548, effective November 15, 1993.

See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

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

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

Amended by R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

Added “Automobile insurance urban enterprise zone” and “Qualified eligible person”.

Amended by R.2006 d.388, effective November 6, 2006.

See: 38 N.J.R. 2786(a), 38 N.J.R. 4719(a).

Added definition “Actively writing”.

11:3-2.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of personal private passenger automobile insurance for qualified applicants to be known as the New Jersey Personal Automobile Insurance Plan, hereafter referred to as “PAIP.”

(b) The PAIP shall be administered by a governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the PAIP shall be located within the State of New Jersey.

11:3-2.4 Exemptions

(a) Every insurer shall participate in the PAIP to the extent required by this subchapter and the plan of operation.

(b) The requirements of this subchapter shall not apply to the following:

1. Insurers that have not issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983;
2. Insurers that have issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983, but only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1 et seq.
3. Insurers transacting private passenger automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent that waiver of participation in the

PAIP is explicitly provided by the terms of the approved plan of orderly withdrawal; or

4. Insurers transacting private passenger automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-23 and 24, but only to the extent provided by the terms of the order.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of automobiles (for example, motor homes, recreational vehicles, antique automobiles or motorcycles) shall participate in the PAIP but only for the particular types of automobiles currently being insured.

(d) Insurers claiming to be excluded from participation pursuant to the provisions of (b) or (c) above shall comply with the following:

1. Such insurers shall file with the PAIP no later than 60 days from the effective date of this rule a certified statement containing the following information:

- i. The insurer's name, including the NAIC group number;
- ii. A statement that the insurer is not required to participate in the PAIP or receive assignments through the PAIP;
- iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with this subchapter;
- iv. The particular provision of this rule under which the insurer is included; and
- v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer's information, knowledge and belief based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the PAIP at the following address:

PAIP Exemptions
New Jersey Personal Automobile Insurance Plan
6000 Midlantic Drive
Suite 200 North
Laurel Corporate Center
Mt. Laurel, NJ 08054

3. A copy of the information filed pursuant to (c)1 and 2 above shall be filed with the Department at the following address:

Property & Casualty
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

New Rule, R.1993 d.548, effective November 15, 1993.

See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

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

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

Amended by R.2006 d.243, effective July 3, 2006.

See: 37 N.J.R. 4162(a), 38 N.J.R. 2828(c).

In (d)2, substituted "6000" for "2000" and "Suite 200 North" for "Suite 450"; and in (d)3, substituted "Property & Casualty" for "ARM Unit".

11:3-2.5 Governing committee

(a) The PAIP shall be administered by a governing committee of 14 members. No employee of a voluntary market auto insurer that is not actively writing private passenger automobile insurance or that has filed and received approval of an application to withdraw from writing private passenger automobile insurance in New Jersey shall be eligible to serve as a member of the governing committee.

1. Eight members shall be salaried employees of an insurer which is a participant in PAIP.

2. Three members shall be licensed producers.

3. One member shall be a public representative who is knowledgeable about automobile insurance matters but who is not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. One member shall be a salaried employee of an approved LAD carrier for the PAIP, provided that neither the LAD carrier nor any affiliate of the LAD carrier otherwise serves as a member of the governing committee.

5. The Commissioner shall be an ex-officio, non-voting member of the committee. The Commissioner may designate an alternate.

(b) The following organizations shall each nominate two members to represent insurer participants of PAIP:

1. Property Casualty Insurers Association of America (PCI); and

2. The American Insurance Association.

(c) Insurers which are not members of the organizations in (b) above shall nominate two members to represent insurer participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;

2. Insurance Brokers Association of New Jersey; and

3. Professional Insurance Agents of New Jersey.

(e) Two of the 14 members shall be representatives of one or more insurer participants in the organizations referenced in (b) above or of a non-member insurer participant as refer-

liability limits. *Selective Ins. Co. of America v. Hojnoski*, 317 N.J.Super. 331, 722 A.2d 118 (A.D.1998).

11:3-2.8 Eligibility

(a) PAIP shall provide coverage to all qualified applicants. For purposes of this subchapter, a “qualified applicant” means:

1. A person who is not an “eligible person” as defined in N.J.A.C. 11:3-34.4 or who is a qualified eligible person; and
2. A person domiciled in New Jersey, who is an owner of an automobile registered and principally garaged in this State or will be registered and principally garaged in this State within 60 days.

(b) “Qualified applicant” shall also include military personnel with respect to an automobile if, at the time application is made, the applicant is a nonresident who is stationed in this State, whose automobile is registered in another State and garaged in this State.

(c) No person shall, however, be deemed a qualified applicant, if the principal operator of the automobile to be insured does not hold a driver’s license which is valid in this State; or if a regular operator of the automobile other than the principal operator does not hold such a license; or if timely payment of premium is not tendered; or if the principal operator of the automobile does not furnish the information necessary to effect insurance; or if such person rents or leases automobiles to others which are used for commercial purposes.

(d) As a prerequisite to consideration for assignment under the PAIP, the applicant must certify, in the prescribed application form approved by the Commissioner, that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in the State and that he or she is a qualified applicant as set forth in (a), (b) and (c) above. An applicant so certifying shall be considered for assignment upon making application in good faith to the PAIP. An applicant shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form approved by the Commissioner.

(e) The governing committee shall establish procedures in the plan of operation with respect to documentation to be provided by the applicant and producer showing the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;
2. Reasons for termination and effective date of termination;
3. Claim history for the preceding three years;
4. Driving history for each operator; and
5. Copies of vehicle registration(s).

(f) The governing committee shall establish procedures for the cancellation or nonrenewal of policies to persons who are not or are no longer qualified applicants.

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

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

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.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

Deleted former (a); recodified former (b) through (g) as new (a) through (f); in new (a)1, inserted "or who is a qualified eligible person" following the N.J.A.C. reference.

11:3-2.9 Rates and policy forms

(a) The governing committee shall file for prior approval by the Commissioner, a rating system including rates, rules and forms which shall be used by insurers writing risks through the PAIP. Proceedings to review rate filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall reflect the experience of the risks insured by the PAIP and shall not be excessive, inadequate or unfairly discriminatory.

1. Rates established for liability insurance coverages with limits in excess of \$50,000 per person and \$100,000 per accident for bodily injury or death and \$25,000 for property damage, or in lieu thereof, \$100,000 for a combined single limit of liability, shall be experience rated with respect to the rate applicable to the coverage in excess of those limits;

2. Rates established for collision and comprehensive coverages on automobiles with a value of \$25,000 or more at the time those coverages are issued or renewed shall be experience rated, and for automobiles with a value of more than \$15,000, but less than \$25,000 at the time those coverages are issued or renewed, that part of the rate applicable to the value between \$15,000 and \$25,000 shall be experience rated.

(b) For purposes of this subchapter, "experience rated" means that rates for liability coverages with limits in excess of the amount specified in (a)1 above, or for collision and comprehensive coverages for automobiles with a value over the amount specified in (a)2 above, shall reflect the experience of those risks insured by the PAIP with liability coverages with limits, and collision and comprehensive coverages on automobiles valued over, the amounts specified in (a)1 and (a)2 above. "Experience rated" shall not be construed to mean retrospectively rated.

11:3-2.10 Installment payment option

(a) The PAIP shall provide for an installment premium payment option in accordance with procedures established by the governing committee in the plan of operation. With respect to the installment premium payment option, the plan of operation shall specify:

1. The minimum initial deposit required, which shall be no more than 30 percent of the estimated total premium;

2. The schedule for the payment of premiums on an installment basis which shall provide for installment payments over a period of not less than nine months;

3. Installment charges;

4. The minimum "per installment" amounts; and

5. Any other procedures deemed necessary by the governing committee.

(b) Additional premium in excess of an amount set by the governing committee in the plan of operation resulting from changes to the policy shall be spread over the remaining installments, if any, or may be billed immediately as a separate transaction.

(c) Return premium resulting from changes to the policy shall be used to reduce the outstanding balance. If the outstanding balance is eliminated, any amount remaining in excess of an amount set by the governing committee in the plan of operation shall be returned within 30 days. If an outstanding balance remains, the number and amounts of the remaining installments shall be adjusted accordingly, except when the return amount is less than \$20.00, in which event it may be treated as a separate transaction.

11:3-2.11 Determination and fulfillment of quotas

(a) The governing committee shall establish procedures in the plan of operation to distribute risks eligible for coverage to insurers on an equitable basis based on the proportion that the insurer's share of the voluntary market for personal private automobile insurance relates to the Statewide total of the voluntary market for personal private passenger automobile insurance in the State.

1. The PAIP shall not provide insurance coverage for more than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State.

2. The PAIP shall cease acceptance of applications for new policies upon certification by the Commissioner that the Plan has reached or exceeded 10 percent of the private passenger automobile non-fleet exposures.

3. The PAIP shall resume acceptance of applications for new policies upon certification by the Commissioner that the PAIP is insuring less than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile market in the State.

4. Each insurer shall receive credit against its respective portion of assigned risks for private passenger automobile risks written voluntarily in the State that are garaged in the UEZs. Such credits shall be in an amount established in the plan of operation.

5. Each insurer shall receive one assigned risk credit for each risk that is not an eligible person written in

accordance with the insurer's approved rating system, regardless of the territory in which the risk is located.

6. Each insurer that activates its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.6 shall receive a credit against its respective portion of assigned risks for private passenger automobile insurance for risks written voluntarily. The credits shall be in an amount established in the plan of operation.

7. In order to encourage the writing of risks in traditionally underserved areas, the PAIP shall, in its allocation of credits as set forth in (a)6 above, consider the loss ratio of the municipality, identified by zip code, in which the risk is located. The loss ratios for municipalities shall be established by the Department from data compiled by the statistical agents and shall be included in the Plan of Operation.

8. No insurer whose surplus as regards policyholders is less than \$1,500,000, as reported on page three of the most recent statutory annual statement, shall be assigned a risk requesting or required by law to carry limits of liability in excess of 50/100/10 or in excess of a combined single limit of \$100,000.

(b) An insurer that issues only policies that provide physical damage coverage shall not be subject to assignments from the PAIP, but shall be entitled or obligated, as the case may be, to receive or pay a cash settlement of its obligation, in lieu of receiving assignments, for the current year, in accordance with procedures established by the governing committee in the plan of operation.

(c) Each insurer or statistical agencies designated by such insurers shall report to the PAIP manager all data necessary to comply with the distribution procedures. Each insurer shall permit its statistical agent to release such data to the PAIP manager and shall permit its statistical agent to furnish the PAIP manager with statements of its PAIP experience.

(d) There shall be no exceptions to the type or class of risks assigned to an insurer other than as provided in this subchapter nor shall there be any agreement with an insurer to refrain from assigning risks in any territory or area of the State.

(e) The PAIP shall not suspend assignments to an insurer for any period of time, for any reason, other than a suspension of insurer obligations granted by the Commissioner pursuant to N.J.S.A. 17:33B-23, 17:33B-24 and N.J.A.C. 11:2-35. The PAIP shall promptly notify all insurers of such action.

(f) If an insurer is ordered or permitted to discontinue writing automobile insurance in this State in accordance with a plan of orderly withdrawal approved pursuant to N.J.A.C. 11:2-29, or other Order of the Commissioner, or Order by a court of competent jurisdiction, the insurer's obligations to pay assessments, receive assignments and run-off existing business shall be pursuant to such Order of the Commissioner or Order of a court of competent jurisdiction.

(g) In the event an insurer is merged with another insurer, there is a consolidation of insurers, or an insurer acquires another insurer's book of business, the continuing insurer shall receive the assignments and assessments of the insurer merged, consolidated, or acquired until the quota of such merged, consolidated, or acquired insurer, as established by its writings prior to such merger, consolidation, or acquisition has been filled; provided, however, the continuing insurer may be relieved from such obligations if another insurer has agreed, in a manner satisfactory to the governing committee, to assume such obligations.

(h) Groups of insurers under the same ownership and management shall be treated as a single insurer. Groups of insurers under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(i) The governing committee shall establish procedures in the plan of operation permitting an insurer by mutual agreement to transfer its obligations to accept assignments to another insurer (to be known as a LAD carrier). The basic contract to be entered into between insurers and LAD carriers, including the minimum duration of such agreement, shall be approved by the governing committee and the Commissioner. Any substantive modifications to the approved contract shall be submitted to the governing committee and Commissioner for approval prior to its use. With respect to the transfer of an insurer's obligations to accept assignments to a LAD carrier, the plan shall address the following:

1. Eligibility criteria for an insurer to act as a LAD carrier and accept additional assignments;
2. The maximum number of additional assignments a LAD carrier may assume;
3. Minimum provisions for contracts between insurers and LAD carriers, including the minimum time duration for such contracts;
4. The parameters for fees to be paid to LAD carriers by the participating insurer for the assumption of the insurer's assigned risk quota;
5. Procedures by which the allocation of assignments to LAD carriers are adjusted to reflect additional assignments as a result of entering into a contract to assume additional assigned risks; and
6. Any other procedures deemed necessary to provide for a LAD carrier distribution system.

Amended by R.1993 d.548, effective November 15, 1993.

See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

Amended by R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

In (a), rewrote the introductory paragraph and 4, added new 5 through 7 and recodified former 5 as 8.

11:3-2.12 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, LAD carrier, person applying to act as a LAD carrier, or insurer may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.

2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1993 d.548, effective November 15, 1993.
See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

11:3-2.13 Voluntary rating tier (VRT)

(a) The voluntary rating tier shall be administered by the PAIP in accordance with its plan of operation.

(b) The plan of operation shall provide for:

1. The procedure for determining eligibility of applicants for coverage in the VRT;
2. Procedures for the assignment of qualified eligible persons to the member insurers of the PAIP pursuant to the apportionment methodology of the PAIP Plan of Operation and including any credits pursuant to N.J.A.C. 11:3-2.11(a)6;
3. Procedures for the nonrenewal of policies;
4. Performance standards for insurers and producers;
5. A VRT producer eligibility program, which shall be available only to producers otherwise certified by the PAIP who have a contract to write personal private passenger automobile insurance with a voluntary market insurer that is actively writing personal private passenger automobile insurance in this State that authorizes the producer to solicit business on the insurer's behalf;
6. Development and maintenance of a statistical plan and of manuals that incorporate the plan and a rating system; and
7. Such other provisions as are deemed necessary by the Governing Committee for the operation of the PAIP.

New Rule, R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

Former N.J.A.C. 11:3-2.13, Penalties, recodified to N.J.A.C. 11:3-2.14.

11:3-2.14 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

Recodified from N.J.A.C. 11:3-2.13 by R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

SUBCHAPTER 8. RENEWAL AND NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

11:3-8.1 Scope

This subchapter applies to all automobiles as defined in N.J.S.A. 39:6A-2a, excluding those owned by business entities or insured through any statutorily mandated residual market mechanism, and to all policies or contracts of insurance insuring such automobiles.

New Rule, R.1983 d.190, effective June 6, 1983.
See: 15 N.J.R. 231(a), 15 N.J.R. 927(a).

Section was "General provisions".
Amended by R.1986 d.418, effective October 6, 1986.
See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(b).

Case Notes

Policy provision defining an eligible person as a spouse only if resident in the same household as insured held void; named insured's deletion of estranged wife from coverage held void; reformation of policy ordered. *Matland v. United States Automobile Ass'n*, 174 N.J.Super. 499, 417 A.2d 46 (Law Div.1980).

The extension of N.J.A.C. 11:3-8.1, establishing procedures for the nonrenewal of "No-Fault" coverages to include physical damage coverages is a valid and enforceable exercise of the commissioner's rule making power. *Atty.Gen.F.O.1982, No. 8.*

11:3-8.2 Definitions

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

"Automobile insurance eligibility points" or "eligibility points" means points calculated under the schedule set forth in N.J.A.C. 11:3-34.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Eligible person" means an individual that meets the qualifications set forth in N.J.A.C. 11:3-34.

"Information" means any facts, documents, information and representations that are intentionally disclosed, or not disclosed, by an insured, applicant or covered person to an insurer or its representative that would materially affect the coverage, the premium or the benefits under a policy of insurance.

"Insurer" includes a group of affiliated companies.

"Nonrenewal" means the termination of coverage at the end of the policy period. Nonrenewal occurs when a notice of nonrenewal is sent to the insured in accordance with these rules.

"Producer" means any person or business entity, licensed pursuant to N.J.S.A. 17:22A-1 et seq., that earns \$10,000 or more in commissions from an insurer in the prior calendar year.

"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 rating plan, filed and approved in accordance with N.J.A.C. 11:3-19A.

"Tier rating plan" means a rating system used by an insurer that provides different rates for different risks to those insureds who qualify in accordance with the insurer's approved underwriting rules, which has been filed and approved in accordance with N.J.A.C. 11:3-19A.

Emergency New Rule, R.1990 d.626, effective November 26, 1990, Operative April 1, 1991 (expired January 25, 1991).

See: 22 N.J.R. 3766(b).

Adopted Concurrent Proposal R.1991 d.89, effective January 25, 1991.
See: 22 N.J.R. 3766(b), 23 N.J.R. 507(a).

Provisions of emergency new rule, R.1990 d.626 readopted without change, operative April 1, 1991.

Amended by R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

Inserted "DIFP", "Information" and "Nonrenewal"; in "Renew", changed N.J.A.C. reference; and changed "Standard/nonstandard rating plan" definition to "Tier rating plan", substituted a reference to rates for a reference to base rates, and changed N.J.A.C. reference.
Amended by R.2001 d.44, effective February 5, 2001.

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

Deleted "DIFP".

Case Notes

Where offer to renew insurance is conditioned upon timely premium payment, that fact should be clearly set forth. *Cervone v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 25, 570 A.2d 999 (A.D.1990).

Notices of nonrenewal must be sent in strict compliance with statutory provisions. *Lopez v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 13, 570 A.2d 994 (A.D.1990), certification denied 122 N.J. 131, 584 A.2d 206.

Renewal policy need not be issued until premium is paid. *Lopez v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 13, 570 A.2d 994 (A.D.1990), certification denied 122 N.J. 131, 584 A.2d 206.

Insurer held liable for fire loss where it failed to give notice of policy expiration. *Barbara Corp. v. Bob Maneely Insurance Agency*, 197 N.J.Super. 339, 484 A.2d 1292 (App.Div.1984) (dissenting opinion).

Provision that no insurer shall refuse to renew coverage without consent of the Commissioner upheld against constitutional challenges. *Sheeran v. Nationwide Mutual Insurance Co., Inc.*, 80 N.J. 548, 404 A.2d 625 (1979).

Insurance company cancelling agencies was required to give insureds renewal options indefinitely unless like coverage was available in the market. *Sheeran v. Nationwide Mutual Insurance Co., Inc.*, 159 N.J.Super. 417, 388 A.2d 272 (Ch.Div.1978), affirmed per curiam 163 N.J.Super. 40, 394 A.2d 149 (App.Div.1978), modified and affirmed 80 N.J. 548, 404 A.2d 625 (1979).

11:3-8.3 General provisions

(a) Every insurer shall make an offer to the insured named policyholder subject to this subchapter to renew such policy upon its expiration date, unless a valid notice of nonrenewal or conditioned renewal as specified in (h) below has been sent by the insurer to the insured in accordance with this subchapter.

(b) Each renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal offer or bill. A renewal offer or bill shall indicate the date by which the renewal premium is due. The renewal bill or offer shall be mailed or delivered by the insurer to the insured not more than 45 days and not less than 30 days prior to the date the renewal premium is due.

1. Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the renewal offer by the insured.

2. Where acceptance of the renewal is made by mailing payment of the renewal bill, the renewal notice shall state the following in a clear and conspicuous manner:

i. The due date for receipt of the renewal premium and a notice of the insured designed to help the insured understand what "12:01 A.M." means as a deadline;

ii. The consequences to the insured if the insurer does not receive the renewal premium by the due date, including any late payment penalties for receipt of the premium by the insurer after the due date pursuant to N.J.A.C. 11:3-19A.7(g); and

iii. A statement advising whether the insured has the option to make payment to the insurance producer.

(c) Subject to changes approved by the Commissioner that had become effective prior to the expiration of the current policy, each renewal shall offer coverage, limits and terms at least as favorable to the insured as the expiring policy, including, but not limited to the schedule of premium payments, if any.

(d) The requirements of (b) above shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate.

(e) A notice of nonrenewal shall not be valid unless it is mailed or delivered by the insurer to the insured named policyholder no less than 60 days and no more than 90 days prior to the expiration of the current policy, except that the Commissioner may direct by Order that a notice of nonrenewal must be mailed or delivered up to 90 days prior to the expiration of the current policy. Any such order shall apply to nonrenewal notices issued a minimum of 30 days after the date of the order. A notice of nonrenewal shall set forth the reason(s) for such nonrenewal.

1. A notice of nonrenewal shall not be valid unless it includes the designated provision(s) of this subchapter under which action is being taken and the facts relied upon by the insurer in determining to nonrenew the insured. The notice shall include reference to the underwriting provision(s), including dates and other facts necessary for identification of the incident(s).

i. In the event action is being taken under N.J.A.C. 11:3-8.4(a) (ineligible person), the notice shall provide the basis by which the insured fails to qualify as an eligible person. When notice of nonrenewals is based on automobile insurance eligibility points, the notice shall identify the number of eligibility points and the events and sources which resulted in their assessment.

ii. In the event action is being taken under N.J.A.C. 11:3-8.4(b) (underwriting rules) to nonrenew an insured who is not an eligible person in accordance with the approved underwriting rules, the notice shall provide the basis by which the insured fails to qualify as an eligible person and shall reference the specific underwriting rule by which the insured is disqualified. The notice shall set forth the specific facts upon which the insurer relied to determine that the insured is not an eligible person and is no longer qualified to be insured in accordance with the insurer's approved underwriting rules.

iii. In the event action is being taken under N.J.A.C. 11:3-8.5(a)2, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)2 (two percent territorial nonrenewal) and shall be consecutively numbered in each territory.

iv. In the event action is being taken under N.J.A.C. 11:3-8.5(a)3, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)3 (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

2. Notices of nonrenewal shall include or be accompanied by the statement prescribed in (f)2i below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention.

i. Notices of nonrenewal must set forth: "If you have reason to believe that our decision to nonrenew your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you should file a written complaint with the New Jersey Department of Banking and Insurance, Division of Enforcement and Consumer Protection, PO Box 329, Trenton, NJ 08625-0329. Your written complaint should indicate the facts on which you are basing your complaint."

