

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Subchapter 38, Towing and Storage Fee Schedule, was repealed by R.1999 d.1, effective January 4, 1999.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Insurance, Subchapter 19, Standard/Nonstandard Rating Plans, and Subchapter 42, Producer Assignment Program, were repealed by R.2001 d.44, effective January 4, 2001.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).

Subchapter 8, Renewal and Nonrenewal of Automobile Insurance Policies, was renamed Acceptance, Renewal, Nonrenewal and Cancellation of Automobile Insurance Policies; Subchapter 19A, Tier Rating Plans and Underwriting Rules, was renamed Tier Rating Plans and Tier Placement Criteria; and Subchapter 35, Private Passenger Automobile Insurance Underwriting Rules, Subchapter 35A, Private Passenger Automobile Insurance—Use of Alternate Underwriting Rules, Subchapter 40, Insurers Required to Provide Automobile Insurance Coverage to Eligible Persons, Subchapter 44, Special Rules for Effecting Coverage for Private Passenger Automobile Insurance and Subchapter 47, Insurance Scenarios, were repealed by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009). See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN**

- 11:3-1.1 Purpose and scope
- 11:3-1.2 Definitions
- 11:3-1.3 Creation of the plan
- 11:3-1.4 Governing committee
- 11:3-1.5 Participation
- 11:3-1.6 Plan of operation
- 11:3-1.7 Coverage
- 11:3-1.8 Qualification
- 11:3-1.9 Rates and policy forms
- 11:3-1.10 Right to petition for appeal to the Commissioner

**SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN**

- 11:3-2.1 Purpose and scope
- 11:3-2.2 Definitions
- 11:3-2.3 Creation of the plan
- 11:3-2.4 Exemptions
- 11:3-2.5 Governing committee
- 11:3-2.6 Plan of operation
- 11:3-2.7 Coverage
- 11:3-2.8 Eligibility
- 11:3-2.9 Rates and policy forms
- 11:3-2.10 Installment payment option
- 11:3-2.11 Determination and fulfillment of quotas
- 11:3-2.12 Right to petition for appeal to the Commissioner
- 11:3-2.13 Penalties
- 11:3-2.14 (Reserved)

**SUBCHAPTER 2A. SPECIAL AUTOMOBILE INSURANCE POLICY**

- 11:3-2A.1 Purpose and scope
- 11:3-2A.2 Definitions
- 11:3-2A.3 General provisions
- 11:3-2A.4 Eligibility for special automobile insurance policy
- 11:3-2A.5 Coverages
- 11:3-2A.6 Election of special automobile insurance policy

**SUBCHAPTER 2B. (RESERVED)**

**SUBCHAPTER 3. BASIC AUTOMOBILE INSURANCE POLICY**

- 11:3-3.1 Purpose and scope
- 11:3-3.2 Definitions
- 11:3-3.3 General provisions
- 11:3-3.4 Coverages; mandatory and optional
- 11:3-3.5 Election of basic automobile insurance policy coverage and reporting
- 11:3-3.6 Filing requirements

**SUBCHAPTER 3A. REPORTING REQUIREMENTS AND FILING DEADLINES**

- 11:3-3A.1 Purpose and scope
- 11:3-3A.2 Definitions
- 11:3-3A.3 Report requirements
- 11:3-3A.4 Penalties

**SUBCHAPTER 4. PERSONAL INJURY PROTECTION BENEFITS; MEDICAL PROTOCOLS; DIAGNOSTIC TESTS**

- 11:3-4.1 Scope and purpose
- 11:3-4.2 Definitions
- 11:3-4.3 Personal injury protection benefits applicable to basic and standard policies
- 11:3-4.4 Deductibles and co-pays
- 11:3-4.5 Diagnostic tests
- 11:3-4.6 Medical protocols

- 11:3-4.7 Decision point review plans
- 11:3-4.8 Voluntary networks
- 11:3-4.9 Assignment of benefits; public information
- 11:3-4.10 (Reserved)

