

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

**Acceptance, Renewal, Nonrenewal and Cancellation of Automobile Insurance Policies
Standards for Nonrenewal; Issuance of Nonrenewal Notices; Limitations on Nonrenewal**

Reproposed Amendments: N.J.A.C. 11:3-8.4, 8.5 and 8.6

Proposed Amendments: N.J.A.C. 11:3-8.2, 8.8 and 8.11; and 11:3-34.2 and 34.4

Proposed New Rule: N.J.A.C. 11:3-8.5

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.14a3, 17:28-1.1, 17:29A-14, 17:29C-4, 17:33B-13g, 17:33B-15, and 39:6A-1.2.

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

Proposal Number: PRN 2010-189.

Submit comments by November 6, 2010 to:

Robert J. Melillo, Chief

Legislative and Regulatory Affairs

New Jersey Department of Banking and Insurance

20 West State Street

P.O. Box 325

Trenton, NJ 08625-0325

Fax: (609) 292-0896

E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

N.J.S.A. 17:33B-15, originally adopted as part of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c. 8, (the FAIR Act) required that on or after April 1, 1992, all private passenger automobile (PPA) insurers provide coverage to all “eligible persons,” as defined in N.J.S.A. 17:33B-13. N.J.S.A. 17:33B-15 was amended by P.L. 2003, c. 89 to provide that the section shall become inoperative on January 1, 2009, unless and until the Commissioner of Banking and Insurance orders reinstatement of the requirement pursuant to standards set forth therein. On November 19, 2008, the Department adopted new rules, amendments, and repeals of existing rules to revise the regulatory framework to reflect the elimination of the requirement that insurers provide coverage to all eligible persons. These rules, amendments and repeals became effective on December 15, 2008. See 40 N.J.R. 6970(b). As part of these changes, new rules were adopted at N.J.A.C. 11:3-8.4 and 8.5, and N.J.A.C. 11:3-8.6 was amended. These new rules and amendments essentially maintained the existing standards for nonrenewals consistent with N.J.S.A. 17:29C-7.1 and added an additional standard whereby insurers could nonrenew insureds for failure to meet their acceptance criteria. However, the revision enabling insurers to nonrenew for failure to meet an insurer’s acceptance criteria was inadvertently not made subject to the limitations on nonrenewals of eligible persons found in N.J.S.A. 17:29C-7.1a. This statute provides that a PPA insurer is limited to the “two percent” and “two-for-one” nonrenewal provisions set forth in N.J.S.A. 17:29C-7.1b and c. In addition, the insurer may only nonrenew policies where the insured or operator under the policy to be nonrenewed “within the five years immediately preceding renewal has had at least two of the following or any combination thereof:

(a) an at fault accident; or (b) a moving violation which was assessed at four automobile insurance eligibility points; or (c) has been required, but failed, to maintain coverage mandated by N.J.S.A. 39:6A-4 without lapse.” N.J.S.A. 17:29C-7.1a(2). This statute also references N.J.S.A. 39:6A-3, which states that, “no insurer shall refuse to renew the required coverage stipulated by this act of an eligible person as defined in N.J.S.A. 17:33B-13 except in accordance with the provisions of N.J.S.A. 17:29C-7.1 or with the consent of the Commissioner of Banking and Insurance.”

Subsequently, on July 6, 2009, the Department proposed to amend N.J.A.C. 11:3-8.4(a)2 and 3 to make it clear that the only notices of nonrenewal that an insurer may issue in addition to those permitted by N.J.A.C. 11:3-8.4(a)1 are to insureds who do not meet the insurer’s acceptance criteria, and to provide that such nonrenewals are limited to drivers who have the violations or at-fault accidents, or who have failed to maintain mandatory insurance coverage without a lapse as required by N.J.S.A. 17:29A-7.1 and as set forth in N.J.A.C. 11:3-8.6(c)2. In the July 2009 proposal, N.J.A.C. 11:3-8.4(a)2 was proposed to be amended to clarify that notices of nonrenewal issued pursuant to that section are also subject to the two percent and “two for one” limitations found in N.J.S.A. 17:29A-7.1 and N.J.A.C. 11:3-8.6. In addition, N.J.A.C. 11:3-8.4(a)4 was proposed to be deleted, as nonrenewals for failure to meet an insurer’s acceptance criteria were proposed to be incorporated in N.J.A.C. 11:3-8.4(a)2 and 3. See 41 N.J.R. 2612(a).

After these amendments were proposed, the Department received timely written comments from the following:

1. The Independent Insurance Agents and Brokers of New Jersey;
2. New Jersey Manufacturers Insurance Group;

3. The Property Casualty Insurers Association of America;
4. The Insurance Council of New Jersey; and
5. State Farm Indemnity Company and State Farm Guaranty Insurance Company.

A summary of the comments received and agency responses follows:

COMMENT: One commenter supported the Department's proposal to clarify the nonrenewal standards and limitations for private passenger automobile insurance. The commenter believed that the standards previously in place, along with the clarification that limits nonrenewal for the failure to meet the insurer's acceptance criteria within the "two percent" and "two for one" rule continues to permit companies to adequately control their books of business. In addition, the commenter stated that the proposed standards and limitations will limit a major disruption in the competitive market place should too many risks be arbitrarily nonrenewed.