3. Each notice of nonrenewal sent in accordance with (f)1iii and iv above shall be accompanied by a copy of the notice contained in Appendix Exhibit A, incorporated herein by reference.

(f) Nothing in this subchapter shall be construed as prohibiting a renewal policy from being issued for higher limits of coverage and/or additional coverage(s), provided that such additional protection is specifically requested by the insured and the insurer is willing to provide it. Conversely, nothing shall prohibit the renewal policy from being issued for lower limits of coverage and/or fewer coverages provided that such reduction in protection is specifically requested by the insured and further provided that coverage in no case shall fall below the level or levels otherwise required by law.

(g) In any instance in which an insurer may, pursuant to the provisions of this subchapter, nonrenew an automobile policy, it may, in lieu of the nonrenewal and in compliance with such provisions, condition the renewal of the policy upon a change of limits or elimination of any coverage not required by law.

(h) A notice of nonrenewal shall not be valid unless it is issued in accordance with N.J.A.C. 11:3-8.3 and authorized by the Commissioner of Banking and Insurance pursuant to N.J.A.C. 11:3-8.4 and 8.5.

Amended by R.1973 d.30, effective January 25, 1973.

See: 4 N.J.R. 305(b), 5 N.J.R. 48(a).

Amended by R.1976 d.328, effective October 18, 1976.

See: 8 N.J.R. 421(a), 8 N.J.R. 516(e).

Amended by R.1977 d.100, effective March 23, 1977.

See: 9 N.J.R. 178(b).

Amended by R.1977 d.437, effective January 1, 1978.

See: 9 N.J.R. 435(d), 9 N.J.R. 586(b).

Amended by R.1983 d.190, effective June 6, 1983.

See: 15 N.J.R. 231(a), 15 N.J.R. 927(a).

Recodified from 11:3-8.1. Replaced (d).

Amended by R.1986 d.418, effective October 6, 1986.

See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(a).

Emergency Amendment, R.1990 d.626, effective November 26, 1990, operative April 1, 1991 (expired January 25, 1991).

See: 22 N.J.R. 3766(b).

Recodified from 11:3-8.2. In (f)1i, added notice of eligibility points and added ii-iv.

Adopted Concurrent Proposal, R.1991 d.89, effective January 25, 1991, operative April 1, 1991.

See: 22 N.J.R. 3766(b), 23 N.J.R. 507(a).

Provisions of emergency amendment R.1990 d.626 readopted without change.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

In (f): revised address in (f)2i and deleted NJAFIUA reference in (f)3, adding text "... a residual market mechanism created by statute."

Amended by R.1998 d.43, effective January 20, 1998.

See: 29 N.J.R. 3107(a), 30 N.J.R. 366(b).

In (f), added 3 and 4.

Amended by R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

In (b), rewrote the last sentence; rewrote (c); in (f), changed N.J.A.C. references throughout, rewrote the introductory paragraph in 1, deleted "applicable to the nonstandard rate level of an approved standard/non-standard rating plan" following "rules" in the first sentence of Iii, and deleted a former 4; and rewrote (i).

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 "policyholder" for "in a policy"; and in (f), inserted "named policyholder" following "to the insured".

Amended by R.2003 d.498, effective December 15, 2003.

See: 35 N.J.R. 3081(a), 35 N.J.R. 5601(a).

Rewrote the section.

Case Notes

Notices of nonrenewal must be sent in strict compliance with statutory provisions. *Lopez v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 13, 570 A.2d 994 (A.D.1990), certification denied 122 N.J. 131, 584 A.2d 206.

Renewal policy need not be issued until premium is paid. *Lopez v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 239 N.J.Super. 13, 570 A.2d 994 (A.D.1990), certification denied 122 N.J. 131, 584 A.2d 206.

Insurance agent who continued to service insurer's policyholders subsequent to termination with insurance company, established prima facie case of quasi-contract. *Cohen v. Home Ins. Co.*, 230 N.J.Super. 72, 552 A.2d 654 (A.D.1989).

Policy binder in effect for more than 60 days held to provide coverage in absence of formal notice of cancellation, despite lack of any premium payment and knowledge that insurer would not issue policy. *Miney v. Baum*, 170 N.J.Super. 282, 406 A.2d 234 (Law Div.1979).

Provision that no insurer shall refuse to renew coverage without consent of the Commissioner upheld against constitutional challenges. *Sheeran v. Nationwide Mutual Insurance Co., Inc.*, 80 N.J. 548, 404 A.2d 625 (1979).

Under assigned risk automobile insurance plan, 45 day notice sufficed for non-renewal expiration; broker held to have breached duty to insured in failing to advise him of ramifications of expiration. *Commercial Union Assurance Companies v. State Farm Mutual Automobile Insurance Co.*, 158 N.J.Super. 326, 385 A.2d 1286 (Law Div.1978).

Proof of mailing of notice of cancellation held to be conclusive proof of provision of such notice to insured. *Weathers v. Hartford Insurance Group*, 77 N.J. 228, 390 A.2d 548 (1978).

Insured's latest accident justifies insurer declining coverage. *Hakim v. State Farm Insurance Company*, 97 N.J.A.R.2d (INS) 20.

11:3-8.4 Standards of nonrenewal—ineligible persons

(a) An insurer may issue a notice of nonrenewal to any person who is not an eligible person as defined in N.J.A.C. 11:3-34.

1. For the purpose of determining whether a person is an eligible person who must be renewed, an insurer shall consider those eligibility points accrued only in the 36-month period ending 90 days prior to the expiration of the current policy or a 36-month period ending as of the extended notification period ordered by the Commissioner pursuant to N.J.A.C. 11:3-8.3(e).

2. An insurer shall not issue a notice of nonrenewal for the reason that a member of the insurer's household is not an eligible person unless the member of the insured's household usually accounts for 10 percent or more of the use of the vehicle insured for the purpose of this section:

i. 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.

ii. Except 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.

3. No insurer shall issue a notice of nonrenewal to any person qualified to be renewed in accordance with the insurer's filed and approved underwriting rules.

(b) An insurer which has filed a tier rating plan pursuant to N.J.A.C. 11:3-19A may issue notices of intention not to renew any insured who is not an eligible person and who no longer qualifies for any rate level in accordance with its approved underwriting rules.

Amended by R.1983 d.190, effective June 6, 1983.

See: 15 N.J.R. 231(a), 15 N.J.R. 927(a).

Recodified from 11:3-8.1(e)-(g).

Amended by R.1986 d.418, effective October 6, 1986.

See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(a).

Emergency Repeal and New Rule, R.1990 d.626, effective November 26, 1990, operative April 1, 1991 (expired January 25, 1991).

See: 22 N.J.R. 3766(b).

Recodified from 11:3-8.3.

Adopted Concurrent Proposal, R.1991 d.89, effective January 25, 1991, operative April 1, 1991.

See: 22 N.J.R. 3766(b), 23 N.J.R. 507(a).

Provisions of emergency repeal and new rule R.1990 d.626 readopted with changes.

Amended by R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

In (a)3, substituted "filed and approved underwriting rules" for "underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35" at the end; and in (b), substituted a reference to tier rating plans for a reference to standard/nonstandard rating plans, and changed N.J.A.C. reference.

Amended by R.2003 d.498, effective December 15, 2003.

See: 35 N.J.R. 3081(a), 35 N.J.R. 5601(a).

Rewrote (a)1.

Case Notes

Nonmailing or mailing of renewal offer for New Jersey Automobile Full Insurance Underwriting Association policy by mail less than 30 days before expiration date results in coverage beyond expiration date for reasonable period. *Gatto v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 284 N.J.Super. 665, 666 A.2d 204 (A.D.1995).

Commissioner adopted the Initial Decision (2006 N.J. AGEN LEXIS 788), which concluded that the testimony of the insurer's appraiser was sufficiently detailed and reliable and supported by competent evidence to permit a finding that the damage exceeded the threshold number, where the appraiser did not appraise insured's vehicle personally, but the existence of damage was not denied, and the appraiser, who had nothing to gain by fabricating the appraisal, testified as an expert in appraisals. Insured was thus found to be involved in two at-fault accidents and was liable for the assessment of two five-point insurance eligibility point assessments; consequently, insured did not meet the definition of an "eligible person" under N.J.S.A. 17:33B-13(d), (f) and N.J.A.C. 11:3-34.4(a)8, and insurer had the legal right to refuse to renew insured's coverage. *Cagnacci v. New Jersey Manufacturers Ins. Co.*, OAL Dkt. No. BKI 00075-06S, 2006 N.J. AGEN LEXIS 942, Final Decision (October 23, 2006).

Consistent with prior decisions and with N.J.A.C. 11:3-34.3, an accident involving the insured's vehicle striking a roadway curb was an at-fault accident, and consequently the insurer correctly determined that insured was not an eligible person at the time it issued the notice of nonrenewal; historical interpretation of N.J.A.C. 11:3-34.3 as set forth in several prior Final Decisions in similar cases compelled this determination. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BKI 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 2006).

Insurer proved by a preponderance of credible evidence that the insured's son accumulated an excess amount of automobile insurance eligibility points due to his having been convicted of a moving violation and his involvement in an at-fault accident; on that basis and in

accordance with N.J.A.C. 11:3-34.4(a), insurer correctly determined that insured's son was not an "eligible person" as set forth in that rule. *Scarfi v. First Trenton Indem. Co.*, OAL Dkt. No. BKI 07769-04, 2005 N.J. AGEN LEXIS 1157, Final Decision (December 8, 2005).

Absent a state-mandated definition of the date or time when "accrual" of violation points occurred, for purpose of determining whether insured was an eligible person who had to be renewed, terms of insurance policy, which specifically stated that points for violations accrued when event was recorded in records of the New Jersey Division of Motor Vehicles (DMV), would define the term. *Jonathan A. Kessous, v. Liberty Mutual Insurance Company*, 2003 WL 21781647, N.J. Adm., Jul 16, 2003, (NO. BKI 044, EPO2).

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.

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.

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 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.

11:3-8.5 Other nonrenewals—standards

(a) Subject to the limitation set forth in N.J.A.C. 11:3-8.6, an insurer may issue a notice of nonrenewal to an insured, in the following instances:

1. In accordance with N.J.S.A. 17:29C-7.1f, when the policyholder or other person insured under the policy either has:

i. Provided false or misleading information in connection with an application or renewal of coverage, or as part of a claim for benefits; or

ii. Failed to provide the minimum information necessary to accurately rate the policy or renewal.

2. In accordance with N.J.S.A. 17:29C-7.1b, an insurer may nonrenew the policies of two percent of the insurer's in force voluntary market policies in each rating territory.

3. In accordance with N.J.S.A. 17:29C-7.1c, an insurer may nonrenew one automobile for each two automobiles written by the insurer during the same calendar year and in the same rating territory.

Repeal and New Rule, R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

Section was "Additional nonrenewals".

11:3-8.6 Limitations on nonrenewal

(a) No insurer shall nonrenew a policy based on N.J.A.C. 11:3-8.5(a)1i without having first conducted an investigation and reported the matter in accordance with the insurer's Fraud Detection and Prevention Plan.

(b) No insurer shall nonrenew a policy for failure to complete and return a renewal questionnaire without having first given written notice to the policyholder one full policy cycle prior to the issuance of the notice of nonrenewal that:

1. At the next renewal, the insurer shall send the policyholder a renewal questionnaire, which must be completed and returned; and

2. Failure to complete and return that renewal questionnaire may result in the nonrenewal of the policy

(c) No insurer shall nonrenew a policy pursuant to N.J.A.C. 11:3-8.5(a)2 and 3:

1. In an amount in excess of 20 percent of the entire private passenger automobile insurance book of business of any one producer in force with the insurer at the end of the previous calendar year; and

2. Unless the insured or any other operator insured under the policy has individually, within five years prior to

the expiration of the policy, two or more of the following events:

i. An at-fault accident as defined by N.J.A.C. 11:3-34.3;

ii. A motor vehicle violation for which four or more automobile insurance eligibility points accumulate under N.J.A.C. 11:3-34.5; or

iii. Has failed to maintain insurance coverage without lapse as required by P.L. 1998, c.21 and 22, sec. 4 and 6.

(d) No insurer shall nonrenew a policy pursuant to N.J.A.C. 11:3-8.5(a)3 in any rating territory containing a municipality designated as an automobile urban enterprise zone (UEZ) unless the insurer's aggregate voluntary market share in the UEZs is at least 95 percent of the insurer's Statewide market share excluding UEZs as of the most recent UEZ in force report filed in accordance with N.J.A.C. 11:3-46.13 for the quarter ending September 30.

(e) Except as prohibited by (d) above, an insurer may nonrenew a policy pursuant to N.J.A.C. 11:3-8.5(a)3 in a rating territory where the number of its in-force exposures has increased in the previous year as indicated by the two most recent in-force exposure reports for the quarter ending December 31.

(f) Nothing in these rules or their application shall be construed to authorize insurers to act in contravention of any applicable State or Federal law prohibiting discrimination on impermissible bases.

New Rule, R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

Former N.J.A.C. 11:3-8.6, Suspension of nonrenewals, recodified to N.J.A.C. 11:3-8.7.

Administrative correction.

See: 32 N.J.R. 809(b).

11:3-8.7 Suspension of nonrenewals

Notwithstanding the provisions of this subchapter, if the plan for automobile insurance established pursuant to N.J.S.A. 17:29D-1 is not accepting new applications for coverage pursuant to N.J.S.A. 17:29D-1(d), no insurer transacting automobile insurance in this State shall refuse to renew any private passenger automobile insurance policy in this State.

Emergency New Rule, R.1990 d.626, effective November 26, 1990, operative April 1, 1991 (expired January 25, 1991).

See: 22 N.J.R. 3766(b).

Adopted Concurrent Proposal, R.1991 d.89, effective January 25, 1991, operative April 1, 1991.

See: 22 N.J.R. 3766(a), 23 N.J.R. 507(a).

Provisions of emergency new rule readopted without change.

Recodified from N.J.A.C. 11:3-8.6 by R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

Former N.J.A.C. 11:3-8.7, Reporting requirements, recodified to N.J.A.C. 11:3-8.8.

11:3-8.8 Records

Insurance companies shall maintain records of nonrenewals for not less than five years which shall include a copy of the notice of nonrenewal, data concerning the allowable number of nonrenewals in each territory computed in accordance with N.J.A.C. 11:3-8.5(a)2, and data concerning the actual number of newly insured automobiles and nonrenewals in each territory for each category, computed in accordance with N.J.A.C. 11:3-8.5(a)3. Such records and data shall be made available to the Department upon request.

New Rule, R.1986 d.418, effective October 6, 1986.

See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(a).

Emergency Repeal and New Rule, R.1990 d.626, effective November 26, 1990, operative April 1, 1991 (expired January 25, 1991).

See: 22 N.J.R. 3766(b).

Recodified from 11:3-8.5.

Adopted Concurrent Proposal, R.1991 d.89, effective January 25, 1991, operative April 1, 1991.

See: 22 N.J.R. 3766(a), 23 N.J.R. 507(a).

Provisions of emergency repeal and new rule, R.1990 d.626 readopted without change.

Recodified from N.J.A.C. 11:3-8.7 and amended by R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

Rewrote the section. Former N.J.A.C. 11:3-8.8, Separability, recodified to N.J.A.C. 11:3-8.9.

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

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

Rewrote the section.

11:3-8.9 Separability

If any provision of this subchapter or its application to any person or circumstances is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

New Rule, R.1986 d.418, effective October 6, 1986.

See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(a).

Recodified from 11:3-8.6 as part of Emergency Amendments filed as R.1990 d.626, effective November 26, 1990, operative April 1, 1991.

See: 22 N.J.R. 3766(b).

Adopted Concurrent Proposal, R.1991 d.89, effective January 25, 1991, operative April 1, 1991.

See: 22 N.J.R. 3766(a), 23 N.J.R. 507(a).

Recodified from N.J.A.C. 11:3-8.8 by R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

Former N.J.A.C. 11:3-8.9, Penalties, recodified to N.J.A.C. 11:3-8.10.

11:3-8.10 Penalties

(a) Any person violating the provisions of this subchapter shall be subject to such penalties as may be authorized by law.

(b) In addition to any such penalties, the Commissioner may, after notice and hearing, suspend or revoke the rights of any insurer or group of insurers under N.J.A.C. 11:3-8.4.

New Rule, R.1986 d.418, effective October 6, 1986.

See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(a).

Recodified from 11:3-8.7 as part of Emergency Amendments filed as R.1990 d.626, effective November 26, 1990, operative April 1, 1991.

See: 22 N.J.R. 3766(b).

Adopted Concurrent Proposal, R.1991 d.89, effective January 25, 1991, operative April 1, 1991.

See: 22 N.J.R. 3766(a), 23 N.J.R. 507(a).

Recodified from N.J.A.C. 11:3-8.9 by R.1999 d.270, effective August 16, 1999.

See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

APPENDIX

EXHIBIT A

New Jersey Auto Consumers' Rights Q & A

New Jersey Department of Banking and Insurance
 PO Box 325
 Trenton, NJ 08625-0325
 1-800-446-7467

*Shopping for Auto Insurance? Start
 now and know your rights.*

Below are some of the most commonly asked questions about auto insurance and the answers every consumer should have before shopping for a new policy. But remember, it is difficult to take advantage of your rights if you wait until the last minute.

- *Can a company refuse to sell auto insurance to me?*

No, not as long as you are an “eligible” driver under the law, based primarily on motor vehicles violations, at-fault accidents and lapses in coverage. More than 97 percent of New Jersey drivers are eligible for coverage by all but a very few companies. If your application is declined, the company must tell you the reason, in writing.

- *There are no insurance agents in my neighborhood? Where can I get insurance?*

Call the Department of Banking and Insurance for an annual premium comparison survey and a list of all companies that sell insurance in New Jersey. Many are “direct writers,” who sell insurance over the telephone or by mail.

- *Can I be denied insurance because of where I live or my race, sex, or age?*

No. Insurance companies are barred by law from refusing to sell auto insurance coverage based on any of those factors.

- *An insurance agent refused to tell me about rates. Is this right?*

No. Insurance companies and agents must provide general pricing information for your area upon request. If you meet with an agent to get a “quote,” or specific pricing for your policy, any agent who sells for multiple companies must give you quotes for each one.

- *Will I have to wait several weeks to get an appointment to buy auto insurance coverage?*

No. If a company uses appointments, you should be scheduled so that you can get coverage before your current policy expires. Tell the agent your current expiration date, and get an appointment well in advance so your coverage will not lapse. Give yourself time to shop around – you might get

a better price. Remember that processing the application will take some time, so don't wait until the last minute.

- *What documents do I have to provide to get insurance?*

That can vary, so be sure to ask and make a list of what is needed. You will be asked to provide a copy of your driver's license and registration certificate and you may be asked to supply other information or documents. Companies cannot require you to provide a copy of your driver's “abstract,” or Motor Vehicle Commission record. You may wish to bring one if you do not have time to wait for the company to obtain one. It's up to you.

- *How much time does an insurance company have to approve or reject my application once it is completed?*

The company has 5 business days from the time it receives a completed application to approved or decline it, and the clock starts running *when the company receives the application*, not when you put it in the mail. If you buy through an agent, ask how long will it take for the company to receive your application and you will know when to expect an answer.

- *Can I do anything to reduce the cost of my insurance?*

Yes. Give yourself enough time to shop around. Prices vary from company to company. When you apply for insurance coverage, you will be asked to complete a “coverage selection form.” Read the form carefully. You can pay less by taking advantage of cost-saving options available. Buy only the insurance you need. You can help lower the cost of insurance by reporting insurance fraud and spotting aggressive drivers who cause accidents.

- *Who should I call?*

To obtain shopping information,
 Insurance Consumer Hotline
 1-800-446-7467
 To report suspected fraud
 Office of the Insurance Fraud Prosecutor
 1-800-877-55FRAUD
 To report aggressive drivers
 New Jersey State Police
 1-888-723-7623

New Rule, R.1998 d.43, effective January 20, 1998.
 See: 29 N.J.R. 3107(a), 30 N.J.R. 366(b).
 Recodified from N.J.A.C. 11:3-8 Appendix Exhibit C by R.1999 d.270, effective August 16, 1999.
 See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).
 Former N.J.A.C. 11:3-8 Appendix Exhibit A, Nonrenewal report—A, repealed.
 Amended by R.2001 d.44, effective February 5, 2001.
 See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
 Amended by R.2006 d.243, effective July 3, 2006.
 See: 37 N.J.R. 4162(a), 38 N.J.R. 2828(c).
 Substituted “Motor Vehicle Commission” for “Division of Motor Vehicles”.

EXHIBIT B (RESERVED)

Repealed by R.1999 d.270, effective August 16, 1999.
See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).
Exhibit was "Nonrenewal report—B".

EXHIBIT C (RESERVED)

Recodified to N.J.A.C. 11:3-8 Appendix Exhibit A by R.1999 d.270,
effective August 16, 1999.
See: 30 N.J.R. 2564(a), 31 N.J.R. 2383(b).

SUBCHAPTER 9. RATING INFORMATION;
AUTOMOBILE INSURANCE ON PRIVATE
PASSENGER CARS

**11:3-9.1 Rating information; private passenger cars;
automobile insurance**

(a) Every automobile insurance policy subject to New Jersey rates and providing coverage for an individually owned (or jointly owned by husband and wife; or two or more relatives resident of the household) private passenger automobile and/or any motor vehicle rates as a private passenger automobile shall be accompanied by rating information applicable to the premium determination. Such information must include the criteria pertaining to any individual driver classification plan used by the company and shall recite any rules that apply to the chargeability of accidents and convictions.

(b) If the declaration page or extension certificate or similar documents to the insured identifies the insured's car by a code, or other abbreviation, the rating information may be supplied by a rating information form that interprets the code number or abbreviation.

(c) Every company shall develop a rating information format adapted to the classification system approved for and used by the company in this State. Such format shall be submitted to the Commissioner of Banking and Insurance for approval initially within 30 days of the effective date of this regulation, and subsequently within 15 days of any revision of the classification system approved for the company. Filings of the rating information format by a rating organization shall be applicable to members and subscribers of such organization unless such companies deviate from the rating organization's classification system.

(d) This regulation shall be effective August 31, 1973. Use of approved forms will be required on all new and renewal business with effective dates January 1, 1974 and thereafter.

R.1973 d.206, effective August 31, 1973.

See: 5 N.J.R. 150(b), 5 N.J.R. 282(b).

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Deleted subsection (b) regarding New Jersey Automobile Insurance Plan and recodified existing (c)-(e) as (b)-(d) with no change in text.

