

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Renewal and Nonrenewal of Automobile Insurance Policies
Tier Rating Plans and Underwriting Rules

Adopted Amendments: N.J.A.C. 11:3-8.3, 8.4 and 19A.7

Proposed: July 21, 2003 at 35 N.J.R. 3081(a)

Adopted: November 19, 2003 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: November 19, 2003 as R.2003 d.498, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: December 15, 2003

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (“Department”) received timely written comments from:

One comment provided jointly by the Insurance Council of New Jersey, the American Insurance Association and the National Association of Independent Insurers

Allstate New Jersey Insurance Company

Alliance of American Insurers

New Jersey Professional Insurance Agents

New Jersey Auto Agents Alliance

Independent Insurance Agents of New Jersey

State Farm Indemnity Company

New Jersey Manufacturers Insurance Group

B. Sachau

L. Madrachnimov

COMMENT: Several commenters expressed their support for the proposal.

RESPONSE: The Department appreciates the support.

COMMENT: Several commenters stated that the proposed amendments regarding the notice of renewal and advance notice required for payment of renewal premium focus on the date when an insured receives the notice. The commenters noted that insurers do not control when insureds receive mail. The commenters recommend that the date that the insurer mails the renewal notice, rather than the date of receipt by the insured, should be the controlling date. One commenter noted that an insurer cannot prove receipt by an insured without using certified mail, return receipt requested, and this would be a burden both to insurers and insureds.

RESPONSE: The Department agrees with the commenter. The language concerning renewal notices was not intended to change the requirement in the old rule, which was “notice shall be given...” The Department has amended the rule upon adoption to parallel the requirements for notices of nonrenewal. The change

would require that renewal notices, “be mailed or delivered by the insurer to the insured not more than 45 days or less than 30 days...”

COMMENT: Several commenters noted that insurers consider renewal mailings as “offers,” rather than as renewal bills, and suggested that the terminology be amended.

RESPONSE: The Department has amended N.J.A.C. 11:3-8.3(b) upon adoption to include the term “offer.” The rule provision is intended to refer to those transactions where the insured must make a payment to continue the policy.

COMMENT: Several commenters requested that the term “authorized producer” rather than “producer” be used in N.J.A.C. 11:3-8.3(b)1.

RESPONSE: The commenters did not provide a definition of “authorized” and the Department has not used this term with “producer.” If the commenters’ concern is that not all producers are authorized to receive payments on behalf of their company, that would be addressed in the notice of renewal. The notice must include information about the ability to make payments to the producer only if the producer is authorized to receive such payments.

COMMENT: Several commenters addressed the proposed amendment regarding the option to make payments to insurance producers. Several commenters

suggested that the rule specify that the payments to producers must occur during normal business hours. One commenter stated that the rule should require that payment to the producer is always considered payment to the carrier.

RESPONSE: The Department does not agree with the commenters. The rule only provides that the notice of nonrenewal inform the insured about the option to pay the renewal premium to the producer, if such an option is available. The notice can include any reasonable restrictions on making such payments. The commenter's suggestion that the Department mandate that all payments made to producers be considered payment to the insurer is beyond the scope of this proposal. The intention of the provision was only to give insureds information about their options, not to change the contractual relationship between producers and insurers.

COMMENT: Several commenters expressed concern about the proposed amendment to change the due date for receipt of the renewal premium from 12:01 a.m. on the next day to 11:59 P.M. on the due date. The commenters noted that the 12:01 A.M. standard is nationally utilized for inception and expiration dates. A change in the New Jersey rules will burden insurers.

RESPONSE: The Department agrees with the commenters that a change from the nationally used 12:01 A.M. standard solely for New Jersey private passenger automobile insureds is not warranted. The reason for proposing this change was

to try and prevent confusion between 12:01 A.M. and 12:01 P.M. on the part of insureds. As noted in the Response to a Comment below, the Department will instead require that the nonrenewal notice give the insured additional information about what the insured must do to ensure that their payment is made in a timely manner.