#### APPENDIX. TREATMENT OF ACCIDENTAL INJURY TO THE SPINE AND BACK CARE PATHS

##### EXHIBIT 1. GLOSSARY OF TERMS

##### EXHIBIT 2. TREATMENT OF ACCIDENTAL INJURY TO THE SPINE AND BACK CARE PATH OVERVIEW

##### EXHIBIT 3. CARE PATH 1

##### EXHIBIT 4. CARE PATH 2

##### EXHIBIT 5. CARE PATH 3

##### EXHIBIT 6. CARE PATH 4

##### EXHIBIT 7. CARE PATH 5

##### EXHIBIT 8. CARE PATH 6

##### EXHIBIT 9. TREATMENT OF ACCIDENTAL INJURY TO THE SPINE AND BACK CARE PATH DIAGNOSIS CODING

##### EXHIBIT 10. ADDENDUM TO CARE PATHS

##### EXHIBIT 11. DECISION POINT REVIEW/PRE-CERTIFICATION IMPLEMENTATION REPORT

#### SUBCHAPTER 5. PERSONAL INJURY PROTECTION DISPUTE RESOLUTION

- 11:3-5.1 Purpose and scope
- 11:3-5.2 Definitions
- 11:3-5.3 Designation of the administrator
- 11:3-5.4 Dispute resolution organizations
- 11:3-5.5 Dispute resolution professionals
- 11:3-5.6 Conduct of PIP dispute resolution proceedings
- 11:3-5.7 Recordkeeping
- 11:3-5.8 Medical review organizations
- 11:3-5.9 Standards for medical review organizations
- 11:3-5.10 Medical review organization certification process
- 11:3-5.11 Fees
- 11:3-5.12 Prohibition of conflicts of interest

#### SUBCHAPTER 6. INSURANCE IDENTIFICATION CARDS

- 11:3-6.1 Scope
- 11:3-6.2 Permanent identification cards
- 11:3-6.3 Temporary identification card
- 11:3-6.4 General provisions
- 11:3-6.5 (Reserved)

#### SUBCHAPTER 7. AUTOMOBILE REPARATION REFORM ACT

- 11:3-7.1 Purpose
- 11:3-7.2 General requirements applicable to additional personal injury protection benefits
- 11:3-7.3 Personal injury protection policy forms or endorsements
- 11:3-7.4 Minimum schedule of additional personal injury protection coverage benefits
- 11:3-7.5 Notice Requirement
- 11:3-7.6 Cancellation of automobile coverage for nonpayment of premium

#### SUBCHAPTER 8. ACCEPTANCE, RENEWAL, NONRENEWAL AND CANCELLATION OF AUTOMOBILE INSURANCE POLICIES

- 11:3-8.1 Scope
- 11:3-8.2 Definitions
- 11:3-8.3 Standards for renewal

- 11:3-8.4 Standards for nonrenewals
- 11:3-8.5 Issuance of nonrenewal notices
- 11:3-8.6 Limitations on nonrenewal
- 11:3-8.7 Suspension of nonrenewals
- 11:3-8.8 Records
- 11:3-8.9 Standards for cancellation
- 11:3-8.10 Issuance of cancellation notices
- 11:3-8.11 Acceptance criteria
- 11:3-8.12 Separability
- 11:3-8.13 Penalties

#### APPENDIX. CERTIFICATION OF COMPLIANCE WITH N.J.A.C. 11:3-8.11

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

- 11:3-9.1 Rating information; private passenger cars; automobile insurance
- 11:3-9.2 (Reserved)

#### SUBCHAPTER 10. AUTO PHYSICAL DAMAGE CLAIMS

- 11:3-10.1 Scope
- 11:3-10.2 Definitions
- 11:3-10.3 Adjustment of partial losses
- 11:3-10.4 Adjustment of total losses
- 11:3-10.5 Unreasonable delay
- 11:3-10.6 Loss of use
- 11:3-10.7 Subrogation agreements
- 11:3-10.8 Repair estimates
- 11:3-10.9 Referral of insured to the at-fault party
- 11:3-10.10 Examinations by the New Jersey Department of Banking and Insurance

#### SUBCHAPTER 11. MOPED INSURANCE

- 11:3-11.1 Required coverages for mopeds

#### SUBCHAPTER 12. AUTOMOBILE RATE FILERS: FLATTENING OF PREMIUM TAXES AND ASSESSMENTS MADE FOR UNSATISFIED CLAIM AND JUDGMENT FUND

- 11:3-12.1 Purpose
- 11:3-12.2 Scope
- 11:3-12.3 Definitions
- 11:3-12.4 Tax; general provisions
- 11:3-12.5 Filing and reporting requirements

#### SUBCHAPTER 13. COLLISION AND COMPREHENSIVE COVERAGE DEDUCTIBLES AND OPTIONS

- 11:3-13.1 Purpose
- 11:3-13.2 Scope
- 11:3-13.3 Deductibles for private passenger automobile collision and comprehensive coverage
- 11:3-13.4 Filing and reporting requirements
- 11:3-13.5 Named excluded driver