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

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

11:3-9.2 (Reserved)

R.1975 d.130, eff. July 1, 1975.

See: 7 N.J.R. 113(a), 7 N.J.R. 276(d).

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

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

Section was "Private passenger automobile rating class; revoked or suspended operator".

SUBCHAPTER 10. AUTO PHYSICAL DAMAGE
CLAIMS

11:3-10.1 Scope

This subchapter applies to claims arising under motor vehicle collision and comprehensive coverages.

Amended by R.1985 d.629, effective December 16, 1985.

See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).

Section heading was Application.

Case Notes

Insurers' activities in estimating repair costs held not an Antitrust Act violation. *Chick's Auto Body v. State Farm Mutual Automobile Insurance Co.*, 168 N.J.Super 68, 401 A.2d 722 (Law Div.1979), affirmed per curiam 176 N.J.Super. 320, 423 A.2d 311 (App.Div.1980).

11:3-10.2 Definitions

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

"Actual cash value", unless otherwise specifically defined by law or policy, means the lesser of the amounts for which the insured or the designated representative can reasonably be expected to:

1. Repair the motor vehicle to its condition immediately prior to the loss; or
2. Replace the motor vehicle with a substantially similar vehicle. The amount shall include all moneys paid or payable as sales taxes on the motor vehicle repaired or replaced. This paragraph shall not be construed to prevent an insurer from issuing a policy where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

"Agreed price" or "figure" means the amount agreed to by the insurer and the insured, or their representatives, as the reasonable cost to replace the motor vehicle or to repair damages to the motor vehicle resulting from the loss, without considering any deductible or deductions.

"Designated representative" means a person designated by the insured to represent the insured in negotiations with the insurer in an attempt to settle the claim. The designated representative may be any person authorized by the insured who may act legally in his or her behalf.

"Motor vehicle" shall have the meaning ascribed in N.J.S.A. 39:1-1.

“Substantially similar vehicle” means a vehicle of the same make, model, year and condition, including all major options of the insured vehicle. Mileage must not exceed that of the insured vehicle by more than 4,000 miles. Mileage differences of more than 4,000 miles may, at the option of the insured, be exchanged for the presence or absence of options or a cash adjustment.

Amended by R.1985 d.629, effective December 16, 1985.
See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).

Case Notes

Insurers’ activities in estimating repair costs held not an Antitrust Act violation. *Chick’s Auto Body v. State Farm Mutual Automobile Insurance Co.*, 168 N.J.Super 68, 401 A.2d 722 (Law Div.1979), affirmed per curiam 176 N.J.Super. 320, 423 A.2d 311 (App.Div.1980).

Measure of value applicable under policy’s theft coverage held to be fair market value; insured, owner of modified vehicle, held entitled to recover only the average market value of an ordinarily equipped automobile of the same make, model and year. *Titus v. West American Insurance co.*, 143 N.J.Super. 195, 362 A.2d 1236 (Law Div.1976).

11:3-10.3 Adjustment of partial losses

(a) If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, the insurer shall have seven working days following receipt of notice of loss to inspect the insured’s damaged vehicle, which is available for inspection, at a place and time reasonably convenient to the insured; commence negotiations; and make a good faith offer of settlement.

(b) Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price. Early in negotiations, the insurer must inform and confirm in writing to the insured or the insured’s designated representative all deductions that will be made from the agreed price, including the amount of applicable deductible.

(c) If the insurer inspects the damaged vehicle or causes it to be inspected, the insurer shall promptly upon completing the inspection furnish the insured or the designated representative of the insured with a detailed written estimate of the cost of repairing the damage resulting from the loss, specifying all appropriate deductions.

(d) No insurer shall negotiate the settlement of any physical damage claim involving an automobile as defined at N.J.S.A. 39:13-1b with an unlicensed auto body repair facility or in any manner utilize an unlicensed facility in the adjustment, negotiation or settlement of such a claim. It shall be the responsibility of the insurer to make a reasonable and diligent effort to determine whether the facility is properly licensed.

(e) Subject to the requirements of (d) above, the insured may use any repair facility of his or her own choice. With respect to automobile damage claims, the insurer shall notify in writing any insured who elects to use his or her own repair facility that, pursuant to law, any entity engaged in the

business of auto body repairs must be duly licensed. The notice shall further advise the insured that the insurer is prohibited by law from negotiating, adjusting or settling an automobile damage claim with an unlicensed facility. The written notice shall be furnished at the time of acknowledgement of the claim as provided in N.J.A.C. 11:2-17.6 or upon the furnishing of its written estimate, as specified in (c) above, whichever is sooner. The insurer shall make all reasonable efforts to obtain an agreed price with the facility selected by the insured. The insurer may recommend, and if the insured requests, shall recommend a qualified repair facility at a location reasonably convenient to the insured motor vehicle who will repair the damaged motor vehicle at the insurer’s estimated cost of repairs, but in either event the provisions of (g) below apply.

(f) All estimates, including revisions and adjustments, prepared by any repair facility, estimator or appraiser must be included in each claim file.

(g) If the insured’s vehicle is repaired at a repair facility whose name is furnished by the insurer under (e) above for a sum estimated by the insurer as the reasonable cost to repair the vehicle, the insurer:

1. Shall select a repair facility that issues written guarantees that any work performed in repairing damaged vehicles meets generally accepted standards for safe and proper repairs;

2. Shall cause the damaged vehicle to be restored to the condition it was in prior to the loss, at no additional cost to the insured and within a reasonable time, if the repair facility does not repair the damaged vehicle in accordance with generally accepted standards for a safe and proper repair.

(h) Whenever an insurer elects to repair its insured’s vehicle, that is, physically take the vehicle and have it repaired, the election must be in writing addressed to the insured and contain a reasonable estimate of the time period within which the vehicle will be repaired. The insurer shall guarantee, in writing, that the work performed meets generally accepted standards for safe and proper repairs.

(i) Deductions for betterment and depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount by which the resale value of the vehicle is increased by the repair or replacement. Calculations for betterment, depreciation and normal useful life must be included in the insurer’s claim file.

(j) Deductions for previous damage or prior condition of the vehicle must be measurable, discernible, itemized and specific as to the dollar amount, and those deductions must be included in the insurer’s claim file. The deductions shall be

[] New Policy [] Mid-Term Change [] Renewal Change

SIGNATURE OF NAMED INSURED

OR APPLICANT _____

DATE _____

New Rule, R.1998 d.595, effective December 21, 1998 (operative March 22, 1999).
 See: 30 N.J.R. 3577(a), 30 N.J.R. 4452(a).
 Amended by R.2004 d.117, effective March 15, 2004.
 See: 35 N.J.R. 3523(a), 36 N.J.R. 1420(a).
 Deleted former Exhibit 1 and recodified Exhibit 2 and 3 as 1 and 2.

**SUBCHAPTER 16. RATE FILING
 REQUIREMENTS: VOLUNTARY MARKET
 PRIVATE PASSENGER AUTOMOBILE
 INSURANCE**

11:3-16.1 Purpose and scope

(a) This subchapter establishes data, filing format and standardized ratemaking information and methodology requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq. and as required by N.J.S.A. 17:29A-36.2.

(b) This subchapter applies to all insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

(c) These requirements apply to all rate or loss cost filings made by insurers for the revision of base rates or loss costs; informational filings to be made on July 1 of each year pursuant to N.J.S.A. 17:29A-36.2b; and those filings made under N.J.S.A. 17:29A-46.6.

(d) Any insurer wishing to effect the rate level by changing rates, rules or forms must file data pursuant to this subchapter.

(e) This subchapter establishes data requirements and filing procedures for insurers participating in rating organizations to adopt or modify a rating organization's prospective loss cost filing for private passenger automobile insurance.

(f) This subchapter applies to all rating organizations that file prospective loss costs and all insurer filings that adopt or modify a rating organization's prospective loss cost filing for private passenger insurance made pursuant to N.J.S.A. 17:29A-1 et seq. and 17:33B-31.

Emergency Amendment, R.1990 d.621, effective November 26, 1990 (expired January 25, 1991).
 See: 22 N.J.R. 3790(a).
 Expanded (d) to require filing of data pursuant to this subchapter.

Adopted Concurrent Proposal, R.1991 d.91, effective January 25, 1991.
 See: 22 N.J.R. 3790(a), 23 N.J.R. 514(a).

Provision of emergency amendment, R.1990 d.621, readopted without change.

Amended by R.1998 d.128, effective March 2, 1998.

See: 29 N.J.R. 5240(a), 30 N.J.R. 828(a).

In (c), inserted references to loss costs throughout, and substituted a reference to N.J.A.C. 17:29A-46.6 for a reference to N.J.A.C. 17:29A-44 at the end; and added (e) and (f).

Amended by R.2005 d.176, effective June 6, 2005.

See: 36 N.J.R. 5640(a), 37 N.J.R. 2026(a).

In (a), substituted "standardized ratemaking information and methodology requirements" for "preferred ratemaking requirements".

Case Note

Single line private passenger automobile insurer was entitled to 34% rate increase. In *The Matter Of GSA Insurance Company's Request For A Private Passenger Automobile Insurance Rate Increase*, 2000 WL 148198 (N.J. Adm.), NO. BKI 10882-98.

11:3-16.2 Definitions

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

"Accident year" means the 12-month period covering the occurrences during that period.

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer making a filing.

"AIRE" means the Automobile Insurance Risk Exchange, established pursuant to N.J.S.A. 39:6A-21.

"Base rate" means the manual rate that results from all rating factors (limits, class, tiers, etc.) being at unity (1.000 factor).

"Claim" means a request for payment for a loss which comes under the terms of an insurance contract.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Control" is as defined in N.J.S.A. 17:27A-1.

"Coverages" means:

1. Split limit bodily injury (BI);
2. Split limit property damage (PD);
3. Combined single limit BI and PD (CSL);
4. Personal injury protection including medical payments (PIP);
5. BI, PD and PIP combined (PACK);
6. Uninsured and underinsured motorist, bodily injury and property damage (UM). For rate indication purposes, BI and PD components of UM may be combined with liability data in 1, 2, 3 or 5 above as applicable;

7. Comprehensive (COMP); and
8. Collision (COLL).

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

“Expenses” means that portion of a rate that is attributable to commissions and brokerage, other acquisition expenses, general expenses, and taxes, licenses and fees in addition to assessments for losses and costs relating to uninsured motorist coverage and pedestrian personal injury protection. Expenses include the Automobile Insurance Risk Exchange (AIRE) assessments, AIRE allocations, AIRE investment income, and Limited Assignment Distribution (LAD) carrier fees, if applicable, or the expected gain (deficit) resulting from assigned risk business.

“Exposure” means one car insured for one year, or two cars insured for six months each, etc.

“Filer” means any insurer or rating organization who makes an annual informational filing or rate filing requiring prior approval pursuant to these rules.

“Group of coverages” means liability coverages (to include bodily injury liability, property damage liability, personal injury protection and uninsured/underinsured motorists) and physical damage coverages (to include collision and comprehensive).

“Informational filing” means a filing made annually on July 1 in accordance with N.J.S.A. 17:29A-36.2b.

“Loss cost multiplier” means the adjustment reflecting expenses, profit loading and any modifications that the insurer used on the loss costs to produce final rates.

“Rating organization” means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

“Prior approval filing” means a filing made pursuant to N.J.S.A. 17:29A-14 and N.J.A.C. 11:3-16.6 to alter, supplement or amend rating system or any part thereof.

“Prospective loss cost” means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

“Rate” means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium. The unit charge may be expressed as a single number or as a prospective loss cost and an adjustment to account for the treatment of expenses, profit and variations in loss experience.

“Rating system” means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates and rules used by any insurer in determining or ascertaining a rate.

“Reasonable total rate of return” means that rate of return appropriate for an enterprise given the risk involved.

“Small filer” means a filer with less than 0.5 percent of the New Jersey written premiums in the voluntary market for private passenger automobile insurance for the most recently available prior calendar year.

“Tier” and “tier rating system” refer to one or more underwriting rules, filed and approved pursuant to N.J.S.A. 17:29A-46.1 et seq. and N.J.A.C. 11:3-19A which defines and characterizes one or more mutually exclusive groups of insureds.

“Total rate of return” means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

Emergency Amendment, R.1990 d.621, effective November 26, 1990 (expired January 25, 1991).

See: 22 N.J.R. 3790(a).

Added definitions for “advisory organization”, “affiliate”, “base rate”, “control”, “group of coverages”, “MTF”, “NJAFIUA” and “rating organization”.

Adopted Concurrent Proposal, R.1991 d.91, effective January 25, 1991.

See: 22 N.J.R. 3790(a), 23 N.J.R. 514(a).

Provision of emergency amendment, R.1990 d.621, readopted with changes effective February 19, 1991.

Amended by R.1993 d.158, effective April 5, 1993.

See: 24 N.J.R. 4486(a), 24 N.J.R. 56(a), 25 N.J.R. 1543(a).

Added “Amount(s) paid to the MTF”.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Deleted definition of “Public Advocate”.

Amended by R.1998 d.128, effective March 2, 1998.

See: 29 N.J.R. 5240(a), 30 N.J.R. 828(a).

Inserted “Expenses”: in “Filer”, inserted a reference to rating organizations, and deleted a reference to flex rate filing; deleted “Flex rate” and “Flex rate filing”; and inserted “Loss cost multiplier”, “Prior approval filing”, “Prospective loss cost”, “Rate”, “Supplementary rate information”, and “Tier” and “tier rating system”.

Amended by R.2003 d.173, effective May 5, 2003.

See: 34 N.J.R. 3475(a), 35 N.J.R. 1907(a).

Deleted “AIP”, “Amount(s) paid to the MTF”, “MTF” and “NJAFIUA”; in “All other coverages”, inserted “New Jersey” preceding “page 14”.

Amended by R.2003 d.499, effective December 15, 2003.

See: 35 N.J.R. 3084(a), 35 N.J.R. 5604(a).

Rewrote “Expenses” and deleted “UCJF”.

Amended by R.2005 d.176, effective June 6, 2005.

See: 36 N.J.R. 5640(a), 37 N.J.R. 2026(a).

Rewrote the section.

11:3-16.3 General requirements and filing format

(a) The data requirements set forth in this subchapter are minimum requirements. The filer may submit any other data it believes to be relevant in justifying proposed rate changes. If the filer has not collected portions of this information in the past, or has not collected it in a form so as to facilitate reporting, it is not required to compile it retrospectively.

(b) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship and that choose to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.8, 16.9, and 16.10, either:

1. Separately for each company with a different rate level or different underwriting guidelines; or
2. Combined for those companies of the group which use a common rating system, including both base rates and underwriting guidelines, or when the difference is based only on expense differences.

(c) All filings shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance
Office of Property and Casualty
PO Box 325
Trenton, New Jersey 08625-0325

(d) All filings shall be accompanied by a NAIC Uniform Property and Casualty Transmittal Document and accessible, with instructions, at N.J.A.C. 11:1-2.2(b).

(e) All filings shall be accompanied by the following certification signed by an officer of the filer: "I _____ certify that the attached filing complies with all statutory and regulatory requirements and that all the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(f) All data shall be reported on a direct basis exclusive of business ceded to reinsurers or reinsurance assumed from other companies.

Emergency Amendment, R.1990 d.621, effective November 26, 1990 (expired January 25, 1991).
See: 22 N.J.R. 3790(a).

Provisions added to confirm that rate filings should contain only voluntary market data and not include data from risks that may be insured through the assigned risk plan to be instituted pursuant to section 34 of the Act.

Adopted Concurrent Proposal, R.1991 d.91, effective January 25, 1991.
See: 22 N.J.R. 3790(a), 23 N.J.R. 514(a).

Provision of emergency amendment, R.1990 d.621, readopted with changes effective February 19, 1991.

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

Deleted requirement to send filings to the Public Advocate.
Amended by R.1998 d.128, effective March 2, 1998.
See: 29 N.J.R. 5240(a), 30 N.J.R. 828(a).

In (a), deleted the former fourth and fifth sentences; in (d), changed the mailing address; deleted former (i); recodified former (j) as (i); recodified former (k) as (j), and substituted "prior approval rate or lost cost" for "rate" in the first sentence; and added new (k) and (l).
Amended by R.2001 d.44, effective February 5, 2001.

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

Amended by R.2002 d.101, effective April 1, 2002.
See: 33 N.J.R. 1875(a), 34 N.J.R. 1431(b).

Rewrote (e).
Amended by R.2003 d.173, effective May 5, 2003.
See: 34 N.J.R. 3475(a), 35 N.J.R. 1907(a).

In (g), added "A total of three copies shall be submitted." at the end of the paragraph.

Amended by R.2003 d.499, effective December 15, 2003.

See: 35 N.J.R. 3084(a), 35 N.J.R. 5604(a).

In (i), deleted reference to the transactions with UCJF.

Amended by R.2005 d.176, effective June 6, 2005.

See: 36 N.J.R. 5640(a), 37 N.J.R. 2026(a).

Rewrote the section.

Amended by R.2007 d.91, effective April 2, 2007.

See: 38 N.J.R. 4976(b), 39 N.J.R. 1313(a).

Rewrote (d).

11:3-16.4 Insurer informational filings due July 1 of each year

(a) Informational filings shall be made by all insurers transacting private passenger automobile insurance in the voluntary market, including all individual members and subscribers of rating organizations, pursuant to N.J.S.A. 17:29A-36.2b.

(b) The information filing shall consist of the following documents:

1. The insurer's Excess Profits Report for each company filed pursuant to N.J.A.C. 11:3-20. In lieu of providing copies, the filer may submit a certification of an officer that the report has been filed and is incorporated by reference.

2. Such other specific information on a particular subject at a particular time as the Commissioner may require by Order.

Emergency Amendment, R.1990 d.621, effective November 26, 1990 (expired January 25, 1991).

See: 22 N.J.R. 3790(a).

Deleted (b)2. through 8.; added new 2.

Adopted Concurrent Proposal, R.1991 d.91, effective January 25, 1991.

See: 22 N.J.R. 3790(a), 23 N.J.R. 514(a).

Provision of emergency amendment, R.1990 d.621, readopted with changes effective February 19, 1991.

Amended by R.1995 d.171, effective March 20, 1995.

See: 27 N.J.R. 41(a), 27 N.J.R. 1190(b).

11:3-16.5 (Reserved)

Emergency Amendment, R.1990 d.621, effective November 26, 1990 (expired January 25, 1991).

See: 22 N.J.R. 3790(a).

Amended to implement provisions of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.

Adopted Concurrent Proposal, R.1991 d.91, effective January 25, 1991.

See: 22 N.J.R. 3790(a), 23 N.J.R. 514(a).

Provision of emergency amendment, R.1990 d.621, readopted without change.

Amended by R.1992 d.189, effective April 20, 1992.

See: 23 N.J.R. 3199(a), 24 N.J.R. 1504(a).

Rate calculation to be included in memo.

Amended by R.1995 d.171, effective March 20, 1995.

See: 27 N.J.R. 41(a), 27 N.J.R. 1190(b).

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Repealed by R.1998 d.128, effective March 2, 1998.

See: 29 N.J.R. 5240(a), 30 N.J.R. 828(a).

Section was "Insurer flex rate filings".

11:3-16.6 Filings for rates requiring prior approval

(a) Any filer that desires to modify its rates or rating systems in a manner other than that provided by N.J.S.A.

17:29A-46.6 shall provide the following standard information in support of its application:

1. A cover letter notifying the Department of its intention to modify its rating system in a manner that requires prior approval, pursuant to N.J.S.A. 17:29A-14; a statement describing the proposed changes, which shall include the proposed effective date of the change, and the name, telephone number and mailing address of the company officer familiar with the filing, to whom inquiries about the filing may be directed. Filers may choose to eliminate the submission of a cover letter provided that the "Filing Description" of the NAIC Uniform Property and Casualty Transmittal Document referenced in N.J.A.C. 11:3-16.3(d) is fully completed with a clear and precise description of the filing;

2. A checklist that sets forth the information in Exhibit A in the Appendix incorporated herein by reference;

3. Exhibit B in the Appendix incorporated herein by reference;

4. A narrative overview that sets forth the contents of the filing, and explains the reasons and procedures used to derive the rate change requested;

5. Premiums, losses and loss adjustment expenses data, as set forth in N.J.A.C. 11:3-16.8;

6. Expense data, as set forth in N.J.A.C. 11:3-16.9. Rating organizations are exempt from this requirement;

7. Profit and contingency provision, as set forth in N.J.A.C. 11:3-16.10. Rating organizations are exempt from this requirement;

8. Proposed rates or loss costs for each territory and coverage together with their derivation;

9. Calculations showing that the proposed rates are in compliance with N.J.S.A. 17:29A-36; and

10. Data described in N.J.A.C. 11:3-16.8, 16.9 and 16.10 shall be submitted in written copy and, except for purely textual information, on an MS-DOS formatted 3.5 inch 1.44 MB disk or a CD-ROM. The information shall be provided in a Microsoft Excel 97 or compatible spreadsheet. All calculated values shall be given as a formula in the spreadsheet.

(b) All rate filers shall submit data in support of their application for approval of their proposed rating system based on their own loss experience to the extent it is credible (N.J.A.C. 11:3-16.8), their own expense and profit provisions (N.J.A.C. 11:3-16.9) except rating organizations, and their own profit and contingency provision (N.J.A.C. 11:3-16.10). If the application is not supported by the required data, filers shall submit other appropriate documentation as necessary in addition to the required data. Those filers who refer, without deviation, to the loss experience data of a rating organization shall not be required to file their own loss experience data.

(c) Upon approval, insurers shall file manual rating pages on or before the effective date of the rates. In the case of rating organizations, the manual rating page shall reflect the loss cost information.

(d) In those cases where, due to their small size and/or lack of historical experience, filers are unable to completely fulfill all of the data submission requirements set forth in N.J.A.C. 11:3-16.8, 16.9 and 16.10, such filers shall be required to submit as much required information as they are able to supply, and each filing shall be reviewed accordingly.

(e) Filers shall provide any additional rate filing information specifically requested by the Department that may be necessary to constitute a proper rate filing.

Emergency Amendment, R.1990 d.621, effective November 26, 1990 (expired January 25, 1991).

See: 22 N.J.R. 3790(a).

Provisions to implement the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.

Adopted Concurrent Proposal, R.1991 d.91, effective January 25, 1991.

See: 22 N.J.R. 3790(a), 23 N.J.R. 514(a).

Provision of emergency amendment, R.1990 d.621, readopted without change.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended (a)1 and 5, and added (a)6.

