

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Special Rules for Effecting Coverage for Private  
Passenger Automobile Insurance

Adopted Amendments: N.J.A.C.11:3-44.1, 44.2 and 44.3

Proposed: January 22, 2002 at 34 N.J.R. 371(a)

Adopted: September 13, 2002 by Holly C. Bakke, Commissioner  
Department of Banking and Insurance

Filed: September 13, 2002 as R. 2002d. 328, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:33B-15 et seq. and 17:29A-46.1 et seq.

Effective Date: October 7, 2002

Expiration Date: January 4, 2006

**Summary of Public Comments and Agency Responses:**

The Department received 11 written comments on the proposed amendments during the comment period from:

1. First Trenton Indemnity Company;
2. New Jersey Special Investigators Association;
3. New Jersey Auto Agents Alliance;
4. State Farm Indemnity Company;
5. Insurance Council of New Jersey;
6. Insurance Services Office;
7. New Jersey Manufacturers Insurance Group;

8. Allstate New Jersey Insurance Company;
9. American Insurance Association;
10. Alliance of American Insurers; and
11. Chubb Group of Insurance Companies.

COMMENT: One commenter suggested that the definition of “regular operator” should be deleted in its entirety and in its place applicants should disclose all resident individuals, whether licensed or not, and all other drivers who customarily operate a vehicle to be insured under the policy. Also, the definition of “completed written application” should be amended to require disclosure of information about all resident drivers, as well as all regular operators of vehicles insured under the policy.

RESPONSE: The Department disagrees with the commenter’s first suggestion. The definition of “regular operator” is needed in order to enable insurers to identify those persons on whom they must collect information in order to rate and underwrite a policy as specified in N.J.A.C. 11:3-44.3(a)6 as amended. Including in the definition a reference to “all resident individuals” would make the definition too broad. The commenter’s suggested a new definition of “completed written application” is also too broad in that it seeks to include every member of a household including those that might have their own policy.

COMMENT: One commenter suggested that applicants disclose all residents in the household and all operators of the vehicles to be insured; and, thereafter, allow the insurer to determine if the person is to be considered in the underwriting process.

RESPONSE: The Department believes that the revision of the term “completed written application” to include all pertinent information regarding regular operators of vehicles insured under the policy is adequate. Insurers should only consider regular operators of the vehicle in their underwriting process and not every licensed driver in the household.

COMMENT: One commenter suggested a revision to paragraph 4 in the definition of “completed written application” found in N.J.A.C. 11:3-44.2 to include a copy of the motor vehicle registration “or title, and in the specific case of a newly purchased car, a copy of the dealers buyers order (sic) or lease, or the front and back of the signed title if purchased from an individual” for all vehicles insured under the policy.

The commenter further indicated that if the information required by N.J.A.C. 11:3-44.3 is not provided at the specific time that the application is submitted, the insurer should be permitted to assign the highest rating tier or classification to one vehicle for failure to provide a completed written application.

RESPONSE: The Department disagrees with the commenter and believes that the information required to constitute a “completed written application” as defined in the amendment is adequate. The Department’s Automobile Physical Damage Insurance Inspection Procedures (N.J.A.C. 11:3-36) govern the process for the issuance of physical

damage insurance coverage by insurers. The information requested by the commenter relates to N.J.A.C. 11:3-36, physical damage coverage, and these rules include requirements governing how physical damage coverage is obtained on newly purchased automobiles and the documentation that needs to be provided as well as when an insurance inspection is needed.

COMMENT: One commenter suggested that the definition of “regular operator” should be amended to include any person or persons whose usage of the vehicle or vehicles insured under the policy is 10 percent or more, whether or not a member of the household, and all other residents of the household who are licensed regardless of their usage of the vehicle, in cases where the approved rating plan permits consideration of that person’s usage or driver record in rating the policy.

RESPONSE: The Department notes that the proposed revision is too broad, as it includes all licensed drivers of the household irrespective of their usage of the vehicle. The Department has amended the definition of “regular operator” to clarify its application.

COMMENT: One commenter suggested that N.J.A.C. 11:3-44.3(d) may not be necessary because N.J.S.A. 17:29C-7 already permits insurers to cancel policies that have been in effect for less than 60 days. If N.J.A.C. 11:3-44.3(d) is to remain, the commenter suggested that N.J.A.C. 11:3-44.3(d) be amended to allow the insurer to issue a notice of

cancellation for failure to provide a completed written application regardless of how long the policy has been in effect.

RESPONSE: The Department believes that the regulation is necessary to, among other things, ensure that a “completed written application” contains information for insurers to rate policies more fairly. In addition, the Department believes that 60 days is sufficient time for insurers to cancel a policy in the event an insured does not provide the required information.

COMMENT: One commenter suggested that the definition of “regular operator” be amended to mean any individual who is likely to operate the applicant’s vehicle within the policy period; that information on all such “operators” be obtainable; and that throughout the policy period, applicants be required to report any material changes to information in the application.

RESPONSE: The Department disagrees with the commenter that the term “regular operator” should include any individual who operates the vehicle within the policy period. The phrase “likely to operate” is too broad, and could, for example, be construed to include anyone who may use the vehicle with the insured’s permission.

COMMENT: One commenter suggested that insurers should be able to cancel the policy immediately if the applicant has committed fraud or made a material misrepresentation of fact in the application.

RESPONSE: The Department believes that the 60 day period during which an insurer can underwrite and request additional information is an adequate time frame in which to cancel the policy. Material misrepresentation and fraud are often found outside this 60 day period, when a claim has been filed. Such findings should be reported to the appropriate State agencies as specified in the insurer's fraud prevention plan. (See N.J.S.A. 17:33A-1.)