#### APPENDIX

#### SUBCHAPTER 14. PERSONAL INJURY PROTECTION OPTIONS FOR STANDARD POLICIES

- 11:3-14.1 Purpose
- 11:3-14.2 Scope
- 11:3-14.3 Optional medical expense benefits for standard policies
- 11:3-14.4 Optional exclusion of income continuation benefits, essential services benefits, death benefits and funeral expense benefits
- 11:3-14.5 Option to choose health care insurance coverage as primary coverage
- 11:3-14.6 Refund or credit of unearned premium
- 11:3-14.7 Filing requirements

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 cover-

age. *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. ACCEPTANCE, RENEWAL,  
NONRENEWAL AND CANCELLATION 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.

"Acceptance criteria" means the written standards by which an insurer accepts or rejects new business, and/or renews or nonrenews existing business. An insurer may have different acceptance criteria for new and renewal business.

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

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

"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.

"Insurance score" means a number or rating, including that which is derived from an algorithm, computer application, model or other process, that is based in whole or part on credit information.

"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 tier placement criteria, which have 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".

Amended by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Deleted definitions "Automobile insurance eligibility points" and "Eligible person"; added definitions "Acceptance criteria" and "Insurance score"; and in definition "Tier rating plan", substituted "tier placement criteria, which have" for "underwriting rules, which has".

**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 Standards for renewal

(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 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. 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.

i. As an alternative to retaining the payment envelope as proof of the date of mailing, an insurer may presume that receipt of the mailed renewal premium payment within three business days after the due date conclusively establishes that the payment was mailed prior to the due date.

ii. An insurer may file changes to its rating system 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 (b)1i above.

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 to 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 (b)1ii above; 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 (c) 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) 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.

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

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 1ii, and deleted a former 4; and rewrote (i).

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

Sec: 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.

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

Rewrote the section.

Amended by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

Sec: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Section was "General provisions". In (a), deleted "or conditioned renewal as specified in (h) below" following "nonrenewal"; in the introductory paragraph of (b)1, inserted the last two sentences; added (b)1i and (b)1ii; in (b)2i, substituted "to" for "of" following "notice"; in (b)2ii, substituted "(b)1ii above" for "N.J.A.C. 11:3-19A.7(g)"; in (d), substituted "(c)" for "(b)"; deleted former (c) and (h); recodified former (f) and (g) as (e) and (f); in (f), deleted "the provisions of" following "pursuant to" and substituted "all applicable provisions of this subchapter" for "such provisions".

### 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).

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 for nonrenewals

(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 the named 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; or

4. The insured no longer satisfies the insurer's acceptance criteria.

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

Sec: 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.

Sec: 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).

Sec: 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.

Sec: 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.

Sec: 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.

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

Rewrote (a)1.

Repeal and New Rule, R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

Sec: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Section was "Standards of nonrenewal-ineligible persons".

### 11:3-8.5 Issuance of nonrenewal notices

(a) A notice of nonrenewal shall not 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, 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. No such order shall be applicable to nonrenewal notices issued within 30 days after the date of the order. A

notice of nonrenewal shall not be valid unless it specifies the reason(s) underlying the action being taken. Nonrenewal notices based on the insured's failure to meet the insurer's acceptance criteria shall identify the specific acceptance criteria that the insured being non-renewed has failed to fulfill. Non-renewal notices shall identify the specific facts relied upon by the insurer in determining to non-renew the insured, including dates and other facts necessary to identify the incident(s), which form the basis for the insurer's determination to nonrenew the policy.

1. In the event action is being taken under N.J.A.C. 11:3-8.4(a)2, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.4(a)2 (two percent territorial nonrenewal) and shall be consecutively numbered in each territory.

2. In the event action is being taken under N.J.A.C. 11:3-8.4(a)3, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.4(a)3 (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

(b) Notices of nonrenewal shall include or be accompanied by the statement prescribed in (b)1 below, which shall be clearly and prominently set out in boldface type or other manner, which draws the reader's attention.

1. "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 may file a written complaint with the New Jersey Department of Banking and Insurance, Office of Consumer Protection Services, PO Box 329, Trenton, NJ 08625-0329, or electronically at [www.njdoabi.org](http://www.njdoabi.org). Your written complaint should indicate the facts on which you are basing your complaint."