In (a)1 eliminated the exclusion of the policy constant and RMEC from the grand total.

Amended by R.1998 d.128, effective March 2, 1998.

See: 29 N.J.R. 5240(a), 30 N.J.R. 828(a).

In (a), inserted a reference to loss costs in 4, added an exception at the beginning of 5, inserted a reference to loss cost calculations in 6, and changed N.J.A.C. references and deleted a reference to 5.25 inch 360 KB disks in 7; in (b), inserted an exception relating to rating organizations and inserted a reference to loss cost calculations in the first sentence, and added a second sentence; and rewrote (c).

Amended by R.2003 d.173, effective May 5, 2003.

See: 34 N.J.R. 3475(a), 35 N.J.R. 1907(a).

Rewrote the section.

Amended by R.2005 d.176, effective June 6, 2005.

See: 36 N.J.R. 5640(a), 37 N.J.R. 2026(a).

Rewrote the section.

Amended by R.2007 d.91, effective April 2, 2007.

See: 38 N.J.R. 4976(b), 39 N.J.R. 1313(a).

In (a)1, inserted the last sentence.

11:3-16.7 (Reserved)

Emergency Repeal and New Rule, R.1990 d.621, effective November 26, 1990 (expired January 25, 1991).

See: 22 N.J.R. 3790(a).

Formerly entitled Rating Organization Filings; new rule to implement section 69 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.

Adopted Concurrent Proposal, R.1991 d.91, effective January 25, 1991.

See: 22 N.J.R. 3790(a), 23 N.J.R. 514(a).

Provision of emergency amendment, R.1990 d.621, readopted with changes effective February 19, 1991.

Amended by R.1995 d.288, effective June 5, 1995.

See: 27 N.J.R. 1356(a), 27 N.J.R. 2232(b).

Rewrote (i), extending its application indefinitely.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

In (a)4v substituted "costs" for "cuts", and rewrote (i) to eliminate model year limitation.

Repealed by R.1998 d.128, effective March 2, 1998.

See: 29 N.J.R. 5240(a), 30 N.J.R. 828(a).

Section was "Jointly developed historical data".

11:3-16.8 Premiums, loss costs, loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium, loss costs, loss and loss adjustment ex-

penses. Data shall be by coverage for the latest three calendar-accident years, or fiscal-accident years, at either total limits or basic limits, where applicable. Filers shall provide all underlying calculations and justifications for any factors used:

1. All insurers, affiliated groups of insurers and rating organizations writing or transacting private passenger automobile insurance in the voluntary market in this State; and

2. The New Jersey Personal Automobile Insurance Plan.

(c) These rules shall apply to base rate changes by coverage and territory, including expense fees, as well as to increased limit and deductible relativity factor changes. Classification factor changes will also be permitted to the extent necessary for filers to maintain compliance with N.J.S.A. 17:29A-36(c).

Amended by R.2003 d.500, effective December 15, 2003.

See: 35 N.J.R. 3093(a), 35 N.J.R. 5611(a).

In (a), deleted “expedited” preceding “process” and inserted “limited rate” preceding “changes”; in (b)1, inserted “, affiliated groups of insurers” following “All insurers”.

Amended by R.2007 d.179, effective June 4, 2007.

See: 38 N.J.R. 4161(a), 39 N.J.R. 2260(b).

Rewrote (c).

11:3-16B.2 Definitions

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

“Accident year” means the 12-month period covering the occurrences during that period.

“Affiliate” means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer making a filing.

“AIRE” means the Automobile Insurance Risk Exchange, established pursuant to N.J.S.A. 39:6A-21.

“Base rate” means the manual rate that results from all rating factors (limits, class, tiers, etc.) being at unity (1.000 factor).

“Claim” means a request for payment for a loss which comes under the terms of an insurance contract.

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

“Coverage” means:

1. Split limit bodily injury (“BI”);
2. Split limit property damage (“PD”);
3. Combined single limit BI and PD (“CSL”);
4. Personal injury protection including medical payments (“PIP”);
5. BI, PD and PIP combined (“PACK”);

6. Uninsured and underinsured motorists, bodily injury and property damage (“UM”);

i. For developing the indications by coverage, UM data may be combined with liability data in 1, 2, 3 or 5 above;

7. Comprehensive (“COMP”); and

8. Collision (“COLL”).

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

“Expenses” means that portion of a rate that is attributable to commissions and brokerage, other acquisition expenses, general expenses, and taxes, licenses and fees in addition to other miscellaneous expenses. Other miscellaneous expenses include the Automobile Insurance Risk Exchange (AIRE) assessments, AIRE allocations, AIRE investment income, Limited Assignment Distribution (LAD) carrier fees, if applicable, the expected gain (deficit) resulting from assigned risk business, and assessments for losses and costs relating to uninsured motorist coverage and pedestrian personal injury protection.

“Exposure” means one car insured for one year, or two cars insured for six months, each, etc.

“Filer” means any insurer or rating organization who makes an annual informational filing or rate filing requiring prior approval pursuant to these rules.

“Group of coverages” means liability coverages (to include bodily injury liability, property damage liability, personal injury protection and uninsured/underinsured motorists) and physical damage coverages (to include collision and comprehensive).

“Informational filing” means a filing made annually on July 1, in accordance with N.J.S.A. 17:29A-36.2b.

“Loss cost multiplier” means the adjustment reflecting expenses, profit and contingency loading and any modifications that the insurer used on the loss costs to produce final rates.

“Personal Automobile Insurance Plan” or “PAIP” means the New Jersey Personal Automobile Insurance Plan established by N.J.S.A. 17:29D-1 et seq.

“Prior approval filing” means a filing made pursuant to N.J.S.A. 17:29A-14 and N.J.A.C. 11:3-16.6 to alter, supplement or amend a rating system or any part thereof.

“Prospective loss cost” means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

“Rate” means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium. The unit charge may be expressed as a single number or as a prospective loss cost and an adjustment to account for the treatment of expenses, profit and variations in loss experience.

“Rating organization” means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

“Rating system” means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates and rules used by any insurer in determining or ascertaining a rate.

“Reasonable total rate of return” means that rate of return appropriate for an enterprise given the risk involved.

“Small filer” means a filer with less than 0.5 percent of the total New Jersey written premiums in the voluntary market for private passenger automobile insurance for the most recently available prior calendar year.

“Tier” and “tier rating system” refer to one or more underwriting rules, filed and approved pursuant to N.J.S.A. 17:29A-46.1 et seq. and N.J.A.C. 11:3-19A, which defines and characterizes one or more mutually exclusive group of insureds.

“Total rate of return” means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

“Written premium” (“WP”) means direct, written premium net of dividends paid or incurred.

Amended by R.2003 d.500, effective December 15, 2003.
See: 35 N.J.R. 3093(a), 35 N.J.R. 5611(a).

Rewrote “Rate change” and “Written premium”.
Amended by R.2007 d.179, effective June 4, 2007.
See: 38 N.J.R. 4161(a), 39 N.J.R. 2260(b).

Added definitions “Accident year”, “Affiliate”, “AIRE”, “Base rate”, “Claim”, “Department”, “Expenses”, “Exposure”, “Filer”, “Group of coverages”, “Informational filing”, “Loss cost multiplier”, “Prior approval filing”, “Prospective loss cost”, “Rate”, “Rating organization”, “Rating system”, “Reasonable total rate of return”, “Small filer”, “Tier” and “Total rate of return”; in definition “Commissioner”, inserted “New Jersey” preceding “Department” and deleted “in the State of New Jersey” following “Insurance”; in paragraph 3 of definition “Coverage”, inserted “BI and PD”; in paragraph 6i of definition “Coverage”, substituted “may” for “shall” and inserted “2.”; in definition “Personal Automobile Insurance Plan”, substituted “N.J.S.A. 17:29D-1 et seq.” for “N.J.A.C. 11:3-2”; and deleted definitions “Earned premium” and “Rate change”.

11:3-16B.3 Rate process for limited rate changes; insurers and rating organizations

(a) An insurer and/or rating organization, pursuant to N.J.S.A. 17:33B-31, may file for a rate change in accordance

with this subchapter. The insurer shall provide the following information in support of its filing:

1. A cover letter notifying the Department of its intention to make a rate change according to the provisions of this subchapter; a statement containing the effective date of the change for new and renewal policyholders; and the name, telephone number and mailing address of the company officer familiar with the filing to whom further inquiries regarding the filing may be directed;

2. The information in N.J.A.C. 11:3-16 Appendix Exhibit B incorporated herein by reference;

3. A checklist that sets forth the information in Exhibit A in the subchapter Appendix incorporated herein by reference;

4. Exhibits that illustrate that the new rates are within the ranges permitted by N.J.S.A. 17:29A-36 and 29A-46.6(e). The exhibits shall include Statewide average rates, rating factors, and any underlying premium and exposure distributions necessary to the calculations;

5. The manual rating pages containing the territorial base rates by coverage to be implemented, accompanied by an explanatory memorandum showing the calculation of the new rates by coverage, using the existing rates by coverage as the starting point in the calculation;

6. Completed rating examples using the examples set forth in N.J.A.C. 11:3-45.3, which shows the proposed premium amounts;

7. The distribution of exposure – level rate impacts by five percent intervals, including descriptions of the characteristics of risks receiving the minimum and maximum impact; and

8. A CD-ROM or MS-DOS formatted 3.5 inch 1.44 MB disk, as described at N.J.A.C. 11:3-16B.4(e).

(b) The filer may supplement a complete filing in response to questions from the Department about matters that require clarification or additional explanation, provided that the prompt review of the filing within the time frames set forth in this subchapter is not adversely affected.

(c) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship and that choose to submit a single filing for the group shall provide the data, either:

1. Separately for each company with a different rate level or different underwriting guidelines; or

2. Combined for those companies of the group which use a common rating system, including both base rates and underwriting guidelines, or when the difference is based only on expense differences.

(d) All filings shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance
Office of Property and Casualty
P.O. Box 325
Trenton, NJ 08625-0325

(e) All filings shall be accompanied by the following certification signed by an officer of the filer: "I _____ certify that the attached filing complies with all statutory and regulatory requirements and that all the information contained in it is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(f) All data shall be reported on a direct basis exclusive of business ceded to reinsurers or business assumed from other companies.

Amended by R.2003 d.500, effective December 15, 2003.

See: 35 N.J.R. 3093(a), 35 N.J.R. 5611(a).

In (a), inserted "the company's file number," following "the provisions of this subchapter;" and "for new and renewal policyholders" following "of the change" in 1 and deleted the last sentence of 4.

Amended by R.2006 d.243, effective July 3, 2006.

See: 37 N.J.R. 4162(a), 38 N.J.R. 2828(c).

In (a)5, substituted "N.J.A.C. 11:3-45" for "N.J.A.C. 11:3-19A.3" and "show" for "shows".

Amended by R.2007 d.179, effective June 4, 2007.

See: 38 N.J.R. 4161(a), 39 N.J.R. 2260(b).

Rewrote (a)1; added new (a)2; recodified former (a)2 through (a)5 as (a)3 through (a)6; rewrote (a)4; in (a)5, deleted "and" from the end; in (a)6, updated the N.J.A.C. reference and substituted a semicolon for a period at the end; and added (a)7, (a)8, (c), (d), (e), and (f).

11:3-16B.4 Rate process for limited rate changes; calculation for private passenger automobile insurance

(a) General requirements for limited rate change filings are as follows:

1. Filers shall provide coverage indications based on three accident years of data. For coverages that are fully credible based on less than three years of data, filers may use two accident years of data to calculate indications for those coverages;

2. Indications may be based on either total limit or basic limit data for the liability coverages;

3. Coverage indications shall be calculated as follows:

i. Filers that only sell split limits policies shall submit separate BI and PD indications;

ii. Filers that only sell CSL policies shall submit one CSL indication. However, the BI and PD portion of losses shall be developed and trended using separate loss development triangles and trend factors;

iii. Filers that sell both split limits and CSL policies can either submit separate BI, PD and CSL indications or allocate the CSL data between BI and PD;

iv. Filers that sell PACK policies can submit one indication for the policy but the BI, PD and PIP portion of

the losses shall be developed and trended using separate loss development triangles and trend factors; and

v. UM data shall be combined with liability data in (a)3i, ii, iii or iv above. Filers do not have to calculate a separate indication for UM; and

4. All supporting exhibits must include documentation of formulas and data sources.

(b) Filers shall provide the following information regarding projected earned premium:

1. New Jersey (NJ) earned premium by coverage, by accident year;

2. On-level factors by coverage, based on company specific historical NJ rate changes; and

3. The premium trend factors, based on either annual selections from the latest approved Insurance Services Office (ISO) filing in NJ, or internal company data.

i. If supplying premium trend factors developed from internal company data, the filer shall provide all data and methods used.

(c) Ultimate loss and loss adjustment expense ("LAE") shall be determined by:

1. NJ incurred loss and defense/cost containment expense ("DCC"), by coverage, by accident year either combined (loss and DCC) or developed separately;

i. For COMP and COLL coverages, filers may use paid loss instead of incurred loss.

2. New Jersey loss development factors (LDFs) by coverage, either combined (loss and DCC) or separately;

i. The selected age-to-age factors shall be based on the latest five-year X HI/LO average, that is, using a straight average of the latest five age-to-age factors, excluding the highest and lowest.

ii. BI and PIP LDFs shall be developed to 87 months, with a five percent tail factor from 87 months to ultimate.

iii. PD, COMP and COLL LDFs shall be developed out to 51 months, with no subsequent tail factor;

iv. LDFs for COLL and COMP shall be consistent with the method used in (c)1 above.

3. Loss trend factors shall be based on either annual selections from the latest approved ISO filing in NJ, or the latest available NJ Fast Track data, computed separately for severity and frequency by coverage (BI, PIP, PD, COMP, COLL). All data must be based on paid, not incurred/arising, claims.

i. If supplying Fast Track trend factors, the filer shall use the 12 quarter-rolling average and provide all data and calculations.

ii. For COMP, filers may use country-wide Fast Track data to smooth out the effect of catastrophes;

4. Adjusting and other claims related expenses (“AO”) shall be determined as a ratio of incurred AO to incurred loss plus incurred DCC from the latest three-year average of Countrywide Insurance Expense Exhibit (IEE) in the insurer’s annual statement filed with the Department;

5. Filers shall account for impacts of significant changes to legislative, regulatory, social, economic, or operational factors that have an impact on loss frequency or severity, or on loss adjustment expenses. These impacts shall be accounted for as supplemental to the standard data and procedures described elsewhere in this regulation, and must be justified. If the addition of such impacts results in an alternative method of calculating the indications, then the Department’s review of and decision on the method will be governed by the time frames as set forth in N.J.A.C. 11:3-16B.4(k); and

6. Filers may exclude catastrophe losses from the COMP data and include a load based either on the selected factor from ISO’s last approved private passenger automobile filing in New Jersey or derive a factor from at least 10 years of the filer’s internal New Jersey catastrophe COMP data.

(d) Expenses shall be determined by group of coverages (liability versus physical damage) from the total of:

1. Three year average of commissions and brokerage expense ratios based on the NJ page 14 of the insurer’s latest annual statement filed with the Department and calculated as ratios to NJ WP;

2. Three-year average of general and other acquisition expense ratios, based on the countrywide IEE of the insurer’s latest annual statement filed with the Department and calculated as ratios to EP;

3. The sum of (d)1 and 2 above are subject to the expense limitations found in N.J.A.C. 11:3-16.9(c) and shall not include any of the expenses listed in N.J.A.C. 11:3-16.9(d). Current expense limitations by type of insurer will be posted annually on the Department’s website www.njdoabi.org, by group of coverages (liability versus physical damage).

4. Three-year average of taxes, licenses and fee ratios, based on the NJ page 14 of the insurer’s latest annual statement filed with the Department and calculated as ratios to NJ WP; plus

5. The profit and contingency provision shall be the last provision approved for the filer pursuant to either N.J.A.C. 11:3-16.10 or this subchapter. If the filer is proposing a revision to the profit and contingency provision, the filer shall provide all information related to the derivation of the profit and contingency loading contained in the filing by group of coverages. Filers shall

specifically include all data used and judgments made, as well as a description of the method used to arrive at the selected loading. Filers shall demonstrate that the profit and contingency loading does not result in rates that are excessive, inadequate, or unfairly discriminatory. The Department’s review of, and decision on any filing that includes a change to the profit and contingency provision is not governed by the time frames in N.J.A.C. 11:3-16B.6(d), but instead will be subject to the time frames set forth in (k) below.

6. Total expenses shall be determined from the sum of (d)1, 2, 4 and 5 above.

(e) Permissible loss and LAE ratios by group of coverages (liability versus physical damage) shall be determined by subtracting total expenses, determined in (d)6 above from 1.00.

(f) Credibility shall be determined by:

1. If the filer submits indications on a total limit basis, the full credibility standard shall be based on 4,000 claims for BI, PD, CSL and PACK. If the filer submits indications on a basic limits basis, the full credibility standard shall be based on 3,000 claims for BI, PD, CSL and PACK. The full credibility standard for PIP, COMP and COLL shall be based on 3,000 claims.

2. Alternatively, the filer may support different full credibility standards than those in (f)1 above by calculating the mean, variance and coefficient of variation from the company’s internal size-of-loss distributions by coverage and then adjust the 1,082 claims frequency standard by the appropriate factors by coverage to reflect variation in severity. The severity adjustment shall be made and the filer shall provide all data together with the method used.

3. The filer shall apply the classical credibility procedure using the square-root rule to the full credibility standards obtained in either (f)1 or 2 above to determine the credibility of each coverage. The minimum credibility assigned to any coverage or combination of coverages (CSL or PACK) shall be 50 percent.

(g) The complement of credibility shall be assigned to the loss ratio trends by coverage, trended from the average date of earning during the experience period to the average date of earning for the proposed effective period using premium and loss trends by coverage determined in (b)3 and (c)3 above, respectively.

(h) The indicated rate changes by coverage and overall shall be calculated as follows:

1. The all year projected ultimate loss and LAE by coverage determined in (c) above divided by the all year projected premium by coverage determined in (b) above.

2. The raw indications by coverage shall be calculated by the all year loss and LAE ratios determined in (h)1

New Jersey Department of Banking and Insurance
Property/Casualty Division
20 West State Street
PO Box 325
Trenton, NJ 08625-0325

(g) Any filing or other item which is required to be provided to the Public Advocate shall be sent to the Public Advocate at the following address:

Division of Rate Counsel
Department of the Public Advocate
31 Clinton Street, 11th Floor
PO Box 46005
Newark, NJ 07101

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Deleted provision for sending filings to the Public Advocate.

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

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

Amended by R.2007 d.371, effective December 3, 2007.

See: 39 N.J.R. 344(a), 39 N.J.R. 5084(a).

Rewrote (a)1; in (a)2, deleted "qualified" preceding "member"; and added (g).

Case Notes

Insurers' filings for rate increases were ruled complete due to commissioner's failure to timely respond. *Allstate Ins. Co. v. Fortunato*, 248 N.J.Super. 153, 590 A.2d 690 (A.D.1991).

11:3-18.4 Procedures for review of prior approval filings

(a) The time period for the Department's review of a prior approval filing shall commence the day after the filing is received. The filer shall concurrently provide a copy of the filing to the Public Advocate.

(b) The Public Advocate shall notify the Department and the filer if it intends to intervene no later than 10 days after receipt of the filing.

(c) The Department shall advise the filer if the filing is incomplete not later than 25 days after receipt of the filing.

1. The filing shall be deemed to be complete if the filer is not notified that the filing is incomplete.

2. Notice to the filer that the filing has been found to be incomplete shall specify the missing item(s) or information. The Department shall send a copy of the notice that the filing is incomplete to the Public Advocate, if notice of the intent of the Public Advocate to intervene on the filing has been received.

3. The Department may disapprove an incomplete filing as a nonconforming filing. Any resubmission of the filing after the deficiency has been cured shall be considered initial receipt.

(d) If the Department requests further information from the filer, which information must be provided to the Department upon request pursuant to N.J.A.C. 11:3-16.8, 16.9 or 16.10,

the filer shall submit the information to the Department and simultaneously to the Public Advocate within 10 days of the receipt of the request.

(e) The Department deems the filing requirements set forth in N.J.A.C. 11:3-16 to be sufficient information to review and evaluate any rate change requested. Therefore, no supplemental information, other than limited clarifying or explanatory information as referenced in (e)1 and 2 below, shall be required. If necessary, the following procedures may be used to obtain clarifying or explanatory information.

1. Not later than 20 days after its receipt of a filing, the Public Advocate may request in writing that the filer provide information to clarify or explain information contained in the filing. Not later than 10 days after receipt of any such request, the filer shall provide the clarifying or explanatory information to the Public Advocate.

2. Copies of any correspondence between the parties, and any additional information or documents supplied by the filer in response to a request from the Public Advocate shall also be simultaneously provided to the Department.

(f) No later than 60 days after receipt of a filing, the Public Advocate shall file with the Department its report and recommendations, and simultaneously submit a copy to the filer.

(g) Not later than 60 days after receipt of a filing by the Department either the filer or the Public Advocate pursuant to N.J.S.A. 17:29A-46.8 may request in writing a hearing on the filing. A request for hearing shall include a statement of facts and issues in sufficient detail so as to notify the Department and any other party of the matters in dispute.

(h) Upon receipt of a request for a hearing, or not later than 75 days after receipt of a filing by the Department, the Commissioner shall determine whether the matter is a contested case and notify all parties in writing.

1. If no hearing is requested the Commissioner shall enter an appropriate final order disposing of all issues raised by the filing. The final order shall be issued not later than 90 days from receipt of the filing, except for good cause the Commissioner may extend the time to issue a final Order by not more than 30 days.

2. If a hearing is requested the Commissioner may hear the matter; direct that the matter be transmitted to the Office of Administrative Law; or may appoint a salaried employee of the Department to hear the matter pursuant to N.J.S.A. 17:29A-14c.

(i) The hearing shall be conducted pursuant to the provisions of N.J.S.A. 17:29A-14c and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and applicable administrative rules, N.J.A.C. 1:1 and 1:11.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Deleted provisions relating to the Public Advocate.

Recodified from N.J.A.C. 11:3-18.6 by R.2001 d.44, effective February 5, 2001.

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

Former N.J.A.C. 11:3-18.4, Procedures for review of annual informational filings, and 11:3-18.5, Procedures for review of rate flex filings, repealed.

Amended by R.2001 d.270, effective August 6, 2001.