COMMENT: One commenter suggested that the 12:01 A.M. next day standard be maintained, and the minimum grace period after expiration provision be amended so that any late fee does not apply when renewal premiums are received on the first day after the policy expiration date. This approach would not result in any penalty for the insured, and the industry standard would be maintained.

RESPONSE: The Department appreciates the effort of the commenter to provide an alternative solution to changing the expiration date of the policy. However, not permitting a company to charge the late fee during the first day of the three day mailing period provided by N.J.A.C. 11:3-19A.7(g) would be complicated to administer. Upon review, the Department has added language upon adoption to N.J.A.C. 11:3-8.3(b)2i to require that the renewal notice contain a statement designed to help insureds meet the 12:01 A.M. deadline. For example, the notice could contain language such as, "Please be aware that 12:01 A.M. means 1 minute after midnight. For example, if your renewal premium is due by 12:01 A.M. on October 2, that means we must have it before one minute after midnight

on the night of October 1 – 2. Under such circumstances, and to avoid paying a late fee, make sure payment is received on or before October 1.”

COMMENT: One commenter recommended that, since the change in the receipt date represents a major systems change, the effective date of such a provision should be at least 120 days after the adoption of the rule to allow sufficient time for compliance by insurers.

RESPONSE: As noted above in response to a previous Comment, the Department has determined not to adopt the proposed amendment changing the receipt time.

COMMENT: Several commenters expressed support for the proposed change from 12:01 A.M. to 11:59 P.M. to alleviate confusion and make it easier for insureds to maintain coverage with their current insurer.

RESPONSE: The Department appreciates the support but has decided not to change the deadline for receipt of the renewal payments. However, the Department hopes that the requirement that insurers include an explanatory notice on the renewal bill will help prevent confusion about the deadline. In addition, using the mailbox rule will prevent some insureds from having their policies lapse simply because the payment was received after the due date.

COMMENT: Several commenters noted that the proposed amendment permits the Commissioner to direct, by order, that a notice of nonrenewal must be mailed or delivered up to 90 days prior to expiration of a current policy. The commenters stated that this provision exceeds the authority conferred upon the Commissioner by Section 62 of P.L. 2003, c. 89.

RESPONSE: The Department does not agree with the commenter. Prior to the proposal and adoption of these amendments, N.J.A.C. 11:3-8.3(f) (now recodified as (e)) provided that a notice of non-renewal would be invalid unless mailed or delivered by the insured to the named insured policyholder no less than 60 and no more than 90 days prior to the expiration date of the current policy. The provision in the proposed amendment to (recodified) N.J.A.C. 11:3-8.3(e) about which the commenter remarked has provided for the extension of the minimum advance notice period up to an additional 30 days in a regulation, in accordance with N.J.S.A. 17:29C-9 as amended and in accordance with the maximum notice period contemplated under the rule's unamended text. The procedure by which the Commissioner may extend the notice period is incorporated into the regulation. The extraordinary circumstances (that is, emergency market conditions) where such an extension would be necessary by order would require a quicker implementation time frame than that permitted by a rule change. As was noted in the description of this proposed amendment in the Summary of the notice of proposal, the amended rule will permit the Commissioner, on a case-by-case basis, to extend the minimum advance notice period required for non-renewal

notices within the additional 30 day window when, due to market conditions or other special circumstances, additional time for consumers to secure replacement coverage is needed.

COMMENT: Several commenters noted that insurers will need lead time to implement a Commissioner's order that nonrenewal notices be mailed or delivered up to 90 days prior to the current policy expiration dates, and made varying suggestions regarding the appropriate lead time—30 days, 60 days, 120 days .

RESPONSE: The Department acknowledges that an adequate period of time for implementation would be necessary. The Department has amended N.J.A.C. 11:3-8.3(e) upon adoption to provide that any such order will apply to nonrenewal notices issued at least 30 days after the date of the order.

