

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Tier Rating Plans and Underwriting Rules

Adopted Amendment: N.J.A.C. 11:3-19A.5

Proposed: July 21, 2003 at 35 N.J.R. 3097(a)

Adopted November 5, 2003 by Holly C. Bakke, Commissioner,
Department of Banking and Insurance

Filed November 5, 2003 as R. 2003 d.468, without change.

Authority: N.J.S.A. 17:29A-46.1 et seq. and section 40 of P.L. 2003, c.89

Effective Date: December 1, 2003

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

The Department received six written comments on the proposal. The comments were received from, B. Sachau, Alliance of American Insurers, Independent Insurance Agents of New Jersey, State Farm Indemnity Company, Allstate New Jersey Insurance Company, one comment jointly submitted by Insurance Council of New Jersey, American Insurance Association, and National Association Independent Insurers.

COMMENT: One commenter commended the Department for the proposal stating that it will make bad drivers pay more for insurance coverage.

RESPONSE: The Department appreciates the commenter's favorable view of this proposal.

COMMENT: One commenter commended the Department's objective to end the policy of good drivers subsidizing bad drivers. The commenter suggested that the Department provide insurers with sufficient time to implement the operational changes to their systems necessary to comply with the proposal, clarify that the proposal is not mandatory, and permit insurers to assign vehicles to a rating tier other than the standard tier if the insurer's business plan sets that underwriting guideline. Finally, the commenter requested that the Department confirm that the proposal does not apply to private passenger vehicles written under a commercial automobile insurance policy.

RESPONSE: The Department will provide insurers adequate notice consistent with prior practice to enable them to make the appropriate system changes. The provision in the proposed rule that reduces the number of motor vehicle violations points which alone may constitute a basis for the assignment of a vehicle to a higher than standard tier from six to four points is optional. However, as stated in the proposal, no vehicle driven by any named insured or a regular operator shall be assigned to a rating tier other than the standard tier solely on the basis of accumulating four motor vehicle violations points. On the issue of applicability, the proposed new rule does not apply to any vehicles insured under a commercial auto policy, but does apply to policies that insure an "automobile" as defined under N.J.S.A. 39:6A-2.

COMMENT: One commenter supports the proposal, stating that it would benefit good drivers who represent the vast majority of New Jersey residents.

RESPONSE: The Department appreciates the comment.

COMMENT: Several commenters noted that N.J.A.C. 11:3-19A.5(a)3 refers to motor vehicle violation points, and that the statutory term is “motor vehicle points,” not “motor vehicle violation points,” since “motor vehicle points” includes points for things other than violations, such as inexperience and at-fault accidents. One commenter further suggested that N.J.A.C. 11:3-19A.5(a)3 should be amended so that “the eligibility points of all regular operators of the automobile can be accumulated to determine if the four-point test is met.” The commenter suggested that, since the policy covers the risk of all drivers, the combined risk of all regular operators should be considered in the tier assignment.

RESPONSE: The first point is beyond the scope of the proposed amendments. The reference to “motor vehicle violation points” in the rule pertains to the point assessment system set forth in N.J.A.C. 13:19-10.1, a New Jersey Division of Motor Vehicles rule. The adopted amendment provides that a vehicle cannot be placed in a higher than standard tier solely for the accumulation by any named insured or regular operator of four or less motor vehicle violation points. The commenter who suggested the amendatory text quoted above apparently mistakenly used the phrase “eligibility points” when referring to meeting the “four-point test.” Tier rating plans may consider other factors, in addition to motor vehicle violation points, which can result in the assignment of insurance eligibility points as referenced in N.J.A.C. 11:3-34.5, such as inexperience and at-fault accidents, to determine whether to assign vehicles to a higher than standard rating tier. The Department disagrees with the suggestion that the motor vehicle violation points of all regular operators of the automobile should be permitted to be aggregated to determine if the four-point limit is surpassed. The Department has consistently construed this rule in that manner. The adopted amendment has merely decreased the minimum number of motor vehicle violation points accrued by a named insured or regular operator on the basis of

which a vehicle may be assigned to a higher than standard tier from seven to five. The limitation specified in the rule is based solely on the individual driving record of each named insured or regular operator of the vehicle.

COMMENT: One commenter stated that, with regard to N.J.A.C. 11:3-19A.5(a)3, the reference therein to “motor vehicle violation points” should be deleted and that it should read “motor vehicle points” for consistency purposes. Further, where insureds are required to certify that revisions to their underwriting rules based upon the decrease to the motor vehicle points standard will produce rates that are revenue neutral, the commenter recommends including a statement to the effect that the Department shall deem filings to be revenue neutral when the overall effect is within the range of plus or minus 0.5 percent.

RESPONSE: With regard to the commenter’s suggestion to change the reference in N.J.A.C. 11:3-19A.5(a)3 from “motor vehicle violation points” to “motor vehicle points,” see the Response above. The Department disagrees with the commenter’s recommendation to include a statement to the effect that the Department shall deem filings to be revenue neutral when the overall effect is within the range of plus or minus 0.5 percent. The Department will review filings on a case-by-case basis to determine neutrality. Insurers are required by the recently amended N.J.S.A. 17:29A-46.2d to certify that revised rating rules based upon the decrease in the number of motor vehicle points of any named insured or regular operator will produce rates that are revenue neutral. Revenue neutral certification will ensure that there is no expected increase or change in total revenue, though premiums for different vehicles may change due to other factors.

Federal Standards Statement

A Federal standards analysis is required when any State agency adopts, readopts, or amends States rules that exceed any Federal standards or requirements, and must include in the rulemaking document a comparison with Federal law.

The Department notes that the subject of these amendments deals with private life insurance coverage in New Jersey, which is exclusively subject to the laws of this State and is not subject to any Federal standards or requirements. Thus, no Federal standards analysis is required.

Full text of the adoption follows:

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