See: 33 N.J.R. 1305(a), 33 N.J.R. 2694(a).

In first sentence of (d), inserted "either" following "Department" and inserted "or a registered intervenor pursuant to N.J.S.A. 17:29A-46.8" following "filer".

Amended by R.2007 d.371, effective December 3, 2007.

See: 39 N.J.R. 344(a), 39 N.J.R. 5084(a).

In (a), inserted "after" and the second sentence; added new (b); recodified former (b) and (c) as (c) and (d); in (c)2, added the second sentence; in (d), inserted a comma following "16.10" and substituted "and simultaneously to the Public Advocate within 10 days" for "within 15 days"; added new (e) and (f); recodified former (d) through (f) as (g) through (i); and in (g), substituted "the Public Advocate" for "a registered intervenor".

Case Notes

Insurers' filings for rate increases were ruled complete due to commissioner's failure to timely respond. *Allstate Ins. Co. v. Fortunato*, 248 N.J.Super. 153, 590 A.2d 690 (A.D.1991).

11:3-18.5 (Reserved)

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

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

Section was "Procedures for review of rate flex filings".

11:3-18.6 (Reserved)

Recodified to N.J.A.C. 11:3-18.4 by R.2001 d.44, effective February 5, 2001.

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

11:3-18.7 Other remedies preserved

Nothing in this subchapter shall prevent the Commissioner from at any time initiating an action pursuant to N.J.S.A. 17:29A-1 et seq. to direct that rating systems be altered or revised if found to provide for, result in, or produce rates which are unreasonable, inadequate, or which discriminate unfairly between risks in this State involving essentially the same hazards and expense elements.

SUBCHAPTER 19. (RESERVED)

SUBCHAPTER 19A. TIER RATING PLANS AND UNDERWRITING RULES

11:3-19A.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-46.1 et seq. which requires that personal private passenger automobile insurers file for approval their underwriting rules used to accept or reject business and to assign risks to a tier rating plan. 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 tier rating plan.

(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 ratings 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 four or less motor vehicle violation points by any named insured or a regular operator as defined in N.J.A.C. 11:3-44.2;
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.

(c) Insurers who, as a result of the enactment of P.L. 2003, c.89, revise their underwriting rules based on the number of motor vehicle points accumulated by a named insured or a regular operator of a vehicle insured under the policy, shall certify to the Commissioner that the revised rules will produce rates that are revenue neutral based upon the insurer's current coverages and book of business. That certification shall be provided to the Commissioner at the time that the revised underwriting rules are submitted for approval in accordance with N.J.A.C. 11:3-19A.3 and 19A.4.

Amended by R.2003 d.468, effective December 1, 2003.

See: 35 N.J.R. 3097(a), 35 N.J.R. 5422(a).

In (a), rewrote 3; added (c).

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);

v. Conviction of operating a motor vehicle without liability insurance (N.J.S.A. 39:6B-2);

vi. Conviction of misrepresentation of insurance coverage (N.J.S.A. 39:6A-15);

vii. Accumulation of motor vehicle penalty points pursuant to N.J.S.A. 39:5-30.5; or

viii. By a court upon conviction of one of the following motor vehicle violations: racing on a highway (N.J.S.A. 39:5C-1); failure to pass to right of vehicle proceeding in opposite direction (N.J.S.A. 39:4-84); tailgating (N.J.S.A. 39:4-89); reckless driving (N.J.S.A. 39:4-96); exceeding a speed limit by 30 MPH or more (N.J.S.A. 39:4-99); improperly passing a school bus (N.J.S.A. 39:4-128.1); or leaving the scene of an accident in which personal injury occurred (N.J.S.A. 39:4-129);

2. The underwriting rules provide for the cancellation of the policy when:

i. An insured is convicted of a violation of N.J.S.A. 39:6B-2 during the policy term; or

ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during a period of suspension as set forth in (e)1 above; and

3. The underwriting rules provide that coverage for eligible persons shall not be cancelled when the driver's license or motor vehicle registration of an insured is suspended or revoked for any reason other than those set forth in (e)1 above.

(f) Insurers may file for approval underwriting rules by which it declines coverage for one policy period not to exceed one year to eligible persons who have been nonrenewed pursuant to N.J.S.A. 17:29C-7.1(b) and (c) and N.J.A.C. 11:3-8.5(a)2 and 3.

(g) All affiliated insurers shall file for approval underwriting rules that state that where acceptance of the policy renewal is made by payment of the renewal premium on or before the expiration date of the policy, the premium shall be deemed to have been received timely if it was mailed prior to the due date and received by the insurer within three business days after the due date. The date of mailing may be determined by the postmark on the envelope.

1. As an alternative to keeping the payment envelope, an insurer can file for approval underwriting rules that provide that if the insurer receives the renewal premium payment in the mail within three business days after the due date, the payment shall be presumed to have been mailed prior to the due date.

2. Insurers may file for approval underwriting rules that permit the insurer to charge a late fee of not more than \$25.00 when the renewal premium was received after the due date but is deemed timely as provided in (g) above. The rules shall specify how such a late fee shall be collected.

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

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

In (f), amended the N.J.A.C. reference.

Amended by R.2003 d.498, effective December 15, 2003.

See: 35 N.J.R. 3081(a), 35 N.J.R. 5601(a).

Added (g).

11:3-19A.8 Penalties

Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as authorized by law.

11:3-19A.9 (Reserved)

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

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

Section was "Transition".

APPENDIX

The following information shall be used to provide rating examples for Drivers A, B, C and D as listed below:

1. PAIP territories 2, 15 and 40;
2. Verbal and zero thresholds;
3. Liability limits 100/300/50 or 300 CSL;
4. Operator is "all other" class;
5. Annual mileage is 12,000;
6. Basic PIP;
7. \$500 deductibles for comprehensive and collision;
8. Model Year = Current Year -2, (for example, in calendar year 1997 the model year would be 1995);
9. Symbol is based on a Pontiac Grant Am SE Coupe; and
10. Insured with company for five years.

Filers shall furnish rating examples for the following. (If a driver qualifies for more than one tier, use the highest rating tier):

1. Driver A: 0 MVR points, 0 accidents, companion policy.
2. Driver B: 6 MVR points, 0 accident.
3. Driver C: 7 MVR points, 0 accident.

3. The NAIC group and company number for each insurer named in (b)1 and 2 above;

4. The name, signature, title and telephone number of the company officer authorized to complete the certification; and

5. A statement that the company will provide the coverages required in N.J.S.A. 39:6B-1a, 39:6A-3, 39:6A-4, 17:28-1.3, and 17:28-1.1, whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

(c) Any insurer that acquires control of, is acquired by or comes under common control of another insurer shall file the required certification of compliance within 30 days of this change in control and include the following information:

1. A certification that contains the information provided in (b)1 through 5 above; and

2. The effective date of the changes in control described in (c) above.

(d) Any insurer subject to this subchapter shall file a certification of compliance as set forth in this section within 30 days of becoming authorized to transact automobile or motor vehicle insurance in this State. Any insurer authorized as of March 3, 2008 to transact automobile or motor vehicle insurance in this State and subject to the provisions of this subchapter that has not filed a certification of compliance shall do so no later than April 2, 2008. Any insurer subject to this subchapter shall file a new certification of compliance if any information set forth in a previously filed certification changes. The new certification shall be filed within 30 days of any such change.

(e) All certifications shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance
Property/Liability Division
20 West State Street
PO Box 325
Trenton, NJ 08625-0325

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).

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

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

In (b)5, amended the N.J.S.A. reference.

Amended by R.2008 d.47, effective March 3, 2008.

See: 39 N.J.R. 3707(a), 40 N.J.R. 1354(a).

Rewrote (d).

11:3-32.4 Requests for copies of certifications

(a) Any person requesting a copy of a certification on file with the Department shall make the request in writing and include the complete name of the company or companies for which the certification is requested.

(b) Requests for copies of certification on file with the Department shall be directed to:

New Jersey Department of Banking and Insurance
Division of Property and Casualty
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

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

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

11:3-33.1 Purpose; scope

This subchapter sets forth an appeal procedure for a person who has been either denied personal private passenger automobile insurance or nonrenewed in the voluntary market by an insurer on the basis that they are not an eligible person as defined in N.J.A.C. 11:3-34.4. This subchapter applies to such persons, agents and insurers required to write personal private passenger automobile insurance pursuant to State statutes and rules.

11:3-33.2 Definitions

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

“Applicant” means an insured or prospective insured who has made a request for personal private passenger automobile insurance on either a first time or renewal basis.

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

“Cancellation” means termination of insurance during the policy term pursuant to the provisions of N.J.S.A. 17:29C-7.

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

“Completed written application” means a signed application that contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person, to rate and underwrite the policy, is

accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration of the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

"Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decision, determination, or other, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

"Declination," "denied" or "denial" means:

1. Refusal by an insurance agent to submit an application on behalf of an applicant to any of the insurers represented by the agent;

2. Refusal by an insurer to issue an automobile insurance policy to an applicant upon receipt of an application for automobile insurance;

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an applicant, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer, or the offer to insure at a rate applicable to other than eligible persons;

4. The refusal by an insurer or agent to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage;

5. The refusal by an insurer to renew a policy of automobile insurance based on eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2, that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5; or

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium; or

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, or if requested to notify the applicant whether coverage will be provided or denied, within five business days of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a).

"Department" means the Department of Banking and Insurance of the State of New Jersey.

"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.4.

"Insurance agent" or "agent" means an insurance agent as defined at N.J.S.A. 17:22A-2 and shall also include an "insurance broker" as defined at N.J.S.A. 17:22A-2 who has a brokerage relationship with an insurer.

"Insurer" means any person transacting the business of personal private passenger automobile insurance with a duty to write personal private passenger automobile insurance in New Jersey for an eligible person, pursuant to N.J.S.A. 17:33B-15 and rules promulgated pursuant thereto by the Commissioner.

"Person" means an individual, association, corporation, partnership or other entity.

"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.

"Voluntary market" means automobile insurance written other than through a plan of operation established pursuant to N.J.S.A. 17:29B-1 et seq., 17:30E-1 et seq. or 17:33B-11.

"Working day" means any day except Saturday, Sunday or New Jersey State legal holidays.

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 for completed written application added; item 7 added to definition of declination.

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

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

New Rule, R.1994 d.598, effective December 5, 1994.

See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

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

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

11:3-33.3 Right to appeal

Any eligible person who has been denied automobile insurance in the voluntary market by an insurer shall be entitled to appeal the denial in the manner provided by this subchapter.

11:3-33.4 Duties of insurer or insurance agent

(a) If the application or request for coverage was made in writing, the insurer or agent shall provide the applicant with an explanation of the reasons for the denial in writing. If the application or request for coverage was made orally, the insurer or agent may provide the applicant with an oral explanation instead of a written explanation but shall provide a written explanation if the applicant requests a written explanation within 90 days of the oral denial.

NOTE: The above description is a simplification of the statutory definition. For a more extensive description, see the New Jersey Administrative Code at N.J.A.C. 11:3-34.4.

The Commissioner of Banking and Insurance has established an appeal process for persons who have been denied automobile insurance. The procedure for filing a written appeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:3-33. Most New Jersey public libraries have this material.

To begin the appeal process, you must complete the attached form and mail it, with the necessary documentation, to the address indicated.

WARNING: You must have automobile insurance if you plan to operate and/or register a vehicle during the appeal process. Filing an appeal does not provide you with insurance.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
Amended by R.2004 d.372, effective October 4, 2004.
See: 36 N.J.R. 1171(a), 36 N.J.R. 4470(b).
In 8, substituted "seven" for "nine"; added 9 and 10.

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 Motor Vehicle Commission. To obtain a certified copy of your driving record:

1. Visit a Regional Center or call 888-486-3339 (toll free in New Jersey) or 609-292-6500 and request the Driver History Abstract form.
2. Provide your full name, address, date of birth, driver license number (when available), and reason for making the request.
3. Mail the application, a copy of your driver's license (or other form of acceptable ID) and a check or money order for \$10.00 payable to the New Jersey Motor Vehicle Commission to:
Motor Vehicle Commission
Abstract Unit
225 East State Street
PO Box 142
Trenton, New Jersey 08666-0142

There is a \$10.00 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 non-payment 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.
- My auto insurance has not been cancelled for knowingly providing materially false or misleading information in connection with an application for insurance, renewal of insurance, or claim for benefits under an insurance policy during the three-year period immediately preceding the declined application being appealed.
- I am not a named insured or 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.
- 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).
Amended by R.2004 d.372, effective October 4, 2004.
See: 36 N.J.R. 1171(a), 36 N.J.R. 4470(b).
Rewrote the section.

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:

1. Where a driver is 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 33½ percent responsible for an accident involving three drivers, etc.; and

2. Which results in a total payment by the insurer of at least \$500.00 for an accident occurring before June 9, 2003; or at least \$1,000 for an accident occurring on or after June 9, 2003. The \$1,000 dollar amount may be adjusted in \$100.00 or \$250.00 increments by Order of the Commissioner not more frequently than every 36 months. The Order shall reflect the cumulative increases or decreases in the components of the Consumer Price Index, All Urban Consumers (CPI-U) for the Northeast Region, and the adjusted amount shall apply to automobile accidents occurring at least 120 days after the effective date of the adjustment. The adjustment shall be reflected in this definition through a notice of administrative change published in the New Jersey Register.

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.

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
39:4-50	Operating a motor vehicle under the influence of alcohol or drugs	0450; 3261	9
39:4-50.4	Refusal to submit to a chemical test	4504	9
2C:11-2	Vehicular homicide	C115	9
39:3-40 a through h and j	Operating a motor vehicle while driving privilege is suspended	0340	9
39:6B-2	Operating a motor vehicle without liability insurance	06B2	9
39:6A-15	Misrepresentation of insurance coverage	6A15	9
	Each at fault accident		5
	* For each full year of a court imposed driver's license suspension within the preceding 3 years		3
	* For each full year within the immediately preceding 3 years that a person has not held a driver's license		1
	Involved in a fatal accident	EFTL; NFTL	4
39:3-37	Obtaining a driver's license or registration through deception	0337; 0312; 05D5; 1312; MSNJ; MSOS	2
39:3-38	Make or use counterfeit plate or plates other than issued	0338	5
39:3-38.1	Make, alter or counterfeit driver's license or registration	3381	5
	Failure to verify insurance involved in an automobile accident	FVIA	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

N.J.S.A. Section Number	Offense	Points
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
39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-85	Improper passing on right or off roadway	4
39:4-85.1	Wrong way on a one-way street	2
39:4-86	Improper passing in no passing zone	4
39:4-87	Failure to yield to overtaking vehicle	2
39:4-88	Failure to observe traffic lanes	2
39:4-89	Tailgating	5
39:4-90	Failure to yield at intersection	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91 & 39:4-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-98 & 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	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	2
	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

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

Amended by R.2007 d.373, effective December 3, 2007.

See: 38 N.J.R. 4624(a), 39 N.J.R. 5086(a).

In the first column of Schedule 1, substituted "39:3-40 a through h and j" for "39:3-40".

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 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 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. Insurers may also utilize alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.

(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".

Amended by R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

In (a), substituted "Except as provided in N.J.A.C. 11:3-35A, all insurers that" for "All insurers which".

Amended by R.2005 d.345, effective October 17, 2005.

See: 36 N.J.R. 4364(a), 37 N.J.R. 4030(a).

In (a), substituted "All" for "Except as provided in N.J.A.C. 11:3-35A, all", and added the last sentence.

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.

(b) All insurers shall file for approval underwriting rules that provide that on or after April 1, 1992, the insurer shall not refuse to insure, refuse to renew or limit coverage available to any of its insureds, 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 applicable on and after April 1, 1992 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. Except 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 coverage during the policy term under a policy insuring an eligible person pursuant to N.J.S.A. 17:29C-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 may 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 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);

- ii. Conviction of refusal to submit to a chemical test (N.J.S.A. 39:4-50.4);
- 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);
- v. Conviction of operating a motor vehicle without liability insurance (N.J.S.A. 39:6C-2);
- vi. Conviction of misrepresentation of insurance coverage (N.J.S.A. 39:6A-15);
- vii. Accumulation of motor vehicle penalty points pursuant to N.J.S.A. 39:5-30.5; or
- viii. By a court upon conviction of one of the following motor vehicle violations: racing on a highway (N.J.S.A. 39:5C-1); failure to pass to right of vehicle proceeding in opposite direction (N.J.S.A. 39:4-84); tailgating (N.J.S.A. 39:4-89); reckless driving (N.J.S.A. 39:4-96); exceeding a speed limit by 30 MPH or more (N.J.S.A. 39:4-99); improperly passing a school bus (N.J.S.A. 39:4-128.1); or leaving the scene of an accident in which personal injury occurred (N.J.S.A. 39:4-129).

2. The underwriting rules provide for the cancellation of the policy when:

- i. A household member is convicted of a violation of N.J.S.A. 39:6B-2 during the policy term; or
- ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during a period of suspension as outlined in 1 above.

3. The underwriting rules provide that coverage for eligible persons shall not be cancelled when the driver's license or motor vehicle registration of another named insured or any other operator insured under the policy is suspended or revoked for any reason other than those set forth in (e)1 above.

(f) Insurers may file for approval underwriting rules by which it declines coverage for one policy period not to exceed one year to eligible persons who have been nonrenewed pursuant to N.J.S.A. 17:29C-7.1(b) and (c) and N.J.A.C. 11:3-8.5(a)2 and 3.

(g) Insurers may file for approval underwriting rules which provide for the cancellation of coverage during the policy term under a policy insuring an eligible person if:

- 1. The named insured knowingly provided materially false or misleading information in connection with any application for insurance, renewal of insurance, or in connection with the filing of a claim for benefits under an insurance policy; or
- 2. An insurer determines, within 60 days of issuance of the policy, that the named insured does not meet the approved underwriting rules of the insurer in effect on the date of application.

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

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

Added (e) and (f).

Administrative correction.

See: 28 N.J.R. 3798(a).

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

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

In (f), amended N.J.S.A. and N.J.A.C. references.

Amended by R.2003 d.502, effective December 15, 2003.

See: 35 N.J.R. 3529(a), 35 N.J.R. 5616(a).

Added (g).

Case Notes

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.

11:3-35.5 Underwriting rules for standard/non-standard rating plans

(a) Insurers shall file underwriting rules applicable to each rate level of a rating plan in accordance with N.J.A.C. 11:3-19A, which filing shall be made in accordance with, and in satisfaction of, the requirements of this subchapter.

(b) Insurers shall file underwriting rules that provide that its insureds and applicants who have accrued no automobile insurance eligibility points shall be assigned to a standard tier.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure at its standard tier any person who has accrued one or more automobile insurance eligibility points.

(d) Underwriting rules for tier rating plans shall provide that an automobile insured at a higher than standard tier shall be rated based upon the eligibility points of the principal driver; eligibility points of other household members or customary operators may additionally be used to rate the automobile only if not used to rate any other automobile.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

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

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

Rewrote the section.

Case Notes

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.

11:3-35.6 Penalties

An insurer which knowingly fails to transact automobile insurance business consistently with its approved underwriting rules shall be subject to a fine of not less than \$500.00 for each violation, pursuant to N.J.S.A. 17:29A-46.1 and 46.2.

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

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

Rewrote the section.

SUBCHAPTER 35A. PRIVATE PASSENGER
AUTOMOBILE INSURANCE—USE OF
ALTERNATE UNDERWRITING RULES

11:3-35A.1 Scope and purpose

(a) This subchapter implements N.J.S.A. 17:33B-15, as amended by P.L. 2003, c. 89, which permits insurers that have met the requirements of the subchapter to have underwriting rules that are used to refuse to issue or limit coverage for new business.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal lines private passenger automobile insurance in the voluntary market.

Amended by R.2005 d.345, effective October 17, 2005.
See: 36 N.J.R. 4364(a), 37 N.J.R. 4030(a).

In (a), substituted "N.J.S.A. 17:33B-15, as amended by P.L. 2003, c.89," for "N.J.S.A. 17:29A-46.2".

11:3-35A.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 personal lines private passenger automobile insurance business in New Jersey and that are under common ownership and common management.

"Alternate underwriting rules" means a set of underwriting rules that an insurer may use in accordance with the provisions of this subchapter and instead of the underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.3.

"Automobile" or "private passenger automobile" means a vehicle that meets the definition of "automobile" set forth at N.J.S.A. 39:6A-2.

"Automobile insurance" means personal lines private passenger automobile insurance.

"Automobile insurer" or "insurer" means an insurer or group of affiliated insurers authorized or admitted to transact the business of personal lines private passenger insurance in this State.

"Commissioner" means the Commissioner of Banking and Insurance of the State of New Jersey.

"Consolidated report" means the report required to be filed by insurers pursuant to N.J.A.C. 11:3-3A.3.

"Declination," "denied" or "denial" means:

1. Refusal by an insurance producer to submit an application on behalf of an applicant to the insurers represented by the producer;
2. Refusal by an insurer to issue an automobile insurance policy to an applicant upon receipt of an application for automobile insurance;

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an applicant;

4. The refusal by an insurer or producer to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage; or

5. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant or, if requested, to notify the applicant whether coverage will be provided or denied within five business days of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a).

"Department" means the New Jersey Department of Banking and Insurance.

"Eligible person" means an eligible person as defined in N.J.S.A. 17:33B-13.

"New business" means an automobile not currently insured by the automobile insurer or its affiliates that is other than:

1. A replacement automobile;
2. An added automobile; or
3. An automobile whose coverage is reinstated by the automobile insurer after a grace period with or without time out of force.

"PAIP" means the New Jersey Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-2.

11:3-35A.3 General requirements

(a) Notwithstanding the provisions of N.J.A.C. 11:3-35, an insurer may use alternate underwriting rules for new business or may cease writing new business in any rating territory where the insurer has met the growth requirements specified in N.J.A.C. 11:3-35A.4 and made the filing required by N.J.A.C. 11:3-35A.6.

1. Nothing in this subchapter shall reduce an insurer's obligation to renew policies pursuant to N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.3.

2. Nothing in this subchapter shall reduce an insurer's obligation to meet its Urban Enterprise Zone share pursuant to N.J.A.C. 11:3-46.

(b) The insurer's alternate underwriting rules must meet the requirements of N.J.A.C. 11:3-35A.5 and must be applied uniformly in all exempt territories.

(c) Alternate underwriting rules shall be filed with the Department as follows:

1. An insurer's initial set of alternate underwriting rules shall be included in the filing made pursuant to N.J.A.C. 11:3-35A.6.