COMMENT: One commenter stated it was unclear how the Department intends to extend coverage by an Order. The commenter suggested that orders to extend coverage beyond a renewal date apply only to broad situations such as withdrawals from the marketplace, rather than on a case-by-case basis. The commenter went on to state that the intent of the regulation is to alleviate the problems of insureds who have difficulty obtaining replacement coverage when reinstatement is denied following a lapse due to late payment. The commenter

suggested that the Department can best address this situation by Bulletin to personal lines writers rather than regulation.

RESPONSE: The commenter has misunderstood the proposal. N.J.A.C. 11:3-8.3(e) does not authorize the Department to extend the coverage of individual policies by Order. The proposed rule implements the provision in N.J.S.A. 17:29C-9, which permits the Commissioner to extend by 30 days the minimum time period within which insurers must send out notices of nonrenewal. As was noted in the Summary to the proposal, the purpose of the provision is to give insureds more time to find replacement coverage when there is limited capacity in the marketplace because of insurer withdrawals or other problems.

COMMENT: One commenter stated that the business practices of some insurers would make it exceedingly difficult to comply with the proposed rule. As examples, the commenter cited the practices of some insurers to bill by account and of others to renew policies prior to receiving the premium. The requirements of the proposed rule would make such practices impossible.

RESPONSE: The billing practices referred to by the commenter are used in commercial policies and are not permitted in personal lines insurance policies. Nonrenewal and cancellation of commercial insurance policies are governed by N.J.A.C. 11:1-20, not N.J.A.C. 11:3-8. Consequently, the consumer protection measures included in the proposal would not apply to commercial policies.

COMMENT: Several commenters suggested that the amendment related to the 90-day period for notices of non-renewal also impacts on N.J.A.C. 11:3-8.4, which would likewise require amendment to redefine the experience period as up to 120 days from the effective date of the policy.

RESPONSE: The Department agrees with the commenter and has amended N.J.A.C. 11:3-8.4 upon adoption to reflect the possibility of an extended notice period for nonrenewals and render that rule consistent with N.J.S.A. 17:29C-9 as amended.

COMMENT: One commenter suggested that the provision on extending the period for the issuance of non-renewal notices should be amended so that a nonrenewal notice subject to a 90-day minimum notice period could be sent 90-120 days in advance. This allows insurers a needed 30-day window to mail nonrenewals.

RESPONSE: The Department does not agree with the commenter. There is no reason that an insurer would need a 30-day period within which to mail a notice. If the commenter is referring to the time needed to program changes in its system to issue the notices on a different time frame, that is addressed in the response to a comment above.

COMMENT: Several commenters suggested that the underwriting filing amendments proposed to N.J.A.C. 11:3-19A.7(g) should also apply to rate manuals.

RESPONSE: The Department does not agree with the comment. The underwriting rules include the rate manual.

COMMENT: Several commenters sought clarification that filings need not always be made to both underwriting rules and rate manuals, and suggested amendatory language to N.J.A.C. 11:3-19A.7(g).

RESPONSE: As in response to the previous comment, the underwriting rules include the rate manual.

COMMENTS: Several commenters recommended that the proposed amendments regarding acceptance of a postmark as proof of the date of mailing be clarified to state that this provision is an option exclusively of the insurer. A requirement to review postmarks would be costly and burdensome. Another commenter suggested that the burden or establishing the postmark date be placed upon insurance companies.

RESPONSE: The Department believes that the rule is clear that the insurer has the option not to determine the mailing date by the postmark if it does not wish to do so, and that no clarification is necessary.

COMMENT: One commenter inquired what other evidence could be used to determine the date of mailing, since the proposed rule provides that the postmark on an envelope “may” be used to determine date of mailing. The commenter also inquired whether the insurer or the insured would decide what other evidence can be used.

RESPONSE: The commenter has misunderstood the proposal. The alternative for the insurer, if it chooses not to use the postmark as proof of date of mailing, is to file for approval underwriting rules which presume that if the renewal payment was received by the insurer within three business days of the due date, it was mailed timely.

COMMENT: One commenter suggested that the Department determine timely receipt of renewal premiums by using the “mailbox rule”—an acceptance by mail to an offer made by mail is effective when the acceptance is mailed. The commenter noted that the Department has already adopted the mailbox rule for purposes of health claims payments.

