

## Case Notes

Insurer made sufficient offer of basic income continuation benefits for as long as disability exists. *Werts v. New Jersey Mfrs. Ins. Co.*, 250 N.J.Super. 580, 595 A.2d 1110 (A.D.1991), certification denied 127 N.J. 554, 606 A.2d 366.

Absence of income continuation benefits covering either named insured and/or household relatives did not require reformation of policy. *Olivero by Olivero v. New Jersey Mfrs. Ins. Co.*, 227 N.J.Super. 367, 547 A.2d 710 (A.D.1988), certification denied 115 N.J. 76, 556 A.2d 1219.

Additional coverage held provided for all persons for whom basic coverage was provided (citing former N.J.A.C. 11:3-7.7). *Clendaniel v. New Jersey Manufacturers Insurance Co.*, 190 N.J.Super. 286, 463 A.2d 369 (App.Div.1983), affirmed in part, reversed in part 96 N.J. 361, 476 A.2d 263 (1984).

Surviving spouse held entitled to lump sum payment of survivor benefits; doubling of benefits due to payment of two premiums for additional protection denied. *Riccio v. New Jersey Manufacturers Insurance Co.*, 179 N.J.Super. 65, 430 A.2d 641 (App.Div.1981).

Insured held entitled to policy reformation due to statutory deficiency of insurer's letter notifying insured of optional coverage selection. *Lumbermens Mutual Casualty Co. v. Carriere*, 170 N.J.Super. 437, 406 A.2d 994 (Law Div.1979).

**11:3-7.5 Notice Requirement**

(a) Additional personal injury protection benefits that are required to be offered by an insurer shall be offered by the insurer at least annually as part of the Coverage Selection Form required pursuant to N.J.S.A. 39:6A-23 and N.J.A.C. 11:3-15.

1. The buyer's guide and coverage selection form specified at N.J.S.A. 39:6A-23 and any rules promulgated thereunder shall meet the requirements of (a) above.

(b) Each insurer shall distribute copies of this subchapter to every person responsible for the handling and settlement of claims subject to this subchapter. Every insurer shall satisfy itself that all such responsible persons are thoroughly conversant with and are complying with this subchapter.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Changes required by "The Fair Automobile Insurance Reform Act of 1990", P.L. 1990 c.8.

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

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

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Genuine issue of material fact existed as to whether seller of policy was insurer's agent. *Lilly v. Allstate Ins. Co.*, 218 N.J.Super. 313, 527 A.2d 903 (App.Div.1987).

Insured held entitled to policy reformation due to statutory deficiency of insurer's letter notifying insured of optional coverage selection. *Lumbermens Mutual Casualty Co. v. Carriere*, 170 N.J.Super. 437, 406 A.2d 994 (Law Div.1979).

**11:3-7.6 Cancellation of automobile coverage for nonpayment of premium**

(a) This rule applies to all automobile policies delivered or issued for delivery in this State, insuring a single individual or husband and wife resident of the same household, as

named insured, and under which the insured vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, not rented to others; or

2. Any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not customarily used in the occupation, profession or business of insured, other than farming or ranching, provided, however, that this rule shall not apply to any policy insuring more than four automobiles, or to any policy covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards.

(b) The effective date of the cancellation of a policy for nonpayment of premium shall not be earlier than 10 days prior to the last full day of which premium received by the company prior to the date of preparation of the cancellation notice, would pay for coverage on a pro rata basis. In calculating the effective date of the cancellation as provided in this section, the premium applicable to the coverage provided by the policy and the premium received by the company at or prior to the time cancellation notice was prepared shall be the premium used for the calculation and determination of such effective date.

(c) Cancellation for nonpayment of premium does not include cancellation at the request of a premium finance company or of a producer of record under N.J.A.C. 11:1-3.1.

(d) No cancellation notice shall be mailed prior to 30 days in advance of its effective date.

(e) The rule shall not apply to deposits accompanying New Jersey Personal Automobile Insurance Plan or Commercial Automobile Insurance Plan applications which are insufficient under Plan rules or those of any succeeding residual market availability plan.

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

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

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Additional insured is not "insured" within meaning of statute; regulation does not require that notice of cancellation be given to additional insureds. *Pawlick v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 284 N.J.Super. 629, 666 A.2d 186 (A.D.1995).

Cancellation notice of automobile policy for nonpayment was ineffective to cancel policy. *Christian v. Ormsby*, 267 N.J.Super. 237, 631 A.2d 158 (L.1992).

Genuine issue of material fact existed as to whether seller of policy was insurer's agent, precluding summary judgement on issue of coverage. *Lilly v. Allstate Ins. Co.*, 218 N.J.Super. 313, 527 A.2d 903 (App.Div.1987).