RESPONSE: The Department appreciates the support of its proposal. However, as noted below, the Department has determined that it is reasonable and appropriate to repropose the rules to eliminate application of the restrictions in N.J.S.A. 17:29C-7.1(a) to nonrenewals for failures to meet the insurer's acceptance criteria.

COMMENT: Several commenters opposed the proposed amendments because they believed that they will have an adverse affect on the market and that the existing standards for nonrenewal in the rules are consistent with current New Jersey law.

One commenter specifically stated that the standards in the proposed rule result in a "keep-all-comers" environment, severely restricting an insurer's ability to nonrenew personal automobile insurance policies that present adverse risks, including adverse risks that could have

been nonrenewed prior to the elimination of “take-all-comers” in January 2009. The commenter asserted that this is not what either the Legislature or the Department intended, nor is it required by law. The commenter also stated that the proposed rule would prevent the nonrenewal of those policies that no longer satisfy the insurer’s acceptance criteria, unless they also: (1) meet either the “two-for-one” or “two percent” requirements; and (2) have an at-fault accident, four or more motor vehicle violation points or a lapse in coverage. The commenter stated that, under this interpretation, insurers will be prohibited from nonrenewing policies where the following circumstances exist:

- (1) A single serious violation such as a DUI, failure to submit to alcohol test or operating while suspended or revoked;
- (2) Drivers in the household without a valid driver’s license;
- (3) Cars not registered or garaged in New Jersey;
- (4) Excessive claim activity not meeting the definition of “at-fault” accident or totaling four or more motor vehicle violation points;
- (5) Lack of cooperation issues (threatening and abusive behavior, failure to provide assistance in defensive claim, etc.);
- (6) Adding a driver to an existing policy who was previously cancelled or nonrenewed under another contract due to fraud or misrepresentation, conviction of a crime involving the use of a motor vehicle or theft of a vehicle;
- (7) Addition of a gray market vehicle without certification from the United States Department of Transportation, Environmental Protection Agency or Customs Service; and
- (8) Other circumstances that would have rendered a driver ineligible prior to the elimination of take-all-comers.

The commenter stated that if this rule were adopted as proposed, it would have a considerable impact on the industry. The commenter stated that the availability of PPA insurance is at an all-time high, and thus many carriers are reluctant to cancel or nonrenew adverse exposures. The commenter stated that this is evident in the low volume of business coming into the Personal Automobile Insurance Plan (PAIP). The commenter stated that if carriers feel constrained in their ability to shed problem risks, they may tighten entry requirements, thereby limiting availability.

The commenter also stated that the proposed rules are problematic for a company that does not utilize tier rating because it would not be able to charge an appropriate rate for drivers who no longer satisfy its acceptance criteria but cannot be nonrenewed under the requirements of N.J.S.A. 17:29C-7.1(a). The commenter stated that this result may be avoided if the rules permitted a company within a group to nonrenew solely in accordance with its acceptance criteria provided that uninterrupted coverage was offered through a wholly-owned subsidiary in which it would be able to charge an appropriate rate.

RESPONSE: The Department agrees with many of the concerns expressed by the commenters. The Department has reviewed the comments to the proposal and the applicable statutes and concluded that the Legislature did not repeal the use of “eligible person” criteria for purposes of nonrenewal. The Department agrees with the commenters that the original proposal would have led to the anomalous result where the policy of an insured with a DUI conviction could not be non-renewed. Therefore, the Department is reproposing amendments to the nonrenewal rule to comply with N.J.S.A. 39:6A-3 and permit insurers to nonrenew the policies of insureds who do not meet the definition of an eligible person in either N.J.S.A. 17:33B-13 or N.J.A.C. 11:3-34.4.

For purposes of nonrenewal, the Department's new proposal also defines an ineligible person to include an insured who does not meet the insurer's renewal acceptance criteria.

COMMENT: Several commenters disputed the Department's assertion that the standards in the proposed rules are required under existing law. Indeed, some commenters stated that the proposal itself is inconsistent with existing law. Several commenters noted that N.J.S.A. 39:6A-3 permits an insurer to nonrenew an insured who is "ineligible," as defined by N.J.S.A. 17:33B-13, if the criteria set forth in N.J.S.A. 17:29C-7.1 are satisfied, or with the consent of the Commissioner. N.J.S.A. 17:33B-13 defines "ineligible" to include an individual: (a) who has been convicted of (i) driving while intoxicated, (ii) a first, second or third degree offense resulting from the use of a motor vehicle, or (iii) theft of a motor vehicle; (b) who has a suspended or revoked automobile driver's license; (c) who has been convicted of fraud or intent to defraud with respect to an insurance claim or application within the past five years or been successfully denied a claim in excess of \$1,000 if there was evidence of fraud or intent to defraud; (d) whose auto policy has been cancelled because of non-payment of premium within the immediately preceding two-year period; (e) who failed to obtain or maintain membership in an organization where membership is a uniform requirement as a condition of insurance; (f) whose driving record for the prior three years has an accumulation of automobile eligibility points as determined under a schedule promulgated by the Commissioner of Banking and Insurance (Commissioner); (g) who possesses such other risk factors as determined to be relevant by rule or regulation of the Commissioner; or (h) who knowingly provided materially false or misleading information in connection with an application for insurance, renewal or a claim. The commenters believed that each of these circumstances constitute independent legal

grounds for nonrenewal. Accordingly, the commenters believed that, at a minimum, the Department must amend the rule proposal to permit the nonrenewal of “ineligible” insureds.