(c) A notice of nonrenewal shall not be effective unless (c)3 below and either (c)1 or 2 below are satisfied:

1. The notice is sent by certified mail; or

2. The notice is sent by regular mail and at the time of the mailing of the notice the insurer has obtained from the U.S. Postal Service a date-stamped proof of mailing showing the name and address of the insured; and

3. The insurer retains a duplicate copy of the mailed notice of non-renewal that is certified to be a true copy.

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".

Repeal and New Rule, R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Section was "Other nonrenewals-standards".

### 11:3-8.6 Limitations on nonrenewal

(a) No insurer shall nonrenew a policy based on N.J.A.C. 11:3-8.4(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. 11:3-8.4(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. 11:3-8.4(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. 11:3-8.4(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).

Amended by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Updated the N.J.A.C. references throughout; and in (b)2, inserted a period at the end;

### 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 Standards for cancellation

(a) Pursuant to N.J.S.A. 17:29C-7, a notice of cancellation shall be effective only when based on one or more of the following reasons:

1. Nonpayment of premium;
2. The driver's license or motor vehicle registration of the named insured has been suspended or revoked during the policy period;
3. 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 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);
  - ii. Conviction of refusal to submit to a chemical test (N.J.S.A. 39:4-50.4a);
  - 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), except for convictions under N.J.S.A. 39:3-40i;
  - 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;
  - 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); or
  - ix. Where evidence exists that the suspended or revoked operator has been driving the vehicle during the period of suspension or revocation;
4. 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

5. An insurer determines, within 60 days of issuance of the policy, that the named insured does not meet the acceptance criteria of the insurer in effect on the date of application.

New Rule, R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Former N.J.A.C. 11:3-8.9, Separability, recodified to N.J.A.C. 11:3-8.12.

### 11:3-8.10 Issuance of cancellation notices

(a) No notice of cancellation issued pursuant to N.J.A.C. 11:3-8.9(a)1, non-payment of premium, shall be effective unless it is mailed or delivered by the insurer in accordance with N.J.S.A. 17:29C-8 to the named insured at least 15 days prior to the effective date of the cancellation.

(b) No notice of cancellation issued pursuant to N.J.A.C. 11:3-8.9(a)2 through 5 shall be effective unless it is mailed or delivered by the insurer in accordance with N.J.S.A. 17:29C-8 to the named insured at least 20 days prior to the effective date of the cancellation.

(c) All cancellation notices shall include the reason for the cancellation or shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of the cancellation, the insurer will specify the reason for the cancellation.

(d) No cancellation notice shall be effective unless (d)3 below and either (d)1 or 2 below are satisfied:

1. The notice is sent by certified mail; or
2. The notice is sent by regular mail and at the time of the mailing of the notice, the insurer has obtained from the U.S. Postal Service a date-stamped proof of mailing showing the name and address of the insured; and

3. The insurer retains a duplicate copy of the mailed cancellation notice that is certified to be a true copy.

New Rule, R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Former N.J.A.C. 11:3-8.10, Penalties, recodified to N.J.A.C. 11:3-8.13.

### 11:3-8.11 Acceptance criteria

(a) An insurer is prohibited from using any of the following in its acceptance criteria:

1. Any factor set forth in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(l), except in the case of disability set forth in (a)4 below;
2. The territory in which the applicant or insured resides;
3. The occupation, education or insurance score of the applicant or insured; provided that, as it relates to occupa-

tion, this paragraph shall not be construed to prohibit the operation of an insurer that has been approved by the Department to limit coverage to persons who are members or employees of members of certain groups, clubs or organizations, such as trade associations or the military (so-called membership companies) when membership is a condition for insurance and is uniformly and consistently applied on a Statewide basis; and

4. Any mental or physical impairment of the insured unless such disability impairs the ability to operate an automobile safely.

(b) Every insurer shall file a certification with the Department in the form set forth in the subchapter Appendix, incorporated herein by reference, signed by an individual authorized to sign such a certification on behalf of the insurer. The certification shall state that the insurer is not using any of the prohibited acceptance criteria set forth in (a) above.

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

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

New Rule, R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

### 11:3-8.12 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. Recodified from N.J.A.C. 11:3-8.9 by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

### 11:3-8.13 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).  
 Recodified from N.J.A.C. 11:3-8.10 by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).  
 See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

**APPENDIX**

**CERTIFICATION OF COMPLIANCE WITH  
 N.J.A.C. 11:3-8.11**

I hereby certify \_\_\_\_\_(Name of Insurance Company)\_\_\_\_\_ is in compliance with the above-captioned rule and is not using any of the prohibited “Acceptance Criteria” as set forth in N.J.A.C. 11:3-8.11(a).

