

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule

Proposed Amendments: N.J.A.C. 11:3-34.3, 34.4 and 34.5

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:33B-13 and 17:33B-14, and sections 63 and 64 of P.L.2003, c.89.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-295

Submit comments by September 19, 2003 to:

Douglas A. Wheeler, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is amending N.J.A.C. 11:3-34.3, 34.4(a) and 34.5(b) as a result of the June 9, 2003, enactment of P.L. 2003, c. 89 (the "Act"). The Act provides a well-balanced approach to addressing the immediate automobile insurance availability crisis facing New Jersey consumers, insurers and regulators. The Act includes many provisions intended to put downward pressure on rates by reducing fraud,

providing additional consumer education and protection, as well as by helping to ensure that good drivers don't pay for bad drivers.

The Department's proposed amendments make four changes to rules affecting the calculation of automobile insurance eligibility points, and their impact on rates. First, the proposed amendments revise the definition of an "at-fault accident" in N.J.A.C. 11:3-34.3. The Department's amendment conforms the rule to the amended statute by raising from \$500.00 to \$1,000 the monetary threshold for an automobile at-fault accident surcharge. Under the current rule, in order for an insurer to apply that surcharge under the automobile insurance eligibility points schedule, the at-fault accident must result in a payment by the insurer of at least \$500.00. The \$500.00 figure was set in 1990 as part of the Fair Automobile Insurance Reform Act. As a result of inflation, the \$500 figure began to cover less serious accidents. The Act raised that amount to \$1,000 and permits the amount to be adjusted by order of the Commissioner to reflect increases or decreases in the Consumer Price Index, All Urban Consumers (CPI-U) for the Northeast Region, if the Commissioner deems it appropriate. The Department is amending the definition of "at-fault accident" found in N.J.A.C. 11:3-34.3, as a result of the amendments in section 64 of the Act.

Second, the Department is amending N.J.A.C. 11:3-34.4(a)8, to provide that someone is not an eligible person if he or she has accumulated seven or more automobile insurance eligibility points in the previous three years. Currently, the rule provides that a person no longer meets the definition of an eligible person if he or she has accumulated nine or more such points. The Department's eligibility point schedule assesses points for motor vehicle violations and other occurrences that are set forth on a driver's license record abstract. The Department

estimates that approximately one percent of the drivers in this State have seven or eight points and would be affected by this change.

Third, in accordance with section 64 of the Act, the Department is also adding a new provision to N.J.A.C. 11:3-34.4(a). This provision, paragraph (a)9, amends the definition of eligible person to exclude any person who, during the three-year period prior to initially applying for coverage, or applying for the renewal of coverage, has knowingly provided materially false or misleading information in an application for insurance or in a claim for insurance benefits. The Department is also recodifying current paragraph (a)9 as 10.

Fourth, the Department also proposes to add a new paragraph, (b)3, to N.J.A.C. 11:3-34.5. Currently, automobile eligibility points accrue regardless of the fact that the actions on the basis of which they were assessed occurred during the same incident. For example, an insured who was "at-fault" in an accident as defined in N.J.A.C. 11:3-34.3, and who also received a ticket for a two or three point violation, such as careless driving or failure to yield, in the same incident, would accrue a total of seven or eight insurance eligibility points. Under the current rules, a person with seven or eight eligibility points still qualifies as an "eligible person." The Department believes that persons who have no other insurance eligibility points at the time of the incident should not lose their eligible person status as a result of their involvement in an at-fault accident and their simultaneous commission of a two or three point violation. The proposed amendment provides that when an insured with no eligibility points is involved in an at-fault accident and is convicted of a two- or three-point motor vehicle violation that occurred in connection with the same accident, the insured shall be assessed only the five eligibility points attributable to the accident. Thus, although through the proposed amendment, the number of eligibility points that determines who is considered an eligible person would be reduced, insureds

who are involved in an at-fault accident that, in accordance with Schedule 1 of the Appendix, results in the assessment of five eligibility points to them, and who also commit a two or three point Schedule 2 violation at the time of that accident, will not lose their status as an eligible person under the reduced point standard if they had no other eligibility points at the time of the assessment of the five points for the at-fault accident. The Department also proposes to delete N.J.A.C. 11:3-34.5(c) and incorporate its text into N.J.A.C. 11:3-34.5(b). Additionally, the Department is recodifying other provisions of N.J.A.C. 11:3-34.5(b). The Department also added text to recodified N.J.A.C.11:3-34.5(b)4 referring to the footnote exception to the accrual of points found in Schedule 1.