Several commenters also stated that the Commissioner has statutory authority to permit additional standards for nonrenewal under N.J.S.A. 39:6A-3. This statute provides in pertinent part that “[n]o licensed insurance carrier shall refuse to renew the required coverage stipulated by this Act of an eligible person as defined in [N.J.S.A. 17:33B-13], except in accordance with the provisions of [N.J.S.A. 17:29C-7.1] or with consent of the Commissioner” (emphasis added). One commenter stated that the Commissioner is thus required to permit nonrenewals based on ineligibility, and under the emphasized clause has the authority to expand the other bases for nonrenewal beyond those contained in N.J.S.A. 17:29C-7.1, including failure to satisfy an insurer’s acceptance criteria.

The commenters also noted that N.J.S.A. 17:33B-13g provides that an “eligible person” does not include any person “who possesses such other risk factors as determined to be relevant by rule or regulation of the Commissioner.” One commenter stated that under this statute the Commissioner appropriately deemed an insurer’s acceptance criteria to be relevant to the initial evaluation of automobile risks and the renewal process pursuant to N.J.A.C. 11:3-8.2, which defines “acceptance criteria” as “the written standards by which an insurer accepts or rejects new business, and/or renews or nonrenews existing business.” Pursuant to N.J.A.C. 11:3-8.11, the Commissioner has provided guidelines for insurance companies to establish acceptance criteria and requires all companies to file certifications indicating that no prohibited criteria were included. The commenter also stated that acceptance criteria were designed to allow insurers the flexibility to decline coverage to those who would have previously been deemed ineligible in the “take-all-comers” environment and to establish appropriate criteria by which to evaluate

potential policyholders. The commenter stated that the adoption of N.J.A.C. 11:3-8.4(a)4, allowing insurers to nonrenew policies solely on the basis of failure to meet their acceptance criteria, was clearly deemed relevant by the Commissioner. According to the commenter, there is no reason, legal or otherwise, for this provision to be eliminated.

Other commenters also stated that case law, specifically *Sheeran v. Nationwide*, 80 N.J. 548 (1979), upheld the authority granted to the Commissioner by N.J.S.A. 39:6A-3 and N.J.A.C. 11:3-8.1. This case and the rules in question predated the enactment of N.J.S.A. 17:29C-7.1, in 1988. N.J.S.A. 39:6A-3 was the only authorization for automobile insurance policy nonrenewals under the law at that time. The Supreme Court said in that Opinion:

N.J.S.A. 39:6A-3 provides that '[n]o licensed insurance carrier shall refuse to renew the required coverage stipulated by [the No-Fault Act] without the consent of the Commissioner of Insurance.' The language of this provision is clear and unequivocal. Companies licensed to write automobile insurance may not refuse to renew except upon grounds acceptable to the Commissioner.

The Commissioner has, by regulation, provided ten grounds which were deemed to have his consent, N.J.A.C. 11:3-8.1(e). Nonrenewal can be based, Inter alia, upon an insured's involvement in prior accidents, his violation of motor vehicle laws, his use of the car in professional racing, his physical or mental impairment, and his refusal to submit to a medical examination. [*Id.*, 80 N.J. at 555]

The commenters also noted that the Court in *Sheeran* rejected any challenge that the broad grant of authority to the Commissioner and his adoptions of rules were unconstitutional. The commenters stated that where the statute cannot delineate all circumstances to nonrenew, the Commissioner has the authority to, within reason, write rules granting consent. The commenters stated that in *Sheeran*, the rules evidently allowed the Commissioner's consent to nonrenew if certain circumstances were met. The current N.J.A.C. 11:3-8.4(a)4 and 8.11 set forth the circumstances under which the Commissioner's consent to nonrenew will be withheld (that is, the insurer's acceptance criteria violate the prohibitions in N.J.A.C. 11:3-8.11(a)). This list of prohibitions is substantial, placing the rule well within the Court's opinion in *Sheeran*. The commenters thus believed that the Commissioner has the statutory authority to adopt the current version of N.J.A.C. 11:3-8.4(a).

RESPONSE: As noted above in response to a previous comment, the Department has determined that it is appropriate to repropose amendments to permit insurers to non-renew the policies of insureds who do not meet the definition of an eligible person as proposed to be amended herein for renewals as permitted by N.J.S.A. 17:33B-13g. The Department does not agree that the phrase "or with consent of the Commissioner" in N.J.S.A. 39:6A-3 can be used as the basis for a rule that permits nonrenewals for the failure to meet an insurer's acceptance criteria. The Department believes this provision permits insurers to request to nonrenew a policy in unusual circumstances. Likewise, the Department is not persuaded by the holding in *Sheeran v. Nationwide* because it was decided before the take all eligible persons provisions formerly in N.J.S.A. 17:33B-1 et seq. and N.J.S.A. 17:29C-7.1 were enacted and became effective. The Department, however, believes that the reproposed amendments will address the commenters'

concerns within the current statutory framework.

COMMENT: Several commenters objected to the proposed rules as a regulatory step backwards for the industry that threatens the competitive market that the State has been realizing since the 2003 automobile insurance reforms. The commenters stated that the 2003 reforms were, in part, designed to ease government mandates and regulatory burdens and foster a new competitive marketplace for PPA insurance. One commenter stated that the reforms put New Jersey into a more mainstream regulatory environment. The commenters believed that, rather than providing insurers with the flexibility they need to manage their books of business, this proposal further restricts insurers with regard to their nonrenewal practices, which is reminiscent of initiatives that forced the market to the “brink of collapse.” One commenter also stated that the rule would discourage companies from writing new business and would be a significant disincentive for companies to grow throughout the State, which could compromise the ability of the market to maintain its competitive environment.