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Telephone Number

\_\_\_\_\_  
 Date

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”.  
 Repeal and New Rule, R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).  
 See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).  
 Section was “Appendix”.

**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

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

### 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.

#### 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

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.

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 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.
- 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**

(a) 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.

(b) This subchapter shall become inoperative on and after January 1, 2009, unless and until the Commissioner by Order makes the requirements of N.J.S.A. 17:33B-15a and b operative pursuant to the limited circumstances set forth in N.J.S.A. 17:33B-15d(3), upon a determination made after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative

Procedure Rules, N.J.A.C. 1:1, that a competitive market does not exist among insurers authorized to write private passenger automobile insurance in this State, or the Commissioner certifies by Order that the Personal Automobile Insurance Plan is insuring 10 percent or more of the aggregate number of private passenger automobile non-fleet exposures being written in this State. A notice of the issuance by the Commissioner of such an Order shall be published in the New Jersey Register.

Amended by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).  
Inserted designation (a); and added (b).

**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 33 $\frac{1}{3}$  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.

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

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

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

“State” means the State of New Jersey.

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

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

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

Amended by R.2003 d.469, effective December 1, 2003.

See: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

Rewrote “At-fault accident”.

### Case Notes

Department of Banking and Insurance’s application of its regulations to assign insurance eligibility points to an insured for an accident in which the insured was not negligent or culpable exceeded the scope of its statutory authority. *Reilly v. AAA Mid-Atlantic Ins. Co.*, 194 N.J. 474, 946 A.2d 564, 2008 N.J. LEXIS 425 (2008).

Because the New Jersey Insurance Commissioner reasonably construed the term “at-fault accident” as used in N.J.A.C. 11:3-34.3 to include a one-car, weather-related accident in which the driver was not negligent, an insurer properly assessed its insured five eligibility points for such an accident under N.J.S.A. 17:33B-14. *Reilly v. AAA Mid-Atlantic Ins. Co.*, 390 N.J. Super. 496, 915 A.2d 1105, 2007 N.J. Super. LEXIS 47 (App.Div. 2007), reversed by 194 N.J. 474, 946 A.2d 564, 2008 N.J. LEXIS 425 (2008).

As the New Jersey Department of Banking and Insurance’s past construction of the term “at-fault accident” as used in N.J.A.C. 11:3-34.3 had been inconsistent, and N.J.A.C. 11:3-34.3 did not give the insurance industry or consumers fair notice as to the types of accidents that would result in assessment of points for insurability purposes, the Department was ordered to amend N.J.A.C. 11:3-34.3 to define “at-fault” and its application to one-car accidents. *Reilly v. AAA Mid-Atlantic Ins. Co.*, 390 N.J. Super. 496, 915 A.2d 1105, 2007 N.J. Super. LEXIS 47 (App.Div. 2007), reversed by 194 N.J. 474, 946 A.2d 564, 2008 N.J. LEXIS 425 (2008).

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).

For the purposes of applying the definition of “at-fault accident” as set forth in N.J.A.C. 11:3-34.3, “proportionate responsibility” is inapplicable to an accident that involves no collision with another vehicle. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BKI 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 2006).

While incidents involving impacts with animals or flying objects that result in payments by insurers under the comprehensive coverage

provisions of an auto insurance policy are not considered accidents, collisions that do not fall under a policy’s comprehensive coverage provisions will, if the criteria contained in the definition of “at-fault accident” set forth in N.J.A.C. 11:3-34.3 are met and none of the exclusions listed therein apply, be considered an at-fault accident. In the case of one-vehicle accidents, these determinations are made without regard to the moral culpability or “fault” of the single driver involved, but rather it is in the context of insurance rating considerations that the determination is made whether the accident is “chargeable” to the driver of the vehicle. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BKI 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 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 non-renewal: 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).

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

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

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

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

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

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

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

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

### 11:3-34.4 Eligible person qualifications

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

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

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

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

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

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

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

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

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

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

7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization,

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

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

9. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy, has knowingly provided materially false or misleading information in connection with an application for insurance, renewal of insurance or claim for benefits under an insurance policy; or

10. 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. With the exception of a conviction for violating N.J.S.A. 39:3-40i, other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension or revocation.