The Department's rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments will have a positive effect on insureds and will put downward pressure on rates for drivers in minor accidents because they raise the threshold amount of a payment by an insurer that is required, in order for an accident to be considered an at-fault accident, from \$500.00 to \$1,000. Honest drivers will benefit by the proposal to combat fraud by penalizing those who provide false or misleading information on an insurance application or a claim for insurance benefits. The enactment of these amendments will help ensure that good drivers do not pay for bad drivers by ensuring that good drivers pay rates reflective of the actual cost of insuring the vehicles they drive, and that bad drivers, that is, those with more eligibility points, pay rates reflective of the actual cost of insuring the vehicles they drive. Insurers would

no longer be required to offer voluntary market rates for drivers who have accumulated seven or more points – approximately one percent of New Jersey drivers – which should put downward pressure on the rates of drivers with six or few points. The proposed amendments better assure the continued availability of insurance to New Jersey drivers and preserve competition in the auto insurance market by making it easier for companies to write policies with rates that are adequate to cover the insurance risks posed by drivers with poor motor vehicle violation records.

The proposed amendments will have a positive effect on insurers in that they reduce the number of automobile insurance eligibility points needed in order for someone to be considered an ineligible person from nine to seven, and help reduce their claims exposure by reducing fraud.

Economic Impact

The proposed amendments will have a positive economic impact on insureds by putting downward pressure on rates. As a result of these amendments, insurers will have to amend their current underwriting rules filed with the Department. The proposed amendments are expected to decrease premiums for good drivers, while increasing premiums for those insureds whose driving records indicate that they are higher risks based on the number of automobile eligibility points accumulated within the preceding three years.

However, as a result of the proposed amendments to N.J.A.C. 11:3-34.5(b)3, insureds who are involved in an at-fault accident and also commit a two- or three-point Schedule 2 violation at the time of the accident, will not be deemed to be an ineligible person if they do not already have any other eligibility points. Therefore, drivers with clean records who are involved in one at-fault accident and commit such violations will not, as a result of that single incident,

lose their status as an eligible person and be categorized as an ineligible person for rating purposes. Those insureds who have no automobile insurance eligibility points will still be able to secure automobile insurance at rates lower than the rate that may be charged to persons with comparable vehicles and driving habits, but more eligibility points.

Finally, if these amendments are adopted, consumers involved in an at-fault accident that results in a total payment by their insurer of more than \$500.00, but less than \$1,000, will not be assessed the five automobile insurance eligibility points for an at-fault accident. Thus, the amendments will have a favorable economic impact on such persons, since their rates will not increase to the same extent that they would have increased if they had been assessed the five eligibility points for an at-fault accident.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

Although the Department does not anticipate that the amendments alone will result in the generation or loss of jobs, it believes that the package of statutory and regulatory amendments of which it is a part, taken as a whole, will contribute to the attractiveness and competitiveness of the New Jersey automobile insurance market and help preserve and expand employment in the automobile insurance industry and in insurance agencies and brokerage firms. The Department invites interested persons to submit any data or studies about the jobs impact of these proposed rules with their written comments.

Agriculture Industry Impact

The proposed amendments will have no agriculture industry impact.

Regulatory Flexibility Analysis

Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a “small business” means any business resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees. Some insurers affected by these amendments meet this definition.

In accordance with P.L. 2003, c.89, this proposal conforms the rules to the amended statute by raising from \$500.00 to \$1,000 the monetary threshold for an automobile at-fault accident surcharge. This provision amends the definition of eligible person to exclude any person who, during the three-year period prior to initially applying for coverage, or applying for the renewal of coverage, has knowingly provided materially false or misleading information in an application for insurance or in a claim for insurance benefits. The Departments proposed amendments to N.J.A.C. 11:3-34.5(b)1, provides that insureds who are involved in an at-fault accident and also commit a two- or three-point Schedule 2 violation at the time of the accident, will not be deemed to be an ineligible person if they do not already have any other eligibility points.

The Department has determined that the proposed amendments are reasonable and necessary for the purposes expressed herein. The Department observes that the proposed amendments do not impose any new recordkeeping or reporting obligations, but merely implement the recently enacted sections 63 and 64 of P.L. 2003, c.89, which impose a regulatory requirement that is consistently applied without regard to business size. Additionally, the

Department does not believe that these amendments will impose any undue burden on small businesses. In order to provide for uniform and consistent applicability of these rules in the automobile insurance market, no differential treatment is accorded small businesses. These amendments will not require small businesses to use any other kinds of professional services to comply.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:3-34.3 Definitions

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

“At-fault accident” is any accident involving a driver insured under the policy [which resulted in a payment by the insurer of at least \$500.00 and for which the driver is at least proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33 1/3 percent responsible for an accident involving three drivers; etc.]:

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 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 \$1,000, which 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. - 6. (No change.)

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. - 7. (No change.)

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

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

[9] **10.** (No change in text.)

(b) (No change.)

11:3-34.5 Automobile insurance eligibility points

(a) (No change.)

(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 [\$500.00] **\$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 [\$500.00] **\$1,000** and further provided that the insurer shall use the optional date consistently in all cases.

2. (No change.)

3. When an eligible person has not accrued eligibility points during the preceding three-year period, and is subsequently involved in an at-fault 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 the N.J.A.C. 11:3-19A.

[3.] **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 are cumulative and accrue for all offenses set forth on Schedules 1 and 2. Except as noted on Schedule 1.]

Recodify existing (d) – (f) as (c) – (e) (No change in text.)