Another commenter stated that it strongly supported the adoption of the rules governing the acceptance criteria used to both accept and/or renew automobile insurance policies when the rules were originally proposed and adopted. This commenter also noted that the 2008 adoption was the final element of the 2003 reforms that brought competition back to the New Jersey automobile insurance market. The commenter stated that the proposed elimination of acceptance criteria as a permissible basis for the nonrenewal of automobile insurance policies will result in a decline in competition with consumers having a more difficult time purchasing automobile insurance. The commenter stated that if an insurer cannot select which risks to nonrenew, it will be much more cautious in writing new risks. This commenter stated this will mean less

consumer choice when the consumer shops around for automobile insurance which will result in the consumer paying more for automobile insurance or having to be covered by the PAIP. The commenter believed that neither result is desirable or helpful to the consumer.

RESPONSE: The Department wants to give insurers the flexibility to manage their books of business. However, rules promulgated by the Department must comply with current statutory law. N.J.A.C. 11:3-8 was amended in 2008 as one of several rulemaking changes implementing the phase-out of the take all eligible persons requirement. However, as adopted the 2008 changes to N.J.A.C. 11:3-8 were not consistent with N.J.S.A. 17:29C-7.1. As noted above, the Department has reviewed the statutes and rules and decided to repropose the amendments to provide insurers with the necessary flexibility in nonrenewals by retaining the concept of ineligible persons for the purposes of nonrenewals and expanding the definition of ineligible persons for nonrenewals to include those insureds who no longer meet the insurer's acceptance criteria.

COMMENT: One commenter, while opposing the proposed amendments for the reasons expressed by other commenters, understood that the proposal is an attempt to reconcile certain statutory provisions. However, the commenter believed that the ability of an insurer to nonrenew a policyholder for failing to meet acceptance criteria is a critical component of an insurer's ability to manage risks. The commenter asserted that permitting insurers to nonrenew insureds who fail to meet their acceptance criteria is a critical component of any insurance system in the country today and stated that nearly 20 states permit nonrenewals for this or similar underwriting reasons. Most states permit insurers to nonrenew for a number of reasons, including failure to

make premium payments, misrepresentation and fraud, policy violations, license suspension or revocation, conviction or mechanically defective automobiles. In fact, the commenter stated that this recent change would prevent nonrenewal of policies that could have been nonrenewed under the previous “eligible person” requirements. The commenter believed that permitting insurers to nonrenew policyholders because of their failure to meet acceptance criteria has been an important component of the automobile insurance reforms since 2003.

The commenter also stated that the Department did not identify in the proposed amendments any negative impact with this provision, nor did the Department indicate how the market will react to this change. The commenter requested that the Department reconsider the change in view of a lack of evidence that the current provision is having a negative impact on the marketplace. At a minimum, the commenter believed that the Department should provide a more thorough review of this change and its expected impact to the marketplace since it has been in use a number of years.

RESPONSE: As noted above, the Department is reproposing the amendments to address the commenter’s concerns. As the Department has determined not to adopt the proposal, the review suggested by the commenter is now moot.

COMMENT: One commenter stated that the proposed rule will require that a nonrenewal under N.J.S.A. 17:29C-7.1 must meet both the statutory requirement and no longer meet the insurer’s acceptance criteria. The commenter believed that this is contrary to the language of N.J.S.A. 17:29C-7.1, which says nothing about acceptance criteria. The commenter stated that the reference to acceptance criteria could be used, if the purpose is to limit the total number of

nonrenewals under N.J.S.A. 17:29C-7.1 and under N.J.S.A 39:6A-3 (insurance acceptance criteria) to no more than two percent and two-for-one in any given territory. The commenter believed that that would avoid a conflict with the applicable statutory language.

In order to address this issue, the commenter suggested that N.J.A.C. 11:3-8.4(a)2 and 3 be changed to read as follows:

2. [In accordance with] **The sum of the nonrenewals under** N.J.S.A. 17:29C-7.1b, **and nonrenewals** when the policyholder no longer satisfies the insurer's acceptance criteria, in an amount not to exceed two percent of the insurer's in-force voluntary market policies in each rating territory; or

3. [In accordance with] **The sum of nonrenewals under** N.J.S.A. 17:29C-7.1c, **and nonrenewals** when the policyholder no longer satisfies the insurer's acceptance criteria, **in an amount not to exceed** one automobile for each two automobiles written by the insurer during the same calendar year and in the same rating territory in excess of the two percent limitation in (a) above. (Boldface language is to be added to proposal, bracketed language is to be deleted from proposal.)

RESPONSE: The Department does not agree with the commenter's analysis of the statute.

N.J.S.A. 39:6A-3 states that all renewals of eligible persons must be subject to the provisions of N.J.S.A. 17:29C-7.1. However, as is discussed more fully above in response to another comment, the Department has determined that retention of the concept of ‘ineligible person’ for nonrenewals is the best way to resolve the issue.