2. Revisions to an insurer's alternate underwriting rules shall include the certification as set forth in N.J.A.C. 11:3-35A.6(b) and the date on which they become effective.

Amended by R.2005 d.345, effective October 17, 2005.
See: 36 N.J.R. 4364(a), 37 N.J.R. 4030(a).
Rewrote (c)2.

11:3-35A.4 Growth requirements

(a) An insurer may make a filing in accordance with N.J.A.C. 11:3-35A.6(d) to use its alternate underwriting rules in each territory where its in-force exposures as of:

1. December 31, 2003, as filed in the consolidated report due on or before January 31, 2004, exceed its in-force exposures as of December 31, 2002 by five percent or more;
2. June 30, 2004, as filed in the consolidated report due on or before July 31, 2004, exceed its in-force exposures as of June 30, 2003 by five percent or more;
3. December 31, 2004, as filed in the consolidated report due on or before January 31, 2005, exceed its in-force exposures as of December 31, 2003 by four percent or more;
4. June 30, 2005, as filed in the consolidated report due on or before July 31, 2005, exceed its in-force exposures as of June 30, 2004 by four percent or more;
5. December 31, 2005, as filed in the consolidated report due on or before January 31, 2006, exceed its in-force exposures as of December 31, 2004 by three percent or more;
6. June 30, 2006, as filed in the consolidated report due on or before July 31, 2006, exceed its in-force exposures as of June 30, 2005 by three percent or more;
7. December 31, 2006, as filed in the consolidated report due on or before January 31, 2007, exceed its in-force exposures as of December 31, 2005 by two percent or more;
8. June 30, 2007, as filed in the consolidated report due on or before July 31, 2007, exceed its in-force exposures as of June 30, 2006 by two percent or more;
9. December 31, 2007, as filed in the consolidated report due on or before January 31, 2008, exceed its in-force exposures as of December 31, 2006 by one percent or more; or
10. June 30, 2008, as filed in the consolidated report due on or before July 31, 2008, exceed its in-force exposures as of June 30, 2007 by one percent or more.

(b) The growth requirements for an insurer newly authorized to transact automobile insurance in this State and that had no in-force exposures on December 31, 2002 shall be as follows:

1. The insurer's baseline for growth shall be the consolidated report in (a)1 through 10 above in which the insurer's total number of in-force exposures exceeds 1,000.

(c) An insurer may file a request with the Commissioner to use a lower percentage growth standard than those listed in (a)1 through 10 above and the Commissioner may approve such a filing upon a finding that meeting the growth standard in this subchapter would result in the insurer qualifying for relief from its obligations pursuant to N.J.A.C. 11:2-35 or being in hazardous financial condition pursuant to N.J.A.C. 11:2-27.

Amended by R.2005 d.345, effective October 17, 2005.
See: 36 N.J.R. 4364(a), 37 N.J.R. 4030(a).
Rewrote the section.

11:3-35A.5 Alternate underwriting rules

(a) Alternate underwriting rules shall meet the following standards:

1. An underwriting rule shall be based on specific and verifiable standards. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.
2. No underwriting rule shall be based on race, color, creed, national origin or ancestry.
3. 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.
4. 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.

11:3-35A.6 Activation of alternate underwriting rules

(a) An insurer shall initiate the process to use its alternate underwriting rules by making a filing with the Commissioner. The filing shall include the proposed effective date of the filing and the information set forth in (a)1 and 2 below for the territory(ies) where the insurer has met the growth standard established in N.J.A.C. 11:3-35A.4.

1. The in-force exposures in the territory, showing the required growth percentage over the year ending June 30 or December 31, or shorter period pursuant to (e) below. For example, Territory 1—June 30, 2004, 1,000 in-force exposures; June 30, 2005, 1,040 exposures = four percent growth; and
2. Whether the insurer will:
 - i. Continue to use its underwriting guidelines filed and approved pursuant to N.J.A.C. 11:3-35;

ii. Use alternate underwriting guidelines that meet the requirements of N.J.A.C. 11:3-35A.5; or

iii. Cease writing new business.

(b) The filing shall be accompanied by the following certification signed by an officer of the insurer:

"I ___ certify that the attached filing complies with all statutory and regulatory requirements and that all the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(c) The filing shall be sent to:

New Jersey Department of Banking and Insurance
Office of Property and Casualty
PO Box 325
Trenton, NJ 08625-0325

(d) For purposes of N.J.A.C. 11:3-35A.4(a)1 through 10, an insurer may use its alternate underwriting rules for six months beginning no earlier than the first day of the second calendar month after the end of the applicable six-month reporting period set forth in N.J.A.C. 11:3-35A.4(a)1 through 10 or 15 days after the date of the filing of the certification set forth in (b) above, whichever is later.

1. For example, if an insurer makes the filing in N.J.A.C. 11:3-35A.4(b) above on January 25, 2003 for the reporting period December 31, 2002 through December 31, 2003, it could begin using its alternate underwriting guidelines no earlier than February 1, 2004. If the insurer made the filing for the same reporting period on February 13, 2004, it could begin using its alternate underwriting guidelines no earlier than February 28, 2004.

(e) Notwithstanding (d) above, an insurer that reaches a growth standard in N.J.A.C. 11:3-35A.4(a)1 through 10 above before the report date may make the filing required in this rule when it meets the requisite growth standard. In such cases, the insurer may use its alternate underwriting rules no earlier than 30 days after the certification is filed and may continue to use those rules until the due date of the next consolidated report.

1. For example, on March 15, 2004, an insurer that has met the five percent growth requirement in N.J.A.C. 11:3-35A.4(a)2 in a territory and makes a filing with the Department on that date could use its alternate underwriting rules in that territory from April 14, 2004 until July 31, 2004.

2. In order to continue using its alternate underwriting rules, an insurer that makes an early filing pursuant to this section must make the filing in (a) and (b) above no later than the due date for the first consolidated report after its early filing, which filing must show that it continues to meet the relevant growth requirements. An insurer that fails to make a timely filing to continue using its alternate underwriting rules shall cease using its alternate under-

writing rules on the due date for the first consolidated report due after its early filing.

i. Using the example in (e)1 above, the insurer has until July 31, 2004, the due date of its consolidated report for the period ending June 30, 2004, to file a certification to continue using its alternate underwriting rules. If it failed to file the certification by that date, it would be required to cease using its alternate underwriting rules on July 31, 2004.

(f) An insurer may change its selection in (a)2i through iii above by making a supplementary filing with the Department. The change shall be effective on the first day of the second month after the filing is received.

(g) An eligible person declined automobile insurance in a rating territory where an insurer is using its alternate underwriting rules or has ceased writing new business shall be advised by the insurer or its producer of the specific underwriting rule(s) not met or that the insurer is not writing any new business in the territory. The applicant shall also be advised that coverage may be available from another insurer or that coverage is available in the Voluntary Rating Tier in PAIP.

1. If the declined application or request for coverage was made in writing, the insurer or producer shall provide the applicant with the denial notice found in the subchapter Appendix, incorporated herein by reference. The insurer or producer may add other information to the denial notice set forth in the Appendix if that information does not contradict or detract from the contents of the denial notice.

2. If the application or request was made orally, the insurer or producer may provide the explanation of the reasons for denial orally but shall provide the written denial notice if requested by the applicant within 30 days of the oral denial.

Amended by R.2005 d.345, effective October 17, 2005.

See: 36 N.J.R. 4364(a), 37 N.J.R. 4030(a).

In (a), rewrote introductory paragraph, and substituted "(e) below" for "N.J.A.C. 11:3-35A.4(k)"; deleted email address in (c); added (d) and (e); recodified former (d)-(e) as (f)-(g).

11:3-35A.7 Determination of an uncompetitive market

(a) Notwithstanding the provisions of this subchapter, the Commissioner may make operative the provisions of N.J.A.C. 11:3-35 in all territories upon a finding that a competitive market does not exist among insurers authorized to write private passenger automobile insurance in this State pursuant to (a)1 or 2 below.

1. The Commissioner certifies that the PAIP is insuring 10 percent or more of the aggregate number of private passenger automobiles for which coverage is being written in this State; or

2. After notice and a hearing, the Commissioner issues an order that finds two or more of the factors listed in (d) below exist.

i. A hearing under this subsection shall be convened in accordance with the procedures set forth in N.J.S.A. 52:14B-4(g). Any order issued by the Commissioner pursuant to this subsection shall include specific findings of fact and be supported by clear and convincing evidence.

ii. Any ruling that finds that competition does not exist within the market for automobile insurance shall include specific findings regarding:

(1) The actions the State and the Commissioner have taken to return the market to a competitive market; and

(2) An explanation regarding why those actions have failed to return the market to a competitive market.

iii. An order issued pursuant to this subchapter shall expire one year after issued unless rescinded earlier by the Commissioner, or unless the Commissioner renews the ruling after a hearing and a finding as to continued lack of a reasonable degree of competition.

(b) The following factors shall be considered by the Commissioner for purposes of determining if a reasonable degree of competition does not exist in automobile insurance:

1. The number of insurers actively engaged in providing coverage in the market, taking into account any specialization among insurers;

2. Measures of market concentration and changes of market concentration over time, including, but not limited to, the Herfindahl-Hirschman Index (HHI) and the United States Department of Justice merger guidelines for an unconcentrated market;

3. Ease of entry and exit and the existence of financial or economic barriers that could prevent new insurers from entering the market;

4. The extent to which any insurer controls all or a dominant portion of the market and has actively sought to prevent competition;

5. Whether the total number of insurers in this State is sufficient to provide multiple options;

6. The availability of insurance coverage to consumers in the voluntary market; and

7. The opportunities available to consumers in the market to acquire pricing and other consumer information.

(c) The Commissioner shall monitor, and take all reasonable actions to maintain, the degree and continued existence of competition in this State on an on-going basis. In doing so, the Commissioner may utilize existing relevant information, analytical systems and other sources, or rely on any combination thereof. Monitoring activities may be conducted

internally within the Department, in cooperation with other state insurance departments, through outside contractors and in any other manner deemed appropriate by the Commissioner.

(d) Any order issued by the Commissioner that determines that a competitive market does not exist may limit the form of policies to which the order applies and shall establish a maximum increase in an insurer's aggregate number of private passenger automobiles to which the order applies, which increase shall not exceed the maximum limits set forth in N.J.A.C. 11:3-35A.4(a)1 through 10.

Amended by R.2005 d.345, effective October 17, 2005. See: 36 N.J.R. 4364(a), 37 N.J.R. 4030(a).

In (d), added "1" following "11:3-35A.4(a)" and substituted "10" for "(j)" at the end of the paragraph.

11:3-35A.8 Penalties

Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as authorized by law including the suspension, revocation or otherwise termination of the certificate of authority to transact automobile insurance business in this State pursuant to N.J.S.A. 17:33B-15e or the imposition of fines of up to \$1,000 for the first offense and up to \$2,000 for each subsequent offense, pursuant to the authority of N.J.S.A. 17:33-2.

APPENDIX

COMPANY LETTERHEAD

Producer Name
(if applicable)

NOTICE OF DECLINATION PURSUANT TO N.J.S.A. 17:33B-15

DATE: _____

NAME OF APPLICANT: _____

OR PROSPECTIVE APPLICANT

Territory: : _____

Thank you for your interest in obtaining private passenger automobile insurance from COMPANY NAME. We regret that we are unable to issue you an auto insurance policy at this time because, Check one:

[] Our company is not writing business in this territory at this time.

[] You do not meet our current underwriting rules. The rule(s) you do not meet are:

SPECIFY UNDERWRITING RULE(S) NOT MET

The facts on which we relied to make this determination are:

Please be aware that underwriting guidelines differ by company, so you may qualify for coverage from another insurer. If you are unable to obtain coverage from another insurer, you are entitled to coverage at competitive rates through the New Jersey Personal Auto Insurance Plan (PAIP).

For help contacting another insurer or PAIP, please ask your producer or call the New Jersey Department of Banking and Insurance (Department) at 1-800-446-SHOP. Information about other insurers and PAIP can also be found on the Department's website, www.state.nj.us/dobi.

If you believe that the reasons that you failed to meet the insurer's underwriting guideline(s) are incorrect, you may file a written complaint with the Department's Office of Consumer Services, PO Box 329, Trenton, NJ 08623-0329. Please attach a copy of this notice and provide other relevant information.

New Rule, R.2004 d.165, effective April 19, 2004.
See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

SUBCHAPTER 36. AUTOMOBILE PHYSICAL DAMAGE INSURANCE INSPECTION PROCEDURES

11:3-36.1 Purpose and scope

(a) The purpose of this subchapter is to provide rules for the inspection of automobiles in connection with the issuance of physical damage insurance coverage by insurers pursuant to N.J.S.A. 17:33B-33 through 17:33B-40.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State.

11:3-36.2 Definitions

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

"Authorized representative" means any person which is authorized by the insurer to conduct insurance inspections pursuant to this subchapter; an authorized representative may be an employee of the insurer, a producer or an inspection service other than the insured, whether located inside or outside of this State.

"Automobile physical damage insurance" means a policy providing one or more of the following insurance coverages:

1. Collision;
2. Comprehensive; and

3. Fire and theft.

"Automobile physical damage insurance inspection" means a physical examination of an automobile by an authorized representative of the insurer, in accordance with the standards set forth in N.J.A.C. 11:3-36.6.

"Book of business" means all private passenger automobile insurance written by one producer with one insurer.

"Certificate of mailing" means a receipt from the United States Postal Service that the item was received by it with the proper postage affixed for delivery.

"Commissioner" means the Commissioner of Banking and Insurance of the State of New Jersey.

"Inspection service" means any person or legal entity other than the insurer, established and operated to perform the inspections required by this subchapter.

"Insured" means the named insured (as defined in the policy) or an applicant for automobile physical damage insurance.

"Insurer" means any person authorized to write automobile insurance in New Jersey, including any residual market mechanism, and includes a group of affiliated companies.

"New automobile" means an automobile not previously titled with not more than 1,000 miles recorded on the odometer.

"Nonowned automobile" means a private passenger automobile in the possession of the insured or being operated by the insured which is neither owned by nor furnished for the regular use of either the named insured or any relative (as defined in the policy), other than a temporary substitute automobile.

"Private passenger automobile" or "automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

National Highway Traffic and Safety Association
 Docket Room
 NAD-52
 400 Seventh Street, S.W.
 Washington, D.C. 20590

10. A hydraulic brake lock device is qualified if a warning label announces the presence of the device and the device is designed so that:

- i. The device is mounted on the dash;
- ii. When activated and pressurized with the brake pedal, hydraulic pressure is maintained on the brakes at two or more of the automobile's wheels;
- iii. The device has a high security locking system with at least 50,000 combinations; and
- iv. The lock is such that it cannot be pulled using a conventional slide hammer or lock puller equipment.

11. A window etching vehicle identification system is qualified if a warning label announces the presence of the system, and the system is designed so that:

- i. A specific, identifiable set of numbers is permanently etched into all primary window glass areas, either by sandblasting or a chemical process;
- ii. The set of numbers must be traceable to the automobile's registered owner; and
- iii. Immediate telephonic notification or identification of the registrant must be available 24 hours a day, seven days per week.

(d) A device or system qualifies as a Category IV anti-theft or vehicle recovery device if a warning label announces the presence of the device and it meets the following requirements:

- 1. The device or system is designed to transmit a pulse or signal by which the location of the automobile in which the device or system is installed may be tracked by those receiving the signal;
- 2. The device or system is activated or initiated when an automobile is stolen or reported stolen to police;
- 3. The pulse or signal either must be transmittable to the New Jersey State Police or to a private central monitoring station which shall have direct communication with the New Jersey State Police for the purpose of reporting, tracking and monitoring the automobile; and
- 4. The device or system shall be designed so that upon recovery, information concerning the automobile's location may be provided to the proper authorities and/or the automobile's owner or insurer.

(e) All warning labels announcing the presence of an anti-theft or vehicle recovery device or system shall be located so as to be visible from the automobile's exterior,

preferably on the forward passenger and driver's side door windows.

(f) The lists set forth in (a) through (d) above are not exclusive, and shall not prevent an insurer from considering other devices or systems as anti-theft or vehicle recovery devices eligible for reductions in the base rates of comprehensive and theft and fire coverages, in a manner determined by the insurer.

Public Notice: Notice of receipt of and action on Petition for rulemaking for vehicle anti-theft and recovery device.
 See: 23 N.J.R. 2786(c).
 Notice of Receipt of Petition for Rulemaking: Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft, Vehicle Recovery and Safety Devices.
 See: 24 N.J.R. 305(a).
 Notice of Action on Petition for Rulemaking.
 See: 24 N.J.R. 658(a).
 Amended by R.1999 d.170, effective June 7, 1999.
 See: 30 N.J.R. 2332(a), 31 N.J.R. 1493(a).
 Inserted (b)5.

11:3-39.6 Reductions in rates for safety features

(a) Except as (d) below may apply, every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its collision damage coverage for all private passenger automobiles equipped with one or more safety features. Reductions in the base rates shall be as follows:

- 1. At least five percent for a private passenger automobile equipped with one safety feature;
- 2. An additional 2.5 percent reduction shall be provided for each additional safety feature with which the automobile is equipped; and
- 3. No insurer shall be required to provide more than a 10 percent total reduction for safety features, (a)2 above notwithstanding.

(b) Insurers shall develop a list of features which will qualify as collision damage safety features. This list may include features which are standard features for some private passenger automobiles, but which are options or not available for other private passenger automobiles. This list shall include:

- 1. Anti-lock braking systems;
- 2. Traction control systems; and
- 3. Five-mile-per-hour bumpers.

(c) An insurer may require reasonable proof that a private passenger automobile is equipped with a safety feature before providing any reduction in the base rates for collision damage coverage for private passenger automobiles. An inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36, shall be considered reasonable proof.

(d) The requirements of (a) through (c) above shall not be applicable to those insurers which utilize make and model rating in pricing collision coverage.

11:3-39.7 Penalties

Any insurer which fails to comply with the terms of this subchapter shall be in violation of this subchapter, and subject to the assessment of any and all penalties in accordance with the laws of this State.

11:3-39.8 Severability

If any provision of this subchapter or application thereof to any person or circumstances is held invalid, the remainder of the subchapter and application of such provisions to other persons or circumstances shall not be affected thereby.

SUBCHAPTER 40. INSURERS REQUIRED TO PROVIDE AUTOMOBILE INSURANCE COVERAGE TO ELIGIBLE PERSONS

11:3-40.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 17:33B-15 by setting forth those insurers required under that statutory provision to provide automobile insurance to eligible persons.

(b) This subchapter applies to all insurers authorized or admitted to transact automobile insurance in this State.

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

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

Rewrote (b).

11:3-40.2 Definitions

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

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes, owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meeting the definition contained in this section shall be considered a private passenger automobile owned by two or more relatives residing in the same household.

“Automobile insurance” means insurance for a private passenger automobile including one or more 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.

“Commissioner” means the Commissioner of the Department of Banking and Insurance.

“Department” means the Department of Banking and Insurance.

“Eligible person” means a natural person who meets the qualifications of an “eligible person” as set forth at N.J.A.C. 11:3-34.4.

“Insurer” means an entity authorized or admitted to write private passenger automobile insurance in New Jersey.

“Personal lines automobile insurance” means direct automobile insurance issued by an insurer for personal, family or household purposes, and written in accordance with a rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

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

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

Rewrote “Insurer”.

11:3-40.3 Insurers required to provide automobile insurance coverage to eligible persons

(a) In accordance with N.J.S.A. 17:33B-15, every insurer, except as provided in (b) below, shall provide automobile insurance coverage for eligible persons beginning April 1, 1992. No insurer, except as provided in (b) below, shall refuse to insure, renew, or limit coverage available for automobile insurance to an eligible person meeting the insurer’s underwriting rules as filed with and approved by the Commissioner in accordance with N.J.S.A. 17:29A-46. An insurer shall provide all coverages, including physical damage coverages, in accordance with its rating system filed with the Department and approved pursuant to N.J.S.A. 17:29A-1 et seq.

(b) The requirements set forth in (a) above shall not apply to the following:

1. Insurers that have not issued or renewed policies of automobile insurance in New Jersey since December 31, 1983;

2. Insurers that have issued or renewed policies of automobile insurance in New Jersey since December 31, 1983, only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1 et seq.;

3. Insurers with less than 1,000 automobile inforce exposures as of December 31, 1983 and as of September 30, 1988. Insurers newly authorized to transact private passenger automobile insurance after September 30, 1988 shall be exempt from this subchapter until such time as the insurer has 1,000 or more automobile inforce exposures;

4. Insurers transacting automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent provided by the terms of the approved plan of orderly withdrawal;

5. Insurers transacting automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-19 or 20, but only to the extent provided by the terms of the order;

6. Insurers transacting automobile insurance business subject to an order of administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., but only to the extent provided by the terms of such order; or

7. Insurers subject to any limitation on premium volume set forth as a condition of authorization or admission pursuant to N.J.A.C. 11:1-10.8(e) and (f) or 11:1-28.10(f) and (g), as applicable, but only to the extent of such limitation set forth in the authorization or admission or as modified thereafter.

8. Those territories in which an insurer is permitted to use its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of automobiles (for example, motor homes, recreational vehicles or antique automobiles) shall comply with the requirements of (a) above, but only for the particular types of automobiles currently being insured.

(d) Insurers that currently provide, or have provided since December 31, 1983, only limited coverage (for example, physical damage coverage) shall comply with the requirements of (a) above, but only for the limited coverages being written.

(e) Insurers that are required to insure eligible persons, but that do not have a current personal lines automobile insurance rating system on file with the Department, shall file such a system with the Department in accordance with N.J.S.A. 17:29A-1 et seq. within 90 days of the effective date of this rule.

(f) Insurers identified within the provisions of (b), (c) or (d) above, shall comply with the following:

1. Such insurers shall file with the Department no later than 60 days from the date of adoption of this rule a certified statement containing the following information:

i. The insurer's name, including the NAIC number and NAIC group number;

ii. A statement that the insurer is not required to comply fully with N.J.S.A. 17:33B-15;

iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with N.J.S.A. 17:33B-15;

iv. The particular provision of this rule under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer's information, knowledge and belief, based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the Department at the following address:

Division of Licensing, Enforcement and Consumer Protection
 New Jersey Department of Banking and Insurance
 20 West State Street
 PO Box 328
 Trenton, NJ 08625-0328

Amended by R.1995 d.604, effective November 20, 1995.
 See: 27 N.J.R. 2854(a), 27 N.J.R. 4717(c).
 Administrative Correction.
 See: 27 N.J.R. 4894(a).
 Amended by R.2001 d.44, effective February 5, 2001.
 See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
 Amended by R.2004 d.165, effective April 19, 2004.
 See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).
 Added (b)8.