Pedestrian held entitled to benefits under No-Fault Law when struck first by a commercial vehicle and then by a private automobile. *Berg v. The Ohio Casualty Insurance Companies*, 166 N.J.Super. 239, 399 A.2d 675 (Law Div.1979).

## SUBCHAPTER 8. 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 Insurance.

"Department" means the New Jersey Department of Insurance.

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

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

"Standard/non-standard rating plan" means a rating system used by an insurer that provides different base 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. 11:3-19.

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.

#### 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 in a policy 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 bill. With respect to payment of the renewal premium, notice shall be given not more than 45 days or less than 30 days prior to the due date of the premium and shall clearly state the effect on nonpayment of the premium by the due date.

(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:

1. Schedule of premium payments, if any; and
2. Duration of policy term;

i. Whenever an insurer, pursuant to changes approved by the Commissioner, alters the duration of the insured's policy term, the insurer shall permit the insured to revert to the prior duration of policy term upon request.

ii. The renewal offer shall include or be accompanied by a statement advising the insured of his or her right to revert to the prior duration of policy term.

(d) 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.

(e) 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.

(f) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.

1. No notice of nonrenewal shall be valid unless it includes the designated provision(s) of this subchapter under which action is being taken and the correct facts which bring the insured under the provision(s), including dates and any other facts necessary for identification of the incidents.

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 applicable to the non-standard rate level of an approved standard/non-standard rating plan, 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)1, the notice shall specify that the

action is being taken in accordance with N.J.A.C. 11:3-8.5(a)1 (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)2, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)2 (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

2. Each notice 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. Each notice 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 Insurance, Division of Enforcement and Consumer Protection, CN 329, Trenton, New Jersey 08625-0329. Your written complaint should indicate the facts on which you are basing your complaint."

(g) 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.

(h) 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.

(i) No notice of nonrenewal for any coverage subject to this subchapter shall be valid unless it is based upon one or more of the standards set forth in N.J.A.C. 11:3-8.3 or is otherwise authorized by the Commissioner of Insurance pursuant to N.J.A.C. 11:3-8.4.

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."

#### 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).

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).

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).

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).

#### 11:3-8.4 Standards of nonrenewal applicable to all automobile policies

(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.

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 underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.

(b) An insurer which has filed a standard/non-standard rating plan pursuant to N.J.A.C. 11:3-19 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.

#### 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).

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.

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 Additional nonrenewals

(a) Any insurer may:

1. For each calendar year period, issue notices of intention not to renew an automobile insurance policy in the voluntary market in an amount not to exceed two percent of the total number of voluntary market automobile insurance policies of the insurer, rounded to the nearest whole number, which are in force at the end of the previous calendar year in each of the insurer's territories; and

2. For every two newly insured automobiles which an insurer voluntarily writes in each territory during each calendar year period, issue a notice of intention not to renew one additional automobile in that territory. For the purpose of this subsection, "voluntarily writes" shall

not include any exposure voluntarily written by or assigned to an insurer to meet any quota established pursuant to N.J.S.A. 17:30E-14 and N.J.S.A. 17:33B-11 and shall not include any new business cancelled by the insurer pursuant to N.J.S.A. 17:29C-7.

iv. A detailed statement explaining the reasons why the Department's determination is improper together with supporting documentation, if any; and

v. A statement as to whether the appellant is represented by legal counsel, or another person pursuant to N.J.A.C. 1:1-5.1, and the name, address and telephone number of said person.

(c) Upon the Department's timely receipt of the items set forth in (b) above, it shall simultaneously send a copy of the documents to the opposing party and shall transmit the matter to the Office of Administrative Law for hearing as a contested case.

**11:3-33.8 Penalties**

Any insurer or insurance producer who violates any provision of this subchapter shall be subject to the penalties provided by law, including, but not limited to, the suspension or revocation of a certificate of authority or licensure 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, pursuant to N.J.S.A. 17:33B-15 and 21.

**11:3-33.9 Compliance**

(a) Pursuant to N.J.S.A. 39:6A-3 and 17:33B-15, compliance with the provisions of this subchapter shall be effected in the following manner:

1. Appeals from denials concerning new policies on or after April 1, 1992 may be filed in the manner prescribed by this subchapter; and
2. Appeals from denials concerning policy renewals which take effect on or after April 1, 1992, may be filed in the manner prescribed by this subchapter.

**APPENDIX A**

Dear Applicant,

The "Fair Automobile Insurance Reform Act of 1990" (Act) provides that on or after April 1, 1992, every insurer, either by one or more separate rating plans, shall provide automobile insurance for eligible persons.