COMMENT: One commenter stated that the proposed repeal of N.J.A.C 11:3-8.4(a)4 would also require insurers to renew persons who previously would have been considered “ineligible.” Some examples given by the commenter are: the named insured has been convicted of drunk driving in the renewal period resulting in license suspension; the named insured has been convicted of auto theft; and the named insured has been convicted of other first, second or third degree crimes using an automobile. In each of the above examples, the commenter stated that the insured may not have any other major violations or accidents to permit nonrenewal. The commenter believed that this is an absurd result. In addition, the commenter believed that the rule would mean that some risks cannot be priced properly under the existing rating tier structure. While some insurers have tiers for some previously “ineligible” persons, others will be unable to develop such tiers due to lack of data and experience for risks that would have to be renewed under the proposed amendments.

RESPONSE: The Department agrees with the commenter’s analysis of the effect of the initial proposal. In part because of the receipt of this and similar comments, the Department has decided to retain and expand the concept of “ineligible person” for nonrenewals, which will prevent the anomalies that the commenter identified.

COMMENT: One commenter stated that there is a possibility that an insured may become “acceptable” yet excluded from an insurer’s tier rating system, thus becoming “tier refugees.” As an example, the commenter stated one insurer’s existing tier plan has the following criteria that is common to each tier: “No member of the household has been convicted of any of the offenses set forth under N.J.A.C. 11:3-34.4(a).” Under the proposed amendments, the insurer could no longer nonrenew these risks, yet the insurer’s current tier structure excludes them from every tier. Establishing a tier for these individuals would be difficult as there is no concrete data available on them. Further, the insurer would be unable to provide the data as prescribed in N.J.A.C. 11:3-19A.3(b)2 and 3 (number of exposures for credibility, and experience of the insurer). If these tiers were established, the commenter stated that insurers potentially would be in violation of N.J.S.A. 17:29A-46.2, as they would be unable to transact automobile insurance consistent with their underwriting rules. In addition, insurers would also potentially be in violation of N.J.A.C. 11:3-19A.6, which requires that an insurer shall issue and renew its policies at the appropriate tier for which the risk qualifies in accordance with the insurer’s approved tier placement criteria. The commenter asserted that the illogical consequences such as these are inconsistent with the letter and spirit of the Legislature making inoperative N.J.S.A. 17:33B-15, which required insurers to insure all eligible persons.

RESPONSE: As noted above in response to another comment, the Department has decided not to adopt the proposal and to retain and expand the concept of “ineligible person” for nonrenewals. The situation described by the commenter would not occur under the repropoed amendments.

COMMENT: One commenter stated that with the December 2008 adoption, the prior N.J.A.C. 11:3-8.4(b) was repealed along with the rest of N.J.A.C. 11:3-8.4. This subsection stated: “An insurer which has filed a tier rating plan pursuant to N.J.A.C. 11:3-19A may issue notices of intention not to renew any insured who is not an eligible person and no longer qualifies for any rate level in accordance with its approved underwriting rules.” The commenter suggested that this provision be reinstated which would be consistent with N.J.S.A. 39:6A-3.

RESPONSE: The Department does agree in part with the commenter. However, the solution to the problem is more complicated than merely reinstating N.J.A.C. 11:3-8.4(b). As noted above in response to another comment, the Department has proposed amendments to N.J.A.C. 11:3-8 that permit insurers to non-renew insureds who do not meet the definition of an eligible person. In addition, the Department has proposed to amend the definition of an “ineligible person” for nonrenewals to include those who do not meet the insurer’s acceptance criteria. This will address the commenter’s concerns.

COMMENT: One commenter requested that the Department clarify that nonrenewals pursuant to N.J.A.C. 11:3-8.4(a)2 and (a)3 are not subject to the insured also meeting two or more events cited at N.J.A.C. 11:3-8.6(c)2.

RESPONSE: As the Department does not intend to adopt the proposal, it is unnecessary to address this comment.

As noted above, in attempting to reconcile the rules with the applicable statutory requirements on nonrenewals, the amendments as initially proposed could have resulted in insurers being prohibited from nonrenewing risks with a DUI conviction or other serious motor

vehicle violations. The Department did not intend such an anomalous result and does not believe that the Legislature intended such an absurd result when it enacted P.L. 2003, c. 89.

Accordingly, consistent with N.J.S.A. 39:6A-3 and 17:29C-7.1, the Department is: 1) reproposing the amendments to reflect the ability of insurers to nonrenew “ineligible persons,” defined as those insureds who are not eligible persons pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4; and 2) expanding the definition of an ineligible person for nonrenewals to include any insureds who do not satisfy the insurer’s acceptance criteria for renewal pursuant to N.J.S.A. 17:33B-13g. This approach retains all of the concepts currently provided by the applicable nonrenewal statute. A summary of the specific proposed amendments follows.

The Department proposes to amend N.J.A.C. 11:3-8.2 to provide a definition of “ineligible person” by referencing N.J.A.C. 11:3-34.4. Moreover, N.J.A.C. 11:3-34.4(a) is proposed to be amended to include a new ineligibility criteria at paragraph (a)11 for nonrenewals who no longer satisfy the insurer’s acceptance criteria. The Department also proposes to amend the definition of “acceptance criteria” in N.J.A.C. 11:3-8.2 to refer to N.J.A.C. 11:3-8.12 and to delete the provision that an insurer may have different acceptance criteria for new and renewal business because this issue is addressed by the proposed amendment to N.J.A.C. 11:3-8.12.