RESPONSE: The Department is permitting insurers to use the mailbox rule if they save the envelopes in which the renewal premium was mailed. The only way that insurers can determine when a document was mailed is to look at the postmark. However, many automobile insurers have sophisticated mail-handling systems that cannot save envelopes. For this reason, the Department is allowing insurers to presume that payments received within three days of the premium due date were mailed timely.

COMMENT: Several commenters suggested deletion of the proposed phrase “shall be presumed” in N.J.A.C. 11:3-19A.7(g)1, and replacement with the phrase “shall be deemed.”

RESPONSE: The Department does not agree with the commenters. The use of the word “deemed” in the rule would mean that in no case could a payment received within three days of the due date be considered late. The Department’s use of “presumed” gives insurers the ability to rebut the presumption and show that the payment was not mailed before the due date, for example, if the insurer can produce other evidence as part of a fraud investigation that the payment was put into the mail after the due date.

COMMENT: Several commenters expressed support for allowing the acceptance of payments mailed prior to the due date but received thereafter. One commenter praised the three-day grace period to show mailing before due date; while other

commenters suggested extending the timeframe to five or seven business days to reflect more accurately the payment processing capabilities of insurance companies and to offer more accommodation to consumers.

RESPONSE: The Department appreciates the support, but believes that three business days is reasonable and is the time frame in which payment that was mailed timely would be received by the insurer.

COMMENT: Several commenters stated that the provisions permitting late fee charges for renewal premiums in N.J.A.C. 11:3-19A.7(g)2 should also apply to late installment payments.

RESPONSE: The Department focused in this rulemaking on the circumstance where payment by a deadline determines whether a policy renews or lapses because there are significant consequences for the insured if the policy lapses. The same is not true of installment payments, where there may be sufficient equity in the policy to prevent a cancellation for late payment.

COMMENT: One commenter noted that carriers may choose to accept payments with a late fee beyond the time frame prescribed in the rule, and that the rule should be amended to reflect this practice.

RESPONSE: The Department does not agree with the commenter. The majority of insurers require that, to renew the policy, payment must be received on or before the expiration date of the policy; otherwise, they are providing coverage without receiving any premium. The Department has amended N.J.A.C. 11:19A.7(g) upon adoption to clarify that the mailbox rule applies to situations where, to renew the policy, the insured must pay the renewal premium on or before the renewal effective date. As noted above in response to another Comment, the Department has received many complaints from insureds who have had their policies lapse because the premium was received by the insurer very shortly after the expiration date. The amendments to the rule were designed to address this circumstance by applying a ‘mailbox rule’ to payment of the renewal premium, not to provide an opportunity for insurers to gain additional revenue by accepting late payments.

COMMENT: One commenter stated that N.J.A.C. 11:3-19A.7(g) requires that insurers give insureds a three-day “grace period” after the due date of the premium. This commenter, an insurer, noted that it already extended coverage for over 20 days after the renewal date and then sent a non-pay cancellation notice to the insured if the payment was not received. The commenter objected to extending its grace period another three days.

RESPONSE: The Department disagrees with the commenter’s description of the three-day period as a “grace period.” As noted above, in response to a previous

Comment, for insurers that require payment on or before the expiration date of the policy, the Department is adopting the “mailbox rule” to determine when a renewal premium payment is made. Insurers that cannot determine mailing dates from envelopes must assume a maximum three-day mailing period to determine if the payment was made timely. If an insurer does not require payment of the renewal premium on or before the expiration date of the policy, the provisions of N.J.A.C. 11:3-19A.7(g) would not apply.

COMMENT: One commenter sought clarification that the \$25.00 late payment fee applies where the insured’s check is dishonored and the check is not “made good” until after the due date, but during the grace period.

RESPONSE: The rule applies to any circumstance where the insured mailed the renewal premium before the due date and it was not received by the insurer until afterwards. The rule also applies to an insured who, during the three-day period, replaces a check that had been dishonored by a financial institution.

