

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

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

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.14a3, 17:29C-4 and 17:33B-15

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

Proposal Number: PRN 2009-212

Submit comments by September 4, 2009 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 subsection shall become inoperative on January 1, 2009, unless and until the Commissioner of Banking and Insurance orders that the requirement be reinstated pursuant to standards set forth therein. The Department recently 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. 4970(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 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."

On December 15, 2008, the Department issued Bulletin No. 08-26 in an attempt to respond to questions from the industry and to reconcile the conflict in the application of the rules related to all eligible persons that are no longer operative for purposes of accepting or rejecting risks, as opposed to those on nonrenewing existing risks. Apparently, this Bulletin failed to

sufficiently resolve the confusion regarding the application of standards for nonrenewals under the new and amended rules. Accordingly, the Department is proposing 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 that such nonrenewals are limited to drivers who have the violations, at-fault accidents or have failed to maintain mandatory insurance coverage without a lapse as set forth in N.J.A.C. 11:3-8.6(c)2. In addition, notices of nonrenewal issued pursuant to N.J.A.C. 11:3-8.4(a)2 are subject to the two percent and "two for one" limitations found in N.J.A.C. 11:3-8.6.

N.J.A.C. 11:3-8.4(a)4 is proposed to be deleted as nonrenewals for failure to meet an insurer's acceptance criteria are now incorporated in N.J.A.C. 11:3-8.4(a)2 and 3.

Existing N.J.A.C. 11:3-8.5(a)1 and 2 are proposed to be amended to require that the notice of nonrenewal "also" state that the action is being taken in accordance with the two percent or two-for-one requirement, whichever provision is applicable. N.J.A.C. 11:3-8.5(a) currently provides that the notice of nonrenewal must state what acceptance criterion the insured did not meet and this provision is retained in this proposal.

N.J.A.C. 11:3-8.6(d) and (e) are proposed to be deleted as no longer applicable since 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. 11:3-8.6(f) is proposed for recodification as N.J.A.C. 11:3-8.6(d).

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 proposed amendments will clarify the standards for the nonrenewal of PPA insurance policies, consistent with the current statutory scheme which requires that nonrenewals for failure to meet an insurer's acceptance criteria are subject to the limitations contained in N.J.S.A. 17:29A-7.1. The proposed amendments will reconcile these rules and that statutory provision. Accordingly, the proposed amendments 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.

Economic Impact

Insurers will be required to nonrenew PPA policies in accordance with the standards set forth in the proposed amendments, and incur any compliance costs associated therewith. The Department believes that no negative economic impact should result due to the proposed amendments. As noted above, the current rules for nonrenewal have caused confusion among PPA insurers insofar as they continue to utilize standards related to eligible person determinations that were not repealed for nonrenewals. 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 proposed standards will impose significant additional costs on insurers. The standards are similar to those previously in effect. No additional professional services should be required in order to comply with the proposed amendments; and, insurers should be able to comply with the proposed amendments by utilizing existing professional services and systems.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments. As noted above, the proposed amendments 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 proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments 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 proposed amendments apply to small businesses, they will apply to New Jersey domestic insurers authorized to transact PPA insurance in this State. As noted above, the proposed amendments are intended to conform the requirements applicable to nonrenewals of PPA insurance to the current statutory and regulatory scheme. No new professional services

should be required in order to comply with the proposed amendments. The purpose of the proposed amendments is to achieve consistency amongst the legal authorities that govern the nonrenewal 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 proposed amendments provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

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

Housing Affordability Analysis

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

Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that these proposed amendments 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 proposed amendments relate to the provision of PPA insurance.

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

11:3-8.4 Standards for nonrenewals

(a) Subject to the limitation set forth in N.J.A.C. 11:3-8.6, an insurer may issue a notice of nonrenewal to the named insured, 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] **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 N.J.S.A. 17:29C-7.1c, [an insurer may nonrenew] **when the policyholder no longer satisfies the insurer's acceptance criteria,** 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)2 above.** [; or
4. The insured no longer satisfies the insurer's acceptance criteria.]

11:3-8.5 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, 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) 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 Limitations on nonrenewal

(a) – (c) (No change.)

[(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.)

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