The Department proposes to amend N.J.A.C. 11:3-8.4 to have the section heading refer to “eligible persons” to reflect the application of the section to such persons. In addition, the Department proposes to amend N.J.A.C. 11:3-8.4(a) to change the reference therein from N.J.A.C. 11:3-8.6 to N.J.A.C. 11:3-8.7 to reflect the proposed recodification of that rule discussed below. In addition, the rule is proposed to be amended to provide that the rule applies when the named insured being nonrenewed is an eligible person. N.J.A.C. 11:3-8.4(a)4 is

proposed to be deleted because nonrenewals for failure to meet an insurer's acceptance criteria are now addressed in proposed N.J.A.C. 11:3-8.5.

A new N.J.A.C. 11:3-8.5 is proposed to provide standards for nonrenewals of ineligible persons. This proposed new section provides that an insurer may issue a notice of nonrenewal to any person who is an ineligible person pursuant to the definition in N.J.A.C. 11:3-34.4. In addition, the proposed new rule sets forth the timeframe for determining accrual and application of eligibility points. This is consistent with the procedures that were set forth in the rules prior to the amendments that became operative in 2009. (See 40 N.J.R. 3572(a) and 6970(b).) Moreover, the proposed rule provides that no insurer shall nonrenew the policies of insureds who are ineligible persons on the basis of failure to meet the insurer's acceptance criteria in an amount in excess of two percent of the insurer's in-force voluntary market policies in each rating territory. This proposed limit attempts to reconcile the limits in N.J.S.A. 17:29C-7.1b with the elimination of the requirement that insurers provide coverage to all eligible persons. There has been a restriction on the ability of insurers to nonrenew risks to two percent of the insurer's total number of voluntary market private passenger automobile insurance policies by territory since 1989. (See N.J.S.A. 17:29C-7.1.) The Department believes that continuation of this limitation is reasonable, appropriate and will afford consistency and predictability to both insurers and insureds related to the nonrenewal of PPA coverage based upon failures to meet the insurer's acceptance criteria.

Existing N.J.A.C. 11:3-8.5 is proposed to be recodified as N.J.A.C. 11:3-8.6. In addition, N.J.A.C. 11:3-8.6(a)1 is proposed to be amended to reference action taken to nonrenew ineligible persons pursuant to N.J.A.C. 11:3-8.5(c), discussed above.

Existing N.J.A.C. 11:3-8.6 is proposed to be recodified as N.J.A.C. 11:3-8.7. Also, N.J.A.C. 11:3-8.7(c)2iii is proposed to be amended to provide that an insurer may not nonrenew an ineligible person unless the person individually, within five years prior to the expiration of the policy, had been required, but had failed to maintain the coverage required by N.J.S.A. 39:6A-3, without lapse, because this more accurately reflects the requirements in N.J.S.A. 17:29C-7.1. Further, N.J.A.C. 11:3-8.7(d) and (e) are proposed to be deleted because the mandatory assignment provisions of the Urban Enterprise Zone program are no longer operative and the phase-out of the “take all comers” requirement was completed on January 1, 2009. N.J.A.C. 11:3-8.7(f) is proposed to be recodified as N.J.A.C. 11:3-8.7(d).

The existing N.J.A.C. 11:3-8.7 is proposed to be recodified as N.J.A.C. 11:3-8.8, without change.

Existing N.J.A.C. 11:3-8.8 is proposed to be recodified as N.J.A.C. 11:3-8.9, with the references to N.J.A.C. 11:3-8.5(a)2 and 3 revised to refer to N.J.A.C. 11:3-8.4(a)2 and 3, to correct an error in the existing rule. Also, a reference to N.J.A.C. 11:3-8.5(c) is proposed to be added to reflect the amendment to that rule as discussed above.

Existing N.J.A.C. 11:3-8.9 and 8.10 are proposed to be recodified as N.J.A.C. 11:3-8.10 and 8.11, without amendment.

N.J.A.C. 11:3-8.11 is proposed to be recodified as N.J.A.C. 11:3-8.12. In addition, a new subsection (a) is proposed to provide that acceptance criteria are the written standards by which an insurer accepts, rejects, renews or nonrenews business. The rule also provides that an insurer shall have separate acceptance criteria for new and renewal business. Existing subsection (a) is proposed to be recodified as subsection (b) with the addition of two prohibitions involving acceptance criteria for PPA insurance. The prohibitions proposed are: (1) criteria based on

whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount; and (2) criteria based upon a policyholder's application for coverage required to be provided by law, such as minimum limits of liability set forth in N.J.S.A. 17:28-1.1, or criteria requiring the purchase of coverage not otherwise required by law, such as physical damage coverage. These proposed additional restrictions on acceptance criteria for PPA insurance reflect that the purchase of PPA insurance is mandatory pursuant to N.J.S.A. 39:6A-1 et seq., and that it would be unfairly discriminatory, and therefore prohibited by N.J.S.A. 17:29A-14, to condition the purchase of such mandatory coverage on the purchase of other coverage, such as homeowners' coverage. The proposed amendment recognizes that insurers may continue to offer discounts for such other coverages. Further, the proposed amendment reflects the requirement that insurers offer minimum limits of liability coverage pursuant to N.J.S.A. 17:28-1.1 and that the failure to offer such coverage would violate that statute. Similarly, certain coverages are not required to be maintained, such as physical damage coverage. Conditioning acceptance of a risk on the choosing of higher limits than those required by law, or upon the purchase of coverage not required to be maintained, would be inconsistent with the statutory framework and mandates governing PPA insurance as set forth above.