11:3-40.4 Penalties

(a) The Commissioner may suspend, revoke or otherwise terminate the certificate of authority to transact automobile business in this State of any insurer failing to comply with the provisions of this subchapter requiring that the insurer provide automobile insurance in accordance with N.J.S.A. 17:33B-15.

(b) In addition to or in lieu of the penalty set forth in (a) above, the Commissioner may impose a fine as provided in N.J.S.A. 17:33B-21 for any violation of the provisions of this subchapter.

(c) The Department shall follow the procedures set forth at N.J.A.C. 11:17D-2.1 in imposing the penalties set forth at (a) or (b) above.

SUBCHAPTER 41. (RESERVED)

SUBCHAPTER 42. (RESERVED)

SUBCHAPTER 43. (RESERVED)

SUBCHAPTER 44. SPECIAL RULES FOR
EFFECTING COVERAGE FOR PRIVATE
PASSENGER AUTOMOBILE INSURANCE

11:3-44.1 Purpose and scope

(a) This subchapter implements the provisions of N.J.S.A. 17:33B-15 and 18 which prohibit insurers, both individually and through their agents, from attempting to channel away eligible persons, with the effect of avoiding an insurer's obligation to provide private passenger automobile insurance coverage to eligible persons.

(b) This subchapter applies to all persons that are licensed and authorized to transact the business of personal private passenger automobile insurance in this State and all producers.

(c) This subchapter also implements the provisions of N.J.S.A. 17:29A-46.1 et seq., to afford insurers the opportunity to acquire and consider all relevant information necessary to rate policies properly and adequately.

Amended by R.2002 d.328, effective October 7, 2002.

See: 34 N.J.R. 371(a), 34 N.J.R. 3525(b).

Added (c).

11:3-44.2 Definitions

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

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common ownership and management with, another insurer.

"Business days" means all days other than weekends and official New Jersey State and Federal holidays.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Completed written application" means a signed written application that contains:

1. The minimum information necessary to determine if the applicant is an eligible person pursuant to N.J.A.C. 11:3-44.3(a);
2. The minimum information necessary to determine the appropriate rate and underwrite the policy;
3. A signed and completed coverage selection form as required by N.J.A.C. 11:3-15.6;

4. With respect to all vehicles to be insured under the policy, either a copy of the motor vehicle registration or satisfactory proof of ownership or of the holding of a valid leasehold interest, which shall not include an agreement with a rental company or agency;

5. A copy of one additional proof of New Jersey residency;

6. An acknowledgement of the requirement for insurance inspection form, where a physical damage inspection is requested; and

7. A copy of the applicant's driver's license, and the name and driver's license numbers of all regular operators of all vehicles insured under the policy, when authorized by the insurer's filed and approved rating plan.

"Days" means calendar days.

"Eligible person" means a person as defined at N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4.

"Insurer" means a person authorized to transact the business of personal private passenger automobile insurance in this State including insurers organized pursuant to N.J.S.A. 17:50-1 et seq.

"Personal private passenger automobile insurance" means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

"Regular operator" means any person or persons, whether or not a member of the household of the primary insured, whose usage of the vehicle or vehicles may be considered in rating the policy as permitted by the insurer's approved rating plan.

"Transmit" means to mail or deliver by any means including, but not limited to, third class mail, certified mail, overnight delivery or express delivery, hand delivery and any transmission by wire, including, but not limited to, facsimile transmission or computer modem.

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

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

Deleted "Market Transition Facility".

Amended by R.2002 d.328, effective October 7, 2002.

See: 34 N.J.R. 371(a), 34 N.J.R. 3525(b).

Rewrote "Completed written application"; added "Regular operator".

Amended by R.2004 d.188, effective May 17, 2004.

See: 35 N.J.R. 5215(a), 36 N.J.R. 2482(b).

In "Completed written application", rewrote 4.

11:3-44.3 Duty to provide coverage upon receipt of a
completed written application

(a) The minimum information necessary to determine whether an applicant is an eligible person and to rate and underwrite the policy is as follows:

1. The desired effective date of policy;

2. Personal information, including the name, address, home telephone number, date of birth, sex and marital status of the applicant and principal driver of each automobile to be insured under the policy;

3. The number of vehicles to be insured and a description of each such vehicle including:

- i. The model year;
- ii. The cost of the vehicle, if new;
- iii. The trade name;
- iv. The model;
- v. The body type;
- vi. The vehicle identification number;
- vii. An approximate odometer reading if the insurer rates by mileage;
- viii. The estimated annual mileage if the insurer rates by mileage;
- ix. The intended use of vehicle (for pleasure, for or to work, to school or to public transportation);

4. Where the vehicle is garaged, if different from residence;

5. The month and year licensed for all drivers licensed less than three years;

6. Information regarding each licensed driver who is to be a named insured under the policy, or who is a regular operator of a vehicle insured under the policy, or who are not otherwise a named insured under a separate policy of automobile insurance. Information regarding regular operators to be insured under the policy may include:

- i. The percentage use of each licensed driver;
- ii. The motor vehicle record for the previous three years including:
 - (1) Convictions for traffic violations that result in the assessment of insurance eligibility points pursuant to N.J.A.C. 11:3-34.5;
 - (2) Motor vehicle accidents; and
 - (3) Drivers' license and registration suspensions and revocations;
- iii. An insurer shall not require the applicant to submit a motor vehicle abstract;
- iv. Automobile insurance claims history if needed to determine placement into a preferred company in a group of insurers;
- v. Insurance fraud and other violations or crimes enumerated at N.J.S.A. 17:33B-13 or set forth at N.J.A.C. 11:3-34.4(a)1, 2 or 4; and

vi. Criminal convictions for offenses in the course of which a motor vehicle was used pursuant to N.J.S.A. 2C:43-2b(7);

7. The driver's license number of each regular operator;

8. Information relating to types of coverage, limits of liability and driver discounts;

9. A completed and signed coverage selection form; and

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

(b) An insurer, by itself or through its producers with binding authority, shall provide coverage to an eligible person applicant who submits a completed written application that includes the information in (a) above.

1. Insurers shall have five business days from the date of receipt of a completed written application to either provide or decline insurance, or if requested to notify the applicant whether coverage will be provided or denied. An insurer shall obtain and retain documentation of the date of receipt of such application. When an application is transmitted to an insurer by first class mail, there is a rebuttable presumption that the application was received by the insurer two calendar days after mailing when the destination is in New Jersey or within a 300 mile radius of the place of mailing, or three calendar days when the destination is outside a 300 mile radius of the place of mailing, as evidenced by a proof of mailing or postmark.

2. Any document required to be submitted in connection with an application or renewal shall be prominently requested in the application or renewal form. An insurer shall not issue a notice of incomplete application in accordance with (c) or (d) below unless the applicant failed to provide the minimum information necessary to determine the eligibility of the applicant or any regular operator of the vehicles listed on the application.

3. If physical damage coverages are requested by eligible person applicants, insurers shall bind liability coverages in accordance with these rules and may bind physical damage coverages subject to compliance with N.J.A.C. 11:3-36.

(c) If upon receipt of an application from a producer without immediate binding authority or directly from an applicant, an insurer finds that the application is incomplete or fails to disclose required information on all regular operators of the vehicles to be insured under the policy and the insurer is unable to determine whether the applicant or any regular operator of any vehicles to be insured under the policy is an eligible person, the insurer shall, within five business days of the date the application was received by it, issue a notice which:

1. Clearly and specifically identifies the deficiencies;
2. Advises the applicant that if the deficiencies are cured within 15 days and the applicant is determined to be an eligible person, coverage shall be provided either immediately or as of the originally requested effective date if later; and
3. Advises the applicant that if the deficiencies are not cured within 15 days, the application shall be deemed to have been declined.

(d) If, during the first 60 days that a new policy is in effect, the insurer ascertains that the applicant failed to disclose the necessary information required on the application to determine whether the applicant or any regular operator is an eligible person, the insurer shall issue a written notice to the applicant which clearly and specifically identifies the deficiencies and the information necessary, and allows the applicant 15 days to provide the requested information. The request for information shall either be sent by certified mail or the insurer shall retain date stamped proof of mailing from the U.S. Post Office listing the name and address of the applicant. If the information is not provided within the specified time, the insurer may issue a notice of cancellation within the first 60 days of the policy, for failure to provide a completed written application. The insurer who issues such cancellation shall not be required to accept an application from the applicant for one policy period.

(e) Nothing in this rule shall be deemed to require an insurer to provide coverage prior to receipt by either the insurer or its producer of the premium deposit required based upon the premium quoted by the insurer or its producer.

Amended by R.1994 d.598, effective December 5, 1994.
See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).
Amended by R.2002 d.328, effective October 7, 2002.
See: 34 N.J.R. 371(a), 34 N.J.R. 3525(b).

In (a), rewrote the introductory paragraph in 6, 7 and 9; rewrote (b)2; in (c), rewrote the introductory paragraph; added new (d) and recodified former (d) as (e).

11:3-44.4 New applicants previously insured in another state by the insurer or an affiliate

(a) An insurer shall immediately provide coverage, without lapse, to any eligible person applicant that:

1. Has moved to New Jersey from another state;
2. Submits a completed written application within 60 days of establishing residency in New Jersey; and
3. Applies to either the same insurer under which the applicant is currently insured or an affiliate of that insurer.

Recodified from N.J.A.C. 11:3-44.5 by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Former N.J.A.C. 11:3-44.4, Immediate binding authority for insurers with MTF rates, repealed.

11:3-44.5 Underwriting rules

These new rules shall supersede any existing, conflicting underwriting rules previously filed and approved by the Department pursuant to N.J.A.C. 11:3-35.

Recodified from N.J.A.C. 11:3-44.6 by R.2001 d. 44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Former N.J.A.C. 11:3-44.5, New applicants previously insured in another state by the insurer or an affiliate, recodified to N.J.A.C. 11:3-44.4.

11:3-44.6 Penalties

Any insurer that violates any provision of this subchapter shall be subject to the penalties provided by law, including but not limited to the suspension, revocation or termination of a certificate of authority and a civil penalty in an amount of up to \$2,000 for the first violation and up to \$5,000 for the second and each subsequent violation in accordance with N.J.S.A. 17:33B-15 and 17:33B-21.

Recodified from N.J.A.C. 11:3-44.7 by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
Former N.J.A.C. 11:3-44.6, Underwriting rules, recodified to N.J.A.C. 11:3-44.5.

SUBCHAPTER 45. INSURERS REQUIRED TO PROVIDE SURVEY INFORMATION

11:3-45.1 Purpose and scope

(a) The purpose of the subchapter is to implement N.J.S.A. 39:6A-23.1 by setting forth those procedures by which insurers shall annually submit to the Department current premium information.

(b) This subchapter shall apply to all auto insurers that have on file with the Department a current personal lines rating system for automobile insurance and which are not exempted from the obligation to insure, renew, or provide automobile insurance to eligible persons. Exempted insurers are listed in N.J.A.C. 11:3-40.3(b), (c) and (d).

11:3-45.2 Definitions

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

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

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

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

“Auto insurer” means an entity authorized or admitted to write automobile insurance in New Jersey but does not include either any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq. or any other statute, or insurers which are exempted from the requirement to provide automobile insurance coverage to eligible persons in accordance with N.J.A.C. 11:3-40.3(b), (c) and (d).

“Survey information” means the data annually supplied by the Commissioner to the auto insurers from which they will then issue survey quotations. This information includes, but is not limited to, the prior driving experience of the insured, the nature and extent of coverages, the deductible, the composition of household, information regarding the proposed vehicle, and other pertinent information.

Administrative change.
See: 30 N.J.R. 1317(a).

11:3-45.3 Annual premium survey filing

(a) Every auto insurer shall prepare and file on or before September 15 of each calendar year, with the Department,

at the address set forth in (d) below, an annual premium survey reflecting premiums charged for specific automobile insurance coverage.

(b) The filing shall reflect the annual premiums by coverage as of October 1 of that calendar year and shall be predicated on survey information provided by the Commissioner to auto insurers by Bulletin on or before September 1 of each calendar year.

(c) Auto insurers shall prepare and file the information required by this subchapter in accordance with the forms contained in the Appendix and incorporated herein by reference.

(d) Completed annual premium survey forms shall be submitted to:

New Jersey Department of Banking and Insurance
Office of Property/Casualty
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Attn: Automobile Premium Comparison Survey

Administrative change.
See: 30 N.J.R. 1317(a).

11:3-45.4 Penalties

Failure to comply with the provisions of this subsection shall result in the imposition of penalties as prescribed by law.

APPENDIX

**New Jersey Automobile Insurance
Premium Comparison Survey**

The sample premiums shall be calculated for each territory using the survey information provided by the Commissioner on or before September 1 each year. The premium information submitted in these forms must be effective October 1 of that year and must be calculated on an annual basis.

All of the forms in this Appendix shall be completed and filed with the New Jersey Department of Banking and Insurance, Office of Property/Casualty, 20 West State Street, PO Box 325, Trenton, NJ 08625-0325 NO LATER THAN SEPTEMBER 15 of the same year. Any questions regarding this survey may be directed to the Office of Property/Casualty at (609) 984-7010.

If the data supplied herein is for more than one company, submit separate completed forms for each such company if different rates are on file with the Department.

1. Insurance Company Name: _____
2. NAIC Group # _____ NAIC Company # _____
3. Sample premiums must reflect split liability limits unless company only writes CSL. Choose one only:
 Combined Single Limits of Liability? yes _____
 Split Liability Limits? yes _____
4. Effective Date of Rates _____
5. Worksheets used to Calculate Rating Examples.
6. Individual collecting and submitting data:
 Name: _____
 Title: _____
 Phone #: _____
 (Include Area Code)

Insurance Co. Name: _____

NAIC Group #: _____ NAIC Company #: _____

COMPLETE A SEPARATE FORM FOR EACH COMPANY IN YOUR GROUP.

PREMIUM INFORMATION

Territory	Example 1	Example 2	Example 3	Example 4
1	_____	_____	_____	_____
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____

Territory	Example 1	Example 2	Example 3	Example 4
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____
15	_____	_____	_____	_____
16	_____	_____	_____	_____
17	_____	_____	_____	_____
19	_____	_____	_____	_____

Footnote:
Companies should use the 27 territories set forth in the PAIP Manual.

Insurance Co. Name: _____

NAIC Group #: _____ NAIC Company #: _____

COMPLETE A SEPARATE FORM FOR EACH COMPANY IN YOUR GROUP.

Territory	Example 1	Example 2	Example 3	Example 4
22	_____	_____	_____	_____
23	_____	_____	_____	_____
24	_____	_____	_____	_____
25	_____	_____	_____	_____
26	_____	_____	_____	_____
27	_____	_____	_____	_____
31	_____	_____	_____	_____
38	_____	_____	_____	_____
39	_____	_____	_____	_____
40	_____	_____	_____	_____

Footnote:
Companies should use the 27 territories set forth in the PAIP Manual.

Comments and Footnotes

Administrative change.
See: 30 N.J.R. 1317(a).

**SUBCHAPTER 46. AUTOMOBILE INSURANCE
URBAN ENTERPRISE ZONE PROGRAM**

11:3-46.1 Purpose and scope

(a) The purpose of this subchapter is to:

1. Provide for the establishment of a private passenger automobile insurance urban enterprise zone program pursuant to N.J.S.A. 17:33C-1 et seq., and for the voluntary rating tier of the PAIP pursuant to N.J.S.A. 17:29D-1i; and
2. Encourage greater availability of private passenger automobile insurance in certain urban areas of this State as designated by the Commissioner pursuant to N.J.S.A. 17:33C-2b and this subchapter.

(b) This subchapter shall apply to all insurers authorized or admitted to transact private passenger automobile insurance in this State, all insurers seeking to become "qualified insurers" pursuant to N.J.S.A. 17:33C-3 and this subchapter, and all producers seeking to become "UEZ agents" or

"qualified producers" pursuant to N.J.S.A. 17:33C-1 et seq. and 17:29D-1, and this subchapter.

(c) In accordance with N.J.S.A. 17:29D-1i(6), the provisions of N.J.A.C. 11:3-46.6, 46.7, 46.8, 46.9, 46.10, and 46.11 shall not be operative after November 1, 2003.

Amended by R.1999 d.218, effective July 19, 1999.

See: 31 N.J.R. 920(a), 31 N.J.R. 1927(a).

In (c), inserted N.J.S.A. reference at the beginning, and changed the date from December 31, 2000 to November 1, 2003 at the end.

11:3-46.2 Definitions

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

"Automobile" means an automobile as defined pursuant to N.J.S.A. 39:6A-2.

"Automobile insurance" means personal lines private passenger automobile insurance.

"Automobile insurance urban enterprise zone" or "UEZ" means a geographic area identified and designated by the Commissioner pursuant to N.J.S.A. 17:33C-2 and this subchapter.

"Automobile insurance urban enterprise zone program" or "program" means an automobile insurance urban enterprise zone program established pursuant to N.J.S.A. 17:33C-2 and this subchapter.

"Automobile insurer" means an insurer or group of affiliated insurers authorized or admitted to transact the business of personal lines private passenger automobile insurance in this State.

"Bona fide office" means an office maintained by the producer for the transaction of business that is open to the public during normal business hours, and that provides access as required by 12 U.S.C. § 12101 (the "Americans with Disabilities Act").

"CAIP" means the Commercial Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-1.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Eligible person" means an eligible person as defined in N.J.S.A. 17:33B-13.

"Insurance producer" means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant, and who is licensed pursuant to N.J.S.A. 17:22A-1 et seq.

"Located in a UEZ" or "maintain a bona fide office in a UEZ" means that the street address of the business office of the producer is located in a zip code located within a UEZ. Determination of zip code boundaries shall be based on the edition of the United States Zip Code and Post Office Directory in effect at the time of the application for eligibility.

"PAIP" means the New Jersey Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-2.

"Qualified insurer" means an automobile insurer that is a qualified insurer pursuant to N.J.S.A. 17:33C-3 and this subchapter.

"Urban enterprise zone agent" or "UEZ agent" means an insurance producer who is licensed pursuant to N.J.S.A. 17:22A-1 et seq., is appointed on or after January 1, 1998 by a qualified insurer in accordance with the procedures set forth in N.J.S.A. 17:22A-15 and N.J.A.C. 11:17-2.9 to represent it in an automobile insurance urban enterprise zone under the terms of N.J.S.A. 17:33C-1 et seq., and maintains a bona fide office within that automobile insurance urban enterprise zone.

11:3-46.3 Designation of UEZ and UEZ share

(a) Pursuant to N.J.S.A. 17:33C-2, the Commissioner has identified and designated as UEZs certain urban-based geographic areas where the Commissioner has found that automobile insurance consumers would benefit from increased access to automobile insurance as set forth below. UEZs shall be designated by municipality consisting of one or more zip codes.

(b) In determining UEZ areas, the Commissioner first determined those areas of the State that are urban, as follows:

1. The eight Urban Centers designated by the State Planning Commission, Appendix C in the most recent edition of the State Plan; and
2. Municipalities with populations in excess of 10,000 as of the 1990 census and with population densities in excess of 3,500 persons per square mile.

(c) From the urban areas of the State pursuant to (b) above, the Commissioner has designated the UEZs using the following criteria:

1. Municipalities where less than half of the insurers with a Statewide marketshare of at least 0.5 percent have a marketshare in the municipality that is at least equal to 90 percent of their Statewide marketshare; and which are either:

i. Located in those rating territories where the pure premium for business in that territory divided by the pure premium for business in all territories exceeds 1.35, based on the data from the Department's statistical agents for calendar-accident years 1993 through 1995 evaluated as of March 31, 1996;

ii. Designated as an Urban Center by the State Planning Commission, Appendix C in the 1992 edition of the New Jersey State Development and Redevelopment Plan; or

iii. Designated in the top 20 distressed municipalities by the State Planning Commission, in the 1996 Municipal Distress Index, Appendix B in the 1992 edition of the New Jersey State Development and Redevelopment Plan.

(d) The initial UEZ areas determined pursuant to (b) and (c) above are set forth in Exhibit A in the Appendix to this subchapter, incorporated herein by reference.

(e) The Commissioner shall, in consultation with the UEZ Advisory Committee established pursuant to N.J.S.A. 17:33C-2b, periodically review the availability of automobile insurance in this State and determine whether any revisions to the designation of UEZ areas are necessary to further the intent of N.J.S.A. 17:33C-1 et seq.

(f) The Commissioner shall advise each insurer of its UEZ share calculated as set forth in Exhibit B in the Appendix to this subchapter, incorporated herein by reference, by Order on or about November 15 of each year.

1. An insurer's initial UEZ share shall be based on each insurer's in-force exposures in UEZs reported for the period ended September 30, 1997. Subsequent UEZ shares shall be based on in-force exposures for the period ended September 30 of each year thereafter.

Amended by R.1999 d.218, effective July 19, 1999.
See: 31 N.J.R. 920(a), 31 N.J.R. 1927(a).
Rewrote (c).

11:3-46.4 Qualified insurers

(a) An automobile insurer may apply to the Commissioner to be considered a qualified insurer for purposes of participating in the UEZ program. An automobile insurer seeking to become a qualified insurer shall demonstrate that it will actively conduct business in UEZ areas by filing plans and procedures, including, but not limited to, the following:

1. A plan to increase access to automobile insurance for consumers residing in a UEZ;

2. A plan to assist newly appointed UEZ agents in developing the skills necessary to manage a successful business;

3. Procedures to monitor and evaluate the impact of efforts to expand services to urban areas;

4. Materials designed to assist consumers in understanding automobile insurance coverages;

5. The insurer's marketing plans and goals for increasing its writing of risks in automobile insurance urban enterprise zones; and

6. A certification from the insurer that it will file all reports required by this subchapter.

(b) The documents submitted pursuant to (a) above shall set forth with specificity:

1. The insurer's goal, which shall be the number of in-force exposures needed to meet its UEZ share, as calculated pursuant to N.J.A.C. 11:3-46.3(f);

i. In the case of an insurer that has approved underwriting guidelines that include membership requirements to be an eligible person pursuant to N.J.S.A. 17:33B-13e, its goal shall be to increase accessibility and marketshare in UEZs so that it insures at least the same percentage of potential eligible members in UEZs as its percentage marketshare of eligible members located outside the UEZs. The insurer also shall be able to demonstrate the potential number of eligible members in and outside the UEZs with credible data;

2. The number of in-force exposures projected to be written in the UEZs and Statewide for each quarter for the periods ending March 31, June 30, September 30, and December 31, which shall consider reductions in actual in-force writings due to nonrenewal, lapse, cancellations, etc.;

3. The UEZs in which the insurer intends to write or increase its writings;

4. The manner by which the insurer intends to satisfy its goal of increasing writings in UEZs, such as appointment of UEZ agents; use of existing agents; new marketing initiatives; etc.;

5. A listing of UEZ agents appointed to date, together with any limit on the number of exposures the UEZ agents may write, pursuant to N.J.S.A. 17:33C-4; and

6. If UEZ agents will be utilized, the support services to be provided to those agents to write the business and whether support services to be provided are different than those provided to its agents appointed in the ordinary course of business.