Therefore, an insurer may deny coverage only to those applicants who are not eligible. New Jersey law provides that any person who owns or has registered an automobile in New Jersey or a person who has a valid New Jersey drivers license is eligible except a person:

1. Who, in the last three years, has been convicted of driving under the influence or refusing a chemical test in New Jersey or elsewhere;
2. Who, in the last three years, has been convicted of a crime involving an automobile;
3. Whose driving license is suspended or revoked by a court;

4. Who, in the last five years, has been convicted of fraud or intent to defraud involving an insurance claim or application;

5. Who, in the last five years, has been denied payment of an insurance claim in excess of \$1,000, if there was evidence of fraud or intent to defraud;

6. Whose automobile insurance policy, in the last two years, was cancelled because of nonpayment of premium or financed premium (unless the entire annual premium for the new coverage is paid in full before issuance or renewal);

7. Who fails to maintain membership in a club, group or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance;

8. Whose driving record, for the last three years, has an accumulation of nine or more eligibility points. (Eligibility points are accumulated as a result of convictions, suspensions, revocations and determination of responsibility for civil infractions in accordance with schedules adopted by the New Jersey Department of Insurance. For example, one at-fault accident has been assigned five eligibility points.)

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 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.

**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 INSURANCE  
AUTOMOBILE DECLINATION APPEAL**

Your Name: \_\_\_\_\_  
 Your Address: \_\_\_\_\_  
 Your Telephone Number: (\_\_\_\_) \_\_\_\_\_

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

Company \_\_\_\_\_

Producer \_\_\_\_\_

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

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

- I have not been convicted of Driving Under the Influence (N.J.S.A. 39:4-50) or of refusing to submit to a chemical test (N.J.S.A. 39:4-50.4(a)), or for a similar offense in another jurisdiction, or of a crime involving an automobile or theft of a motor vehicle.
- My driver's license is not suspended or revoked, nor has it been for any 12-month period in the preceding three years.
- I have not been convicted of insurance fraud or intent to defraud, or have not had an insurance claim (in excess of \$1,000) denied because of evidence of fraud within the five-year period immediately preceding application or renewal.
- My auto insurance has not been cancelled for nonpayment of premium within the last two years and I provide proof of payment OR I have had my policy cancelled for nonpayment AND I am able to pay the full annual premium for this policy.
- I am qualified as a member of a group or organization in which membership is required in order to obtain this insurance policy.
- I have fewer eligibility points accumulated than alleged in the declination letter as evidenced by the attached copy of my driving record.
- The accident record indicated in the declination letter is wrong as evidenced by the attached.
- No other person who is a member of the same household and who will drive the subject vehicle for 10 percent or more of the time is an ineligible person.
- Other (Specify and provide proof, if appropriate).

#### CERTIFICATION OF APPEAL

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

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

Your Signature \_\_\_\_\_ Date \_\_\_\_\_

MAIL THIS COMPLETED FORM AND NECESSARY DOCUMENTATION TO:

New Jersey Department of Insurance  
Division of Enforcement and Consumer Protection  
CN 329  
Trenton, New Jersey 08625  
Attn: Auto Insurance Denial

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

##### 11:3-34.1 Purpose

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

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

##### 11:3-34.2 Scope

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

##### 11:3-34.3 Definitions

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

"At-fault accident" is any accident involving a driver insured under the policy which resulted in a payment by the insurer of at least \$500.00, and for which the driver is at least proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33 $\frac{1}{3}$  percent responsible for an accident involving three drivers; etc. An at-fault accident shall not include the following:

1. Involvement in an accident in which the motor vehicle owned or operated by the insured or other driver insured under the policy was lawfully parked;
2. Involvement in an accident in which the motor vehicle was struck by a hit and run driver, if such accident was reported to the proper authorities within 24 hours;

3. Involvement in an accident in connection with which neither the named insured nor any other driver insured under the policy was convicted of a moving traffic violation and the owner or operator of another vehicle involved in such accident was so convicted;

4. For physical damage losses other than collision;

5. For an accident in which the motor vehicle was struck in the rear by another vehicle and a driver insured under the policy has not been convicted of a moving violation in connection with the accident; or

6. For an accident occurring as a result of operation of any motor vehicle in response to an emergency if the operator at the time of the accident was responding to the call to duty as a paid or volunteer member of any police or fire department, first aid squad or any law enforcement agency.

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

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

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

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

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

“State” means the State of New Jersey.

Public Notice: Receipt of petition for rulemaking and action on petition.  
See: 28 N.J.R. 1565(b).

#### Case Notes

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.