A new subsection (c) is proposed to require that an insurer's acceptance criteria shall be maintained by the insurer in writing and shall indicate the effective date thereof. In addition, an insurer's acceptance criteria shall be made available to the Department upon request.

A new subsection (d) is proposed to provide that the only acceptance criteria that may be used to non-renew a policy are those that were in effect at the initiation of the policy period

during which a notice of non-renewal is issued. In other words, X renews or gets a new automobile insurance policy on January 1, 2010, from insurer A. Insurer A changes its renewal acceptance criteria on May 1, 2010. Insurer A can only nonrenew X's policy if he or she does not meet the nonrenewal acceptance criteria that were in effect on January 1, 2010. X cannot be nonrenewed based solely on a nonrenewal criterion that was added after January 1, 2010. These proposed new subsections mirror the requirements set forth in N.J.A.C. 11:1-20 that are applicable to homeowners' and commercial lines policies.

A new subsection (e) is proposed to provide that if the Department finds that one of an insurer's acceptance criteria violates the requirements of N.J.A.C. 11:3-8.12(b), the Department may order that the insurer cease using such criteria in accordance with the process set forth in N.J.A.C. 11:17D.

Existing subsections (b) and (c) are proposed to be recodified as subsections (f) and (g), without amendment.

Existing N.J.A.C. 11:3-8.12 and 8.13 are proposed to be recodified as N.J.A.C. 11:3-8.13 and 8.14, without amendment.

As noted above, N.J.A.C. 11:3-34.2 and 34.4 are proposed to be amended to recognize the usage of the definitions of eligible and ineligible persons at N.J.A.C. 11:3-34.4 for the purposes of nonrenewals pursuant to N.J.S.A. 39:6A-3, and to expand the definition of an ineligible person for nonrenewals to include insureds who no longer satisfy the insurer's acceptance criteria.

A 60-day comment period has been provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The repropose amendments and proposed amendments and new rule will clarify the standards for the nonrenewal of PPA insurance policies, consistent with the current statutory scheme which requires that nonrenewals of eligible persons are subject to the limitations contained in N.J.S.A. 17:29A-7.1, while recognizing that insurers may continue to nonrenew ineligible persons without application of those limitations. The repropose amendments and proposed amendments and new rule will reconcile these rules and that statutory provision. Accordingly, the repropose amendments and proposed amendments and new rule should have a positive social impact by eliminating insurers' confusion as to standards for the nonrenewal for PPA insurance, and provide stability to the market by minimizing disruptions to policyholders due to nonrenewals of PPA policies. Further, the proposed amendments governing acceptance criteria for PPA risks reflect current statutory requirements prohibiting unfair discrimination and requiring that certain coverages be offered.

Economic Impact

Insurers will be required to nonrenew PPA policies in accordance with the standards set forth in the repropose amendments and proposed amendments and new rule, and incur any compliance costs associated therewith. The Department believes that no negative economic impact should result from the repropose amendments and proposed amendments and new rule. As noted above, the current rules for nonrenewal have caused confusion among PPA insurers and do not reflect or properly reconcile the existing statutory requirements governing nonrenewal of PPA risks. Insurers will be required to modify their systems to reflect the standards for

nonrenewal set forth in the proposed amendments. However, the Department does not believe that compliance with these repropoed standards will impose significant additional costs on insurers and clarifying the authority of insurers to nonrenew ineligible persons will enable insurers to better manage their PPA insurance business. The repropoed standards are similar to those that were previously in effect. No additional professional services should be required in order to comply with the repropoed amendments and proposed amendments and new rule; and, insurers should be able to comply with the repropoed amendments and proposed amendments and new rule by utilizing existing professional services and systems.

The proposed requirements governing acceptance of PPA risks reflect applicable statutory requirements, as set forth above. Accordingly, the benefits of reconciling the rules with the applicable statutory provisions related to the nonrenewal or acceptance of private passenger automobile insurance as discussed in the Summary and Social Impact above, and to thereby affirm the ability of insurers to nonrenew ineligible persons, and writing risks consistent with applicable law, outweigh any costs that may be imposed.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the repropoed amendments and proposed amendments and new rule. As noted above, the repropoed amendments and proposed amendments and new rule are intended to clarify the

requirements regarding the nonrenewal of PPA insurance to reflect the current statutory and regulatory framework for the provision of PPA insurance.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The repropoed amendments and proposed amendments and new rule will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The repropoed amendments and proposed amendments and new rule may impose new compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the repropoed amendments and proposed amendments and new rule apply to small businesses, they will apply to New Jersey domestic insurers authorized to transact PPA insurance in this State. As noted above, the repropoed amendments and proposed amendments and new rule conform the requirements applicable to nonrenewals and acceptance of PPA insurance to the current statutory and regulatory scheme. No new professional services should be required in order to comply with the repropoed amendments and proposed amendments and new rule. The purpose of the repropoed amendments and proposed amendments and new rule is to achieve consistency amongst the legal authorities that govern the nonrenewal and acceptance of PPA policies held by New Jersey consumers. These goals do not vary based on the size of the insurer from whom a consumer purchased their PPA coverage. Accordingly, the repropoed amendments and

proposed amendments and new rule provide no basis for differentiation in compliance requirements based on business size.

Smart Growth Impact

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

Housing Affordability Analysis

The repropoed amendments and proposed amendments and new rule will not have an impact on housing affordability in this State in that the repropoed amendments and proposed amendments and new rule relate to the provision of PPA insurance.

Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that these repropoed amendments and proposed amendments and new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan, because the repropoed amendments and proposed amendments and new rule relate to the provision of PPA insurance.

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

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

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 **as set forth in N.J.A.C. 11:3-8.12.**

[An insurer may have different acceptance criteria for new and renewal business.]

...

“**Ineligible person**” means a person who does not meet the definition of an eligible person in N.J.A.C. 11:3-34.4(a).

...

11:3-8.4 Standards for nonrenewals – **eligible persons**

(a) Subject to the limitation set forth in N.J.A.C. 11:3-[8.6]**8.7**, an insurer may issue a notice of nonrenewal to [the] **a** named insured **who is an eligible person**, in the following instances:

1. (No change.)
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;
or
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.]

11:3-8.5 Standards for nonrenewals -- ineligible persons

(a) An insurer may issue a notice of nonrenewal to any ineligible person pursuant to N.J.A.C. 11:3-34.4.

(b) The following shall apply to insureds who are ineligible pursuant to N.J.A.C. 11:3-34.4:

1. For the purpose of determining whether a person is an eligible person, an insurer shall consider those eligibility points accrued only in the 36-month period ending 90 days prior to the expiration of the current policy.

2. An insurer shall not issue a notice of nonrenewal for the reason that a member of the insurer's household is not an eligible person unless the member of the insured's household usually accounts for 10 percent or more of the use of the vehicle insured. For the purposes of this section:

i. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

ii. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.

(c) An insurer may issue a notice of nonrenewal to insureds who are ineligible persons for failure to meet the insurer's acceptance criteria in an amount not to exceed two percent of the insurer's in force voluntary market policies in each rating territory.

11:3-[8.5]**8.6** 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 **or 3, or which would be subject to N.J.A.C. 11:3-8.5(c)**, the notice shall **also** specify that the action is being taken in accordance with N.J.A.C. 11:3-8.4(a)2 [(two percent territorial nonrenewal)] **or 3 or is subject to N.J.A.C. 11:3-8.5(c), as applicable**, 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 **also** 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) - (c) (No change.)

11:3-[8.6]**8.7** Limitations on nonrenewal

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

(c) No insurer shall nonrenew a policy pursuant to N.J.A.C. 11:3-8.4(a)2 and 3:

1. (No change.)

2. Unless the insured or any other operator insured under the policy has individually, within five years prior to the expiration of the policy, accrued two or more of the following events:

i. – ii. (No change.)

iii. [Has failed to maintain insurance coverage without lapse as required by P.L. 1998, c.21 and 22, sec. 4 and 6] **Had been required, but failed, to maintain the coverage required by N.J.S.A. 39:6A-3, without lapse.**

[(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)] **(d)** (No change in text.)

11:3-[8.7]**8.8** (No change in text.)

11:3-[8.8]**8.9** 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]**8.4(a)2 and 8.5(c)**, 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]**8.4(a)3**. Such records and data shall be made available to the Department upon request.

Recodify existing N.J.A.C. 11:3-8.9 and 8.10 as **11:3-8.10 and 8.11** (No change in text.)

11:3-[8.11]**8.12** Acceptance criteria

(a) Acceptance criteria are the written standards by which an insurer accepts or rejects new business, and/or renews or nonrenews existing business. An insurer shall have separate acceptance criteria for new and renewal business.

~~[(a)]~~**(b)**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]~~ **(b)4** below;
2. (No change.)
3. The occupation, education or insurance score of the applicant or insured; provided that, as it relates to occupation, 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[.];

5. Criteria based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount; and

6. Criteria based upon a policyholder's application for coverage required to be provided by law, such as minimum limits of liability set forth in N.J.S.A. 17:28-1.1, or criteria requiring the purchase of coverage not otherwise required by law, such as physical damage coverage.

(c) An insurer's acceptance criteria shall be maintained by the insurer in writing and shall indicate the effective date thereof. An insurer's acceptance criteria shall be made available to the Department upon request.

(d) The only acceptance criteria that may be used to non-renew a policy are those that were in effect at the initiation of the policy period during which a notice of non-renewal is issued.

1. The requirement in (d) above shall not be construed to limit an insurer's ability to modify its acceptance criteria from time to time. However, the modified

guidelines may only be applied to policies issued or renewed subsequent to the effective date of such modification as set forth in (d) above.

(e) If the Department finds that one or more of an insurer's acceptance criteria violates the requirements of (b) above, the Department may order the insurer to cease using such acceptance criteria in accordance with the process in N.J.A.C. 11:17D.

[(b)] **(f)** 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)] **(b)** above.

[(c)] **(g)** (No change in text.)

Recodify existing N.J.A.C. 11:3-8.12 and 8.13 as **11:3-8.13 and 8.14** (No change in text.)

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

11:3-34.2 Scope

(a) (No change.)

(b) Except to the extent that the definition of eligible and ineligible persons at N.J.A.C. 11:3-34.4 is utilized for nonrenewals pursuant to N.J.A.C. 11:3-8, [This] this subchapter shall become inoperative on or 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.

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. - 8 (No change.)

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. (No change.)

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[.]; **or**

11. Who, for the purposes of nonrenewals under N.J.A.C. 11:3-8 only, does not satisfy the insurer's acceptance criteria as set forth in N.J.A.C. 11:3-8.12.

(b) (No change.)