(c) All qualified insurers and insurers filing for qualification shall keep current the information required as part of an application for qualification by filing with the Department any changes in the information filed pursuant to (b) above no later than 15 days after such change.

(d) An automobile insurer that meets the applicable standards established pursuant to (a) above shall certify to the Commissioner that it is a qualified insurer and shall certify to the specific provisions set forth in its plan pursuant to (b) above.

(e) An automobile insurer that certifies to the Commissioner pursuant to (d) above that it meets the standards established pursuant to (a) and (b) above shall be a qualified insurer. If upon review of the documents filed the Commissioner determines that the plan fails to provide all of the information required pursuant to (a) and (b) above, the Commissioner shall promptly notify the insurer that its filing is incomplete, and that it shall not be considered a qualified insurer until the deficiencies in the filing are addressed.

(f) Only qualified insurers shall be eligible to participate in the UEZ program.

(g) To the extent an insurer, in order to provide a complete plan to be a qualified insurer, submits proprietary information, the insurer shall identify and include such information on separate documents. Proprietary information shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq. If the Department determines that such information is not proprietary, the Department shall notify the insurer prior to responding to any public records request.

11:3-46.5 UEZ agents

(a) A qualified insurer may appoint one or more UEZ agents on or after January 1, 1998. Such appointments shall comply with all requirements set forth in N.J.S.A. 17:33C-4 and 17:22A-15, N.J.A.C. 11:17-2.9, and this subchapter. UEZ agent contracts shall set forth any limitation on the number of exposures that may be written by the UEZ agent pursuant to N.J.S.A. 17:33C-4. The notice of agency contract filed pursuant to N.J.A.C. 11:17-2.9 shall note that the agent is a UEZ agent whose contract includes provisions permitted by N.J.S.A. 17:33C-1 et seq. and this subchapter.

(b) The insurer shall provide UEZ agents with reasonable support services. In addition, in setting the compensation for UEZ agents, the insurer shall comply with N.J.S.A. 17:33B-18b.

(c) If the qualified insurer is a direct writer (that is, an insurer that writes business directly through its own employees without the use of contracted agents), and has an amount of in-force exposures in UEZs that exceeds 105 percent of its Statewide marketshare as of the end of a quarterly reporting period, it may request that the Commissioner permit the insurer to suspend any additional marketing efforts implemented as part of its plan submitted pursuant to N.J.A.C. 11:3-46.4.

11:3-46.6 PAIP voluntary rating tier

(a) Pursuant to N.J.S.A. 17:29D-1i, the PAIP Plan of Operation shall provide for the establishment of a voluntary rating tier in which eligible persons residing in UEZs may be written by certain UEZ agents and qualified producers, as set forth in N.J.A.C. 11:3-46.7. The rates utilized in the voluntary rating tier shall be the voluntary market rates in use by the insurer to which the risk is distributed.

(b) The voluntary rating tier shall not provide insurance coverage for more than five percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State. The number of exposures written in the voluntary rating tier shall be included for purposes of determining the maximum number of overall exposures permitted to be written in the PAIP pursuant to N.J.S.A. 17:29D-1d. The Commissioner may suspend writings in the voluntary rating tier if he or she finds that total amount of exposures written in the PAIP is approaching the maximum amount permitted to be written in the PAIP pursuant to N.J.S.A. 17:29D-1d.

(c) An insurer that does not meet its goal, for qualified insurers, or UEZ share, for insurers that are not qualified insurers, shall be subject to distributions in an amount required for the insurer to meet its goal or UEZ share, as applicable, evaluated based on the insurer's quarterly reports filed pursuant to N.J.A.C. 11:3-46.13 in accordance with (f) below.

(d) Insurers that have, and maintain, an aggregate voluntary private passenger automobile insurance marketshare in UEZs that is at least 95 percent of the insurer's goal, if a qualified insurer, or UEZ share, if not a qualified insurer, shall be exempt from distributions pursuant to this section.

(e) An insurer shall be subject to initial distributions beginning September 1, 1998 unless the insurer has filed a plan to become a qualified insurer pursuant to N.J.A.C. 11:3-46.4 by July 1, 1998 that provides as a goal to eliminate its shortfall by March 31, 1999; and either:

1. Has written an amount of in-force exposures equal to at least 20 percent of its goal by June 30, 1998; or

2. Has filed a report with the Department prior to September 1, 1998 that demonstrates that the insurer has written an amount of in-force exposures equal to at least 30 percent of its goal as of September 1, 1998.

(f) An insurer shall be subject to subsequent distributions of exposures if it fails to maintain its goal as of June 30 and each calendar quarter thereafter following the establishment of the UEZ share, based on the report of in-force exposures filed pursuant to N.J.A.C. 11:3-46.13. The Department shall monitor the amount of an insurer's in-force writings quarterly to determine whether it is or remains subject to distributions.

(g) Insurers that are exempt from participation in the PAIP pursuant to N.J.A.C. 11:3-2.4 shall not be subject to distributions pursuant to this section. To the extent that an insurer is exempted from the obligation to participate in the PAIP pursuant to N.J.S.A. 17:33B-23 and 17:33B-24, subject to a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29, or under administrative supervision pursuant to

N.J.S.A. 17:51A-1 et seq., and that specific orders address its obligations, those orders will continue to control, and an insurer's obligations under these rules shall be addressed in those orders or supplementary orders.

Amended by R.1999 d.218, effective July 19, 1999.

See: 31 N.J.R. 920(a), 31 N.J.R. 1927(a).

In (f), rewrote the first sentence.

11:3-46.7 Qualified producers

(a) Only UEZ agents who have met any limit on exposures that may be written in accordance with the UEZ agent's agreement with the appointing insurer pursuant to N.J.S.A. 17:33C-4, and who is certified by the PAIP, or qualified producers as set forth below, shall be permitted to submit eligible person risks from UEZs to the PAIP for coverage under the voluntary rating tier, subject to any apportionment of distributions by the PAIP pursuant to N.J.A.C. 11:3-46.11(h).

(b) For purposes of this subchapter, a "qualified producer" is a producer who:

1. Has been duly licensed with property/casualty authority for the three years immediately preceding the effective date of N.J.S.A. 17:33C-1 et seq.;
2. Has no affiliation with a voluntary market insurer for the placement of automobile insurance;
 - i. A producer shall not be deemed to have an affiliation with a voluntary market insurer if the insurer has had its obligation to insure all eligible persons suspended pursuant to N.J.S.A. 17:33B-19 and 17:33B-20; has been placed in rehabilitation or liquidation pursuant to N.J.S.A. 17:30C-1 et seq.; has been placed under administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq.; or is otherwise limited in its ability to insure all eligible persons pursuant to law;
3. Had an affiliation with a voluntary market insurer for the placement of automobile insurance that was terminated by the insurer in the last three years;
4. Conducts as of the date of application and has continuously conducted his or her business in a bona fide office in a UEZ during the three years immediately preceding January 1, 1998, supported by proper documentation;
5. Is certified by the PAIP; and
6. Demonstrates to the PAIP his or her competency, efficiency and effectiveness in the solicitation, negotiation and effectuation of automobile insurance as evidenced by any history of disciplinary actions or complaints against the producer, and other relevant factors.

(c) Any producer seeking to become a qualified producer shall file an application with the PAIP on a form to be provided by the PAIP, at the following address:

New Jersey Personal Automobile Insurance Plan
6000 Midlantic Drive
Suite 200 North
Laurel Corporate Center
Mt. Laurel, NJ 08054

(d) The PAIP shall review each completed application to determine whether the producer meets the criteria set forth in (b) above, and shall advise the applicant whether he or she is a qualified producer under the voluntary rating tier within 30 days of receipt of a complete application. Disapproval of an application shall be as provided in N.J.A.C. 11:3-46.9.

11:3-46.8 Review of applications

(a) In determining whether a producer has demonstrated competency, efficiency and effectiveness in the solicitation, negotiation and effectuation of insurance, the PAIP's review shall include, but need not be limited to, the following:

1. Any records concerning the termination of the producer's affiliation with any voluntary market insurer(s) to determine whether the reason for termination adversely reflects on the producer's competency, efficiency and effectiveness in servicing insurance business or otherwise indicates that the producer should not be qualified due to unworthiness, bad faith, lack of integrity, financial irresponsibility, dishonesty or other criteria deemed relevant by the Commissioner;
2. Any records relating to the appointment of the producer to act as a PAIP or CAIP producer, his or her performance as a PAIP or CAIP producer, and any corrective or disciplinary action taken by the PAIP or CAIP with respect to the producer;
3. Any administrative action instituted by the Department (that is, issuance of an Order to Show Cause, issuance of an order pursuant to N.J.S.A. 17:22A-20d etc.) with respect to the producer that has resulted in the imposition of fines or suspensions or revocation of license privileges, including the imposition of such sanctions based on a consent order; and
4. Upon disclosure on the application or any other document reviewed by the PAIP of such administrative actions, any records relating to administrative actions instituted by any licensing authority of this or any other state or the Federal government with respect to the producer that has resulted in the imposition of fines, or suspension or revocation of license privileges.

11:3-46.9 Disapproval standards

(a) A producer's application to be a qualified producer under the voluntary rating tier shall be disapproved if, based on the PAIP's review as set forth in N.J.A.C. 11:3-46.8:

1. The producer failed to file a completed application with the PAIP as provided in N.J.A.C. 11:3-46.7(c);

2. The producer is determined not to meet the eligibility criteria set forth in N.J.A.C. 11:3-46.7(b)1 through 5;

3. The producer knowingly withheld material information on the application or any accompanying document or intentionally made or caused to be made any false, deceptive or fraudulent statement during the application process, or otherwise qualified or attempted to qualify by fraud or material misrepresentations; or

4. The producer has failed to comply with insurance laws or regulations and/or the producer standards established by the PAIP in such a manner or with such frequency as to demonstrate a lack of competency, efficiency and effectiveness in the solicitation, negotiation and servicing of insurance business. In making its determination under this paragraph, the PAIP shall consider the nature of any violation and how recently it occurred.

(b) An otherwise eligible producer whose application has been disapproved may reapply, except where such disapproval is for cause. For the purpose of this provision, the term "for cause" shall mean any willful and/or repeated violation of insurance laws or rules, or PAIP performance standards, or any conduct that demonstrates unworthiness, lack of integrity, bad faith, dishonesty, financial irresponsibility or incompetency to transact business as an insurance producer.

(c) When the PAIP disapproves an application for a qualified producer, the disapproval notice shall:

1. Include a written statement specifying the reasons for the rejection; and

2. Inform the producer of his or her ability to request a review by the Commissioner, within 10 days after receipt of the disapproval by the PAIP.

i. A request for review by the Commissioner shall be in writing and made within 10 days of receipt of the disapproval and shall be accompanied by all supporting documentation, if any, disputing with specificity, the reasons for disapproval. A copy of the request shall be filed concurrently with the PAIP. A response to this request may be made by the PAIP within 10 days after receipt by the PAIP; and

ii. The Commissioner shall issue a written decision with reasons upholding or reversing the decision of the PAIP within 45 days from receipt of the last written request or response, whichever is later.

(d) Any review by the Commissioner pursuant to this rule shall be conducted based on a review of the record established by the PAIP.

11:3-46.10 Commissions

(a) Qualified producers shall receive commissions for risks placed in the voluntary rating tier from the insurer to which the risks are distributed. Such commissions shall be equivalent to the insurer's usual commission rate for its agents or brokers, or may be a newly established commission rate for brokers placing business in the voluntary rating tier, but in no event less than nine percent. Direct writers shall pay an amount not less than nine percent. To the extent the minimum commission required pursuant to this section exceeds the insurer's commission underlying its current rates, for every two percent that the minimum commission required exceeds the commission underlying the insurer's current approved rates, the insurer may file rule pages to provide for a one percent increase in rates for business written pursuant to N.J.A.C. 11:3-46.6. In the case of a direct writer, the insurer's commission underlying its rates shall be deemed to be zero.

11:3-46.11 Coverage application procedure

(a) A producer requesting coverage through the voluntary rating tier on behalf of an applicant shall file with the PAIP an application for coverage in a form acceptable to the Commissioner. The application shall contain the information required to constitute a completed written application pursuant to N.J.A.C. 11:3-44, except that a coverage selection form shall be supplied as provided in (c) below. The application shall include information regarding requested coverages, limits of coverages and tort threshold options.

(b) The assigned insurer shall review the application and determine the eligibility for coverage in accordance with time frames and other requirements set forth in N.J.A.C. 11:3-44. Quotations, accompanied by a coverage selection form and any other documents required by the insurer in accordance with its normal business practice in the voluntary market, shall be mailed or faxed to the producer and mailed to the applicant. All quotations shall be valid for a period of 30 days after the date of issuance of the quotation.

1. The insurer shall provide a quotation based on the requested limits of coverage set forth in the application. To the extent that the insurer does not offer the specific limit(s) requested, the insurer shall offer the next broadest coverage it offers.

2. Together with the quotation provided to the applicant pursuant to (b) above, the insurer shall include a coverage selection form specifying the limits of coverages to be provided pursuant to (b)1 above to be executed by the applicant.

(c) Coverage may be effected by the applicant by returning the coverage selection form signed by the applicant together with any required premium deposit to the insurer.

(d) Nothing in this section shall be construed as limiting the PAIP from developing additional application procedures that are not inconsistent with this section.

<u>Zip Code</u>	<u>UEZ</u>	<u>Voluntary In-Force Exposures</u>	<u>UZAR Assigned In-Force Exposures</u>	<u>Total In-Force Exposures</u>
07107	Newark			
07108	Newark			
07109	Belleville			
07111	Irvington			
07112	Newark			
07114	Newark			
07201	Elizabeth			
07202	Elizabeth			
07206	Elizabeth			
07207	Elizabeth			
07208	Elizabeth			
07302	Jersey City			
07303	Jersey City			
07304	Jersey City			
07305	Jersey City			
07306	Jersey City			
07307	Jersey City			
07309	Jersey City			
07310	Jersey City			
07311	Jersey City			
07424	Little Falls/W. Paterson			
07501	Paterson			
07502	Paterson			
07503	Paterson			
07504	Paterson			
07505	Paterson			
07506	Hawthorne			
07507	Hawthorne			
07509	Paterson			
07510	Paterson			
07513	Paterson			
07514	Paterson			
07522	Paterson			
07524	Paterson			
07533	Paterson			
07543	Paterson			
07544	Paterson			
08030	Gloucester			
08101	Camden			
08102	Camden			
08103	Camden			
08104	Camden			
08105	Camden			
08401	Atlantic City			
08601	Trenton			
08602	Trenton			
08603	Trenton			
08605	Trenton			
08607	Trenton			
08608	Trenton			
08609	Trenton			
08611	Trenton			
08618	Trenton			
08629	Trenton			
08638	Trenton			
08861	Perth Amboy			
08862	Perth Amboy			
08901	New Brunswick			
08903	New Brunswick			
08906	New Brunswick			
	Total			

Amended by R.1999 d.218, effective July 19, 1999.

See: 31 N.J.R. 920(a), 31 N.J.R. 1927(a).

In Exhibit A, inserted references to the towns of Perth Amboy and Plainfield; and added Exhibit C.

SUBCHAPTER 47. INSURANCE SCENARIOS

11:3-47.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the requirements for the provision by private passenger automobile insurers and insurance producers of insurance scenarios to new applicants and insureds pursuant to N.J.S.A. 17:29A-52.

(b) This subchapter shall apply to all insurers transacting personal private passenger automobile insurance in this State and licensed insurance producers.

(c) The requirements of this subchapter shall not apply to transactions where a new applicant for insurance specifically requests to purchase a basic policy as provided in N.J.S.A. 39:6A-3.1 or a special policy as provided in N.J.S.A. 39:6A-3.3.

(d) This subchapter shall apply to all applications and requests made on or after May 14, 2004.

11:3-47.2 Definitions

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

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

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

“Insurer” means an entity authorized or admitted to transact insurance business in this State pursuant to N.J.S.A. 17:17-1 et seq., or 17:32-1 et seq., as applicable. “Insurer” includes the Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 et seq. and N.J.A.C. 11:3-2.

“Insurance producer” means a person licensed under the laws of this State to sell, solicit or negotiate insurance.

“Personal private passenger automobile insurance” means direct insurance on automobiles as defined in N.J.S.A. 39:6A-2.

11:3-47.3 Insurance scenarios

(a) Pursuant to N.J.S.A. 17:29A-52, insurers and insurance producers shall provide insurance scenarios in accordance with this subchapter.

1. Every insurer writing private passenger automobile insurance in this State as a direct writer or through insurance producers employed by that insurer or retained to represent that insurer exclusively shall provide each new applicant seeking automobile insurance, and each insured upon request, with a document or documents that describe at least three insurance scenarios demonstrating the effect

of different coverage choices. For new applicants, the insurance scenarios shall be provided in connection with a premium quotation or application and prior to execution of the Coverage Selection Form required by N.J.A.C. 11:3-15. For existing insureds, the insurance scenarios shall be provided upon request. The types of coverage to be utilized in providing the scenarios shall be as set forth in this section.

2. Every insurance producer that is not employed by an insurer or retained to represent one insurer exclusively (that is, an independent insurance producer) shall provide each new applicant seeking automobile insurance, and each insured upon request, with a document or documents that describe at least three insurance scenarios as set forth in (a)1 above. An independent insurance producer shall provide a minimum of three insurance scenarios under this rule irrespective of the number of insurers it may represent. Nothing in this subchapter is intended to affect or modify the duties of an independent insurance producer with respect to any obligations he or she may owe to one or more insurers as a result of any agency relationship or contract with an insurer.

3. For purposes of this rule, "new applicant" shall not include a person who is replacing a vehicle already insured under the policy; adding a vehicle to the policy; or whose policy is being replaced by the insurer or an affiliated insurer to cover the existing insured vehicles, replacement vehicles or added vehicles, provided that the rating system of the affiliated insurer is identical to that of the insurer which originally issued the policy.

4. Where application for an insurance policy is made via the Internet, compliance with (a)1 above shall be satisfied by having the insurance scenarios readily available to the applicant on the insurer's website. In addition to being readily available on the insurer's website, this information also may be placed on the producer's website.

5. Where application for an insurance policy is made via the telephone and coverage is bound during the telephonic transaction, compliance with (a)1 above shall be satisfied if the insurer, with the agreement of the applicant, sends the applicant the insurance scenarios within five business days after the telephonic transaction is completed. Insureds may alter coverages based on their review of the insurance scenarios by returning a signed Coverage Selection Form with the changes noted therein, or electronically, if such process is made available by the insurer. Such alterations shall be effective in accordance with N.J.A.C. 11:3-15.7(d)2.

(b) Coverage limits included in each insurance scenario shall meet the minimum limits of coverage as required by law, and may be modified as required to satisfy coverage requirements for leased or financed vehicles for which coverage is sought. Insurance scenarios shall reflect the approximate cost of purchasing such limits of coverage, and shall not be deemed to be binding quotes.

(c) The three insurance scenarios shall be as follows:

1. Scenario 1 shall reflect choices of Bodily Injury Liability coverage under N.J.S.A. 39:6A-3, for example, the basic policy established by N.J.S.A. 39:6A-3.1; the limitation on lawsuit and no limitation on lawsuit options pursuant to N.J.S.A. 39:6A-8; and policy limits options, including options on uninsured and underinsured motorist coverage;

2. Scenario 2 shall reflect choices related to the Personal Injury Protection coverage under N.J.S.A. 39:6A-4, for example, the medical coverage only option; the healthcare primary options; and policy limits options; and

3. Scenario 3 shall reflect choices related to Physical Damage coverage options, for example, the option not to purchase Physical Damage coverage; various deductible options; and the named driver exclusion option.

(d) The insurance scenarios provided may contain the following statement: "Insurance scenarios are intended to further educate consumers about the choices available to them, are not binding quotes, and do not necessarily represent the recommendations of the producer or insurer."

(e) An insurer or producer shall satisfy the requirements of this subchapter by either:

1. Providing the applicant or insured with three applicable generic insurance scenarios, as set forth in (c) above, from among a selection of scenarios. The scenarios provided shall reflect coverage choices that correspond to the general circumstances of certain kinds of applicants, for example, three that are applicable to families; three that are applicable to single drivers; or three that are applicable to senior citizens, or three that are applicable to households with one, two or three or more drivers, or with one, two or three or more vehicles to be insured. The premium amounts associated with each scenario may be expressed either in an approximate dollar amount or as a percentage difference;

2. Providing the applicant or insured with three insurance scenarios, as set forth in (c) above, which are produced by an electronic data system based upon the individual characteristics and circumstances of the applicant or insured as indicated in information they provide to the insurer or producer. The premium amounts associated with each scenario may be expressed either in an approximate dollar amount or as a percentage difference; or

3. Providing the applicant or insured with three insurance scenarios, as set forth in (c) above, on a document developed by the Department and available on the Department's website, www.njdobi.org, and entering appropriate premium amounts where indicated.

(f) The document developed by the Department may be revised from time to time in order to reflect current market conditions, prevalent consumer choices and the cost-saving features of particular coverage options. The Department shall notify insurers and producers of any changes to its document by Bulletin, which also will be posted on the Department website.

(g) Nothing in this subchapter shall be deemed to prevent an insurer or producer from offering additional insurance scenarios to consumers as the insurer or producer deems appropriate.

Amended by R.2005 d.83, effective March 7, 2005.

See: 36 N.J.R. 4207(a), 37 N.J.R. 775(a).

In (a), added 4 and 5.

11:3-47.4 Penalties

Failure to comply with this subchapter shall result in the imposition of penalties as authorized by law, including, but not limited to, penalties authorized pursuant to N.J.S.A. 17:33-2.