(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).

Sec: 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.

Sec: 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.)

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

Definition of eligible person added at (b).

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

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

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

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

Added (a)9.

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

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

Amended by R.2003 d.469, effective December 1, 2003.

See: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

In (a), substituted "seven" for "nine" following "accumulation of" in 8, added a new 9 and recodified former 9 as 10.

Amended by R.2007 d.373, effective December 3, 2007.

See: 38 N.J.R. 4624(a), 39 N.J.R. 5086(a).

In (a)10ii, substituted "With the exception of a conviction for violating N.J.S.A. 39:3-40i, other" for "Other", and inserted "or revocation" at the end.

#### Case Notes

Department of Banking and Insurance's application of its regulations to assign insurance eligibility points to an insured for an accident in which the insured was not negligent or culpable exceeded the scope of its statutory authority. *Reilly v. AAA Mid-Atlantic Ins. Co.*, 194 N.J. 474, 946 A.2d 564, 2008 N.J. LEXIS 425 (2008).

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).

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).

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

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

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

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

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

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

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

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

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

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

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

(b) Automobile eligibility points are cumulative and accrue for all violations and occurrences set forth on Schedules 1 and 2. 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 \$1,000 or such other amount as may be prescribed by Order of the Commissioner issued pursuant to N.J.S.A. 17:33B-14. The amount under such Order shall be reflected in this paragraph through a notice of administrative change published in the New Jersey Register. 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 \$1,000, 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 Motor Vehicle Commission, or a comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.

3. When an eligible person is involved in an at-fault accident and has not accrued any eligibility points during the three-year period immediately preceding the date of that accident, no eligibility points for a two- or three-point violation, as set forth in Schedule 2 of the Appendix, shall accrue along with the points assessed in accordance with Schedule 1 for the at-fault accident, when the violation arises out of the same incident which results in the assessment of points for the at-fault accident. However, violations that arise out of the same incident may be considered by insurers for purposes of tier placement pursuant to N.J.A.C. 11:3-19A.

4. 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. However, in accordance with Schedule 1, eligibility points assessed for failure to hold a drivers' license in the previous three years are not cumulative to points assessed for the suspension of a drivers license.

(c) Automobile insurance eligibility points set forth on Schedule 2 of the Appendix represent motor vehicle points established by the New Jersey Motor Vehicle Commission 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.

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

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

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

Added (e).

Amended by R.2002 d.330, effective October 7, 2002.  
See: 34 N.J.R. 368(a), 34 N.J.R. 3525(a).

Added (f).

Amended by R.2003 d.469, effective December 1, 2003.  
See: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

Rewrote (b); deleted (c) and recodified former (d) through (f) as (c) through (e).

Amended by R.2006 d.243, effective July 3, 2006.  
See: 37 N.J.R. 4162(a), 38 N.J.R. 2828(c).

In (b)2 and (c), substituted "Motor Vehicle Commission" for "Division of Motor Vehicles".

Amended by R.2007 d.373, effective December 3, 2007.  
See: 38 N.J.R. 4624(a), 39 N.J.R. 5086(a).

In (b)2, substituted "Motor Vehicle Commission, or a" for "Division of Motor Vehicles or"; in (b)3, substituted, "is involved in an at-fault accident and has not accrued any eligibility points during the three-year period immediately preceding the date of that accident" for "has not accrued eligibility points during the preceding three-year period, and is subsequently involved in an at-fault accident".

#### Case Notes

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. BK1 00075-06S, 2006 N.J. AGEN LEXIS 942, Final Decision (October 23, 2006).

While incidents involving impacts with animals or flying objects that result in payments by insurers under the comprehensive coverage provisions of an auto insurance policy are not considered accidents, collisions that do not fall under a policy's comprehensive coverage provisions will, if the criteria contained in the definition of "at-fault accident" set forth in N.J.A.C. 11:3-34.3 are met and none of the exclusions listed therein apply, be considered an at-fault accident. In the case of one-vehicle accidents, these determinations are made without regard to the moral culpability or "fault" of the single driver involved, but rather it is in the context of insurance rating considerations that the determination is made whether the accident is "chargeable" to the driver of the vehicle. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BK1 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 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 non-renewal; 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. BK1 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. BK1 07769-04, 2005 N.J. AGEN LEXIS 1157, Final Decision (December 8, 2005).

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

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

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

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

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

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