COMMENT: One commenter suggested that the definition of "completed written application" should include additional documentation such as copies of an applicant's current or prior out-of-state insurance policy "to help determine the real and most appropriate insured location of the vehicle for rating purposes."

RESPONSE: The Department notes that the documentation required by the amendment is adequate. A prior, out-of-state insurance policy would not necessarily establish the current location of the insured vehicle.

**Summary of Agency-Initiated Changes:**

The Summary included in the notice of proposal of these amendments referred to the Department's desire to address the problem of applications for auto insurance not listing all of the licensed drivers who regularly use vehicles that are covered under a policy. The Summary went on to refer to the additional concern of the inability of insurers to obtain the driver's license number of all regular operators of covered vehicles.

After mentioning the serious consequences, including a deterioration of the insurance pool and systemic fraud, that result from the coverage of undisclosed persons, the Summary described the Department's intent in amending subchapter 44 as "to permit insurers to obtain relevant information regarding all regular operators of insured vehicles."

As proposed, the text of the definition of "regular operator" did not clearly reflect that intent. The proposed definition referenced two grounds on the basis of which a person might be deemed a regular operator. They were: 1) where the person's usage of a covered vehicle was 10 percent or more; and 2) where the person's usage could be considered in rating the policy in accordance with the insurer's approved rating plan. However, the rules applicable to rating plan approvals do not include a 10 percent minimum usage criteria. See N.J.A.C. 11:3-19A. Thus, under approved rating plans, insurers may consider the usage of insured vehicles which is less than 10 percent. Because the intent of the proposal was to enable insurers to gather information on "all" regular operators of insured vehicles, the inclusion of the limiting reference to "persons whose usage... is 10 percent or more" caused the definition to be inconsistent with that intent.

Accordingly, the Department has determined to clarify the text of the definition upon adoption. The revised definition resolves the ambiguity in the definition as proposed and realizes the original intent of the Department to have the definition encompass "all" regular operators of insured vehicles. As set forth in the revised

definition, these would include all persons whose usage of the vehicle or vehicles may be considered in rating the policy as permitted by the insurer's approved rating plan, regardless of whether they are a member of the household of the primary insured.

This definition would not encompass any person who is a named driver under a separate auto insurance policy, as no approved rating plan permits insurers to consider such persons when rating a policy.

As is noted above, the revision to the definition deletes the reference to drivers whose usage of a vehicle or vehicles under the policy is 10 percent or more which was contained in the definition as proposed. This deletion is also necessary to eliminate the inconsistency with N.J.A.C. 11:3-19A that was created as a result of that limitation not also being imposed in these rules, which prescribe the factors on the basis of which the Department may approve rating plans. Again, the usage of an insured vehicle that may be considered as permitted by such approved rating plans when rating a policy was the component of the definition as proposed which had the greatest breadth, and continues to be referenced in the adopted text.

The Department also added the words "of the primary insured" to the definition after the reference therein to "the household", to make explicit what had been the implicit reference in the text to primary insured's household.

Because this revision upon adoption is in the nature of a clarification of the amendment's text as initially proposed, and because the revised text is consistent with the intent of the Department in proposing the amendment as described in the Summary, pursuant to N.J.A.C. 1:30-6.3 this is a substantive change not requiring additional public notice and comment.

### **Federal Standards Statement**

A Federal standards analysis is not required because these adopted amendments regulate the business of automobile insurance which is governed by Title 17 of the New Jersey Statutes, and is subject to any Federal requirements or standards.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \* **thus** \*; deletions from proposal indicated in brackets with asterisks \* [thus]\*):

#### SUBCHAPTER 44. SPECIAL RULES FOR EFFECTING COVERAGE FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-44.1 Purpose and scope

(a) - (b) (No change.)

(c) This subchapter also implements the provision\***g**\* of N.J.S.A. 17:29A-46.1 et seq., to afford insurers the opportunity to acquire and consider all relevant information necessary to rate policies properly and adequately.

## 11:3-44.2 Definitions

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

...

“Regular operator” means any person or persons \*,\* \*[whose usage of the vehicle or vehicles insured under the policy is 10 percent or more in cases]\* whether or not a member of the household \*of the primary insured,\* \*[approved rating plan permits consideration of said person’s usage]\* \*whose usage of the vehicle or vehicles may be considered\* in rating the policy \*as permitted by the insurer’s approved rating plan.\*

## 11:3-44.3 Duty to provide coverage upon receipt of a completed written application

(a) (No change from proposal.)

(b) An insurer, by itself or through its producers with binding authority, shall provide coverage to an eligible person applicant who submits a completed written application that includes the information in (a) above.

1. (No change.)

2. Any document required to be submitted in connection with an application or renewal shall be prominently requested in the application or renewal form. An insurer shall not issue a notice of incomplete application in accordance with (c) or (d) \*[above]\* \*below\* unless the applicant failed to provide the minimum information necessary to determine the eligibility of the applicant or any regular operator of the vehicles listed on the application.

3. (No change.)

(c) (No change from proposal.)

(d) If, during the first 60 days that a new policy is in effect, the insurer ascertains that the applicant failed to disclose the necessary information required on the application to determine whether the applicant or any regular operator \*[of the vehicles listed on the application]\* is an eligible person, the insurer shall issue a written notice to the applicant which clearly and specifically identifies the deficiencies and the information necessary, and allows the applicant 15 days to provide the requested information. The request for information shall either be sent by certified mail or the insurer shall retain date stamped proof of mailing from the U.S. Post Office listing the name and address of the applicant. If the information is not provided within the specified time, the insurer may issue a notice of cancellation within the first 60 days of the policy, for failure to provide a completed written application. The insurer who issues such cancellation shall not be required to accept an application from the applicant for one policy period.

(e) (No change from proposal.)