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

#### 11:3-34.4 Eligible person qualifications

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

1. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a or for an offense of a substantially similar nature committed in another jurisdiction;

2. Who has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle; or has been convicted of theft of a motor vehicle;

3. Whose driver’s license to operate an automobile is under suspension or revocation;

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

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

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

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

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

6. Whose automobile insurance policy has been cancelled for nonpayment of premiums or financed premium with a lapse of coverage of at least 30 days, within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, “paid in full” shall not

include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premium;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Definition of eligible person added at (b).

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

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

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

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

Added (a)9.

#### Case Notes

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

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

#### 11:3-34.5 Automobile insurance eligibility points

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

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

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

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

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

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

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

#### Case Notes

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

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

**APPENDIX**

Schedule of Automobile Insurance Eligibility Points

Schedule 1

| N.J.S.A. Section Number | 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                 | 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    | 5      |
| 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      |
| 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      |

| N.J.S.A. Section Number | Offense   | Points |
|-------------------------|---|--------|
| 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).

**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.

### 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 Insurance of the State of New Jersey.

"Department" means the New Jersey Department of 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.

### 11:3-35.3 General requirements and filing format

(a) All insurers which write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business to the standard or non-standard rate level of an approved standard/non-standard rating plan, in accordance with N.J.S.A. 17:29A-46 and this subchapter. No insurer shall use or implement any underwriting rule not filed and approved as set forth herein.

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

(c) Underwriting rules shall meet the following standards:

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

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

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

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

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

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

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

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

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

**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-7.1b and c and N.J.A.C. 11:3-8.5(a).

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

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

Added (e) and (f).

Administrative correction.

See: 28 N.J.R. 3798(a).

**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 standard/non-standard rating plan in accordance with N.J.A.C. 11:3-19.3(c) 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 its standard rate level.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure at its standard rate level any person who has accrued one or more automobile insurance eligibility points.

(d) Underwriting rules for standard/non-standard rating plans shall provide that an automobile insured at the non-standard rate level 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).

### 11:3-35.6 Penalties

(a) An insurer which fails to file its underwriting rules for approval pursuant to N.J.S.A. 17:29A-46 and this subchapter by March 1, 1991 shall be subject to penalties as provided by N.J.S.A. 17:33-2.

(b) 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 for each violation, pursuant to N.J.S.A. 17:29A-46a.

## 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 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.

“Renewal” means the issuance and delivery by an insurer, at the end of the policy period, of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term.

“Replacement automobile” is a vehicle acquired to replace one shown in the declarations.

“Temporary substitute automobile” means any private passenger automobile not owned by the insured, while temporarily used with the permission of the owner as a substitute for an owned automobile, when the latter is withdrawn from normal use because of breakdown, repair, servicing, loss or destruction.

Amended by R.1992 d.142, effective March 16, 1992.  
See: 23 N.J.R. 1262(a), 24 N.J.R. 953(b).

Definition for authorized representative amended; nonowned and temporary substitute automobile definitions added.

### 11:3-36.3 Mandatory inspection requirements

(a) No insurer shall provide automobile physical damage insurance coverage prior to conducting an insurance inspection in accordance with this subchapter, under the following circumstances:

1. When a new policy or endorsement adding physical damage coverage insuring a private passenger automobile is effected; and
2. When coverage is effected for an additional or replacement private passenger automobile.

(b) An insurer may require, prior to continuing physical damage coverage on an automobile, that the insured present the automobile for inspection, under the following circumstances:

1. When the automobile insured for physical damage coverage has been in an accident or otherwise damaged; or

2. As a condition of renewal.

### 11:3-36.4 Waivers of mandatory inspection

(a) An insurer shall waive a mandatory inspection when a new automobile is purchased from a franchised automobile dealership and the insurer is provided with the following documents in accordance with N.J.A.C. 11:3-36.7(e):

1. A copy of the bill of sale which contains a full description of the automobile, including all options and accessories;
2. A copy of the window sticker or advanced dealer shipping notice (invoice) showing the itemized options and equipment, the total retail price of the automobile, and any dealer installed option purchased by the customer; or
3. Vehicle buyer's order (contract) and/or the dealership invoice to the buyer, including all options and accessories.

(b) An insurer may waive a mandatory inspection under any of the following circumstances:

1. When the automobile is more than seven model years old. For example: in 1991 an insurer shall inspect 1984 and newer model year vehicles and in 1992 an insurer shall inspect 1985 and newer model year vehicles;
2. When a policy is being renewed or issued by a different individual insurance company within a group of affiliated companies;
3. When the insured automobile is insured under a commercially rated policy which insures five or more automobiles;
4. When an insurance producer or insurer is transferring a book of business from one insurer to another insurer(s);