COMMENT: One commenter recommended that when an insured’s payment is not timely received, both the insured and the producer should receive a notice that renewal coverage is not in effect. This will remove any uncertainty about whether a payment was accepted.

RESPONSE: The Department does not agree with the commenter. The creation of a completely new notice requirement is beyond the scope of this proposal. In addition, such a mandate would require extensive reprogramming and expense by insurers and would only inform insureds a little sooner that they were not insured. The amendments to the rule are designed to protect insureds who make a good-faith effort to renew their policies in a timely manner. The rule seeks to achieve this objective by requiring only minor adjustments in the insurers' systems for processing renewal payments.

COMMENT: One commenter recommended changing the language in the proposal regarding charging a late fee to clarify that the \$25.00 charge is only appropriate when the payment is mailed late and the carrier has underwriting guidelines that allow acceptance of the payment and reinstatement.

RESPONSE: The Department believes that the rule is clear that it only affords an insurer an opportunity to file an underwriting rule enabling it to collect the \$25.00 charge, and that no insurer may collect the charge unless it has an approved underwriting rule so providing.

COMMENT: One commenter expressed concern about the costs that insured drivers are paying for uninsured drivers.

RESPONSE: To the extent that uninsured drivers do cost the system money, the proposed amendments are designed to prevent people from inadvertently becoming uninsured by not mailing the renewal premium early enough.

COMMENT: One commenter noted that she received a nonrenewal notice less than 30 days from the expiration date, and that this is unacceptable.

RESPONSE: Anyone who believes that an insurer is not abiding by the rules for issuance of renewal and nonrenewal notices should file a complaint with the Department.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments relate to the business of insurance and are not 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 8. RENEWAL AND NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

11:3-8.3 General provisions

- (a) (No change.)
- (b) Each renewal offer shall be in the usual form of either a renewal policy, a

certificate, or a renewal ***offer or*** bill. A renewal ***offer or*** bill shall indicate the date by which the renewal premium is due. The *[insured must receive the]* renewal bill ***or offer shall be mailed or delivered by the insurer to the insured*** not more than 45 days and not less than 30 days prior to the date the renewal premium is due.

1. (No change from proposal.)
2. Where acceptance of the renewal is made by mailing payment of the renewal bill, the renewal notice shall state the following in a clear and conspicuous manner:
 - i. The due date for receipt of the renewal premium*[, which shall be expressed as 11:59 PM of the due date, rather than as 12:01 AM of the next day]****and a notice to the insured designed to help the insured understand what “12:01AM” means as a deadline;***
 - ii. – iii. (No change from proposal.)
- (c) and (d) (No change from proposal.)
- (e) A notice of nonrenewal shall not be valid unless it is mailed or delivered by the insurer to the insured named policyholder 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. ***Any such order shall apply to nonrenewal notices issued a minimum of 30 days after the date of the order.*** A notice of nonrenewal shall set forth the reason(s) for such nonrenewal.

1. - 3. (No change.)
- (f) – (h) (No change from proposal.)

11:3-8.4 Standards of nonrenewal - ineligible persons

(a) An insurer may issue a notice of nonrenewal to any person who is not an eligible person as defined in N.J.A.C. 11:3-34.

1. For the purpose of determining whether a person is an eligible person who must be renewed, 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 ***or a 36-month period ending as of the extended notification period ordered by the Commissioner pursuant to N.J.A.C. 11:3-8.3(e)*.**

SUBCHAPTER 19A. TIER RATING PLANS AND UNDERWRITING RULES

11:3-19A.7 Underwriting rules for eligible persons

(a) - (f) (No change.)

(g) All affiliated insurers shall file for approval underwriting rules that state that where acceptance of the policy renewal is made by payment of the renewal premium ***on or before the expiration date of the policy***, the premium shall be deemed to have been received timely if it was mailed prior to the due date and received by the insurer within three business days after the due date. The date of mailing may be determined by the postmark on the envelope.

1. – 2. (No change from proposal.)