

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Eligible Persons Qualifications
Automobile Insurance Eligibility Points Schedule

Proposed Amendments: N.J.A.C. 11:3-34.4, and 34.5 and 11:3-34 Appendix,
Schedule 1

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

Authority: N.J.S.A. 17:33B-13 and 14, 39:3-40 et seq., 39:4-139.10 and 39:6A-1.1 et seq.,

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

Proposal Number: PRN 2006-364

Submit comments by January 5, 2007 to:

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The agency proposal follows:

Summary

Property and casualty insurers authorized to write private passenger automobile insurance in this State and regulated by the Department of Banking and Insurance (Department) are permitted to deny coverage to drivers who are not eligible under the “eligible person qualifications” set forth at N.J.A.C. 11:3-34.4 et seq. Carriers regulated by the Department are also permitted to non-renew coverage to drivers who accumulate a certain number of eligibility

points as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions, as set forth in N.J.A.C. 11:3-34.5 and the N.J.A.C. 11:3-34 Appendix.

N.J.S.A. 39:3-40 lists the penalties to be imposed against a person who has been convicted of driving with a suspended or revoked license. The penalty for a first such offense starts at a \$500.00 fine and a license suspension not to exceed six months. Subsequent convictions result in incarceration, increased fines, as well as a minimum six-month suspension. For this reason, a conviction for driving with a suspended license results in the imposition of nine insurance eligibility points. In January 2000, N.J.S.A. 39:3-40 was amended by the passage of P.L. 1999, c. 423. The amendment added subparagraph i which imposed a lower fine of \$100.00 and no additional period of license suspension if the defendant's driving privileges had been suspended for unpaid parking tickets and the parking tickets have been paid prior to the defendant's appearance in court on the driving-while-suspended charge. Because the Legislature has determined that driving while suspended for failure to pay parking tickets is a less serious offense than driving with a license that has been suspended for other reasons, the Department has similarly concluded that it is appropriate to treat a conviction for violating N.J.S.A. 39:3-40i in a different manner with respect to the accrual of insurance eligibility points. Therefore, the Department is proposing to amend the N.J.A.C. 11:3-34 Appendix, Schedule 1 of Automobile Insurance Eligibility Points, to remove a conviction for violating N.J.S.A. 39:3-40i from the list of statutory violations that accrue insurance eligibility points.

The Department's proposed amendments include the following:

This proposal seeks to amend N.J.A.C. 11:3-34.4, and 34.5 and Schedule 1 of the Appendix to N.J.A.C. 11:3-35.4 entitled: "Schedule of Automobile Insurance Eligibility Points." The proposed amendment to N.J.A.C. 11:3-34.4 removes drivers convicted of violating N.J.S.A.

39:3-40i from the list of persons not considered an “eligible person.” The proposed amendments to N.J.A.C. 11:3-34.5(b)2 would update the reference therein from the “New Jersey Division of Motor Vehicles” to the “New Jersey Motor Vehicle Commission.”

The Department is also proposing amendments to N.J.A.C. 11:3-34.5(b)3. The amendments would revise the text of that paragraph to more clearly indicate that when an eligible person is involved in an at-fault accident and has not accrued any eligibility points during the three-year period immediately preceding the date of that accident, no eligibility points for a two-or three-point violation shall accrue along with the points assessed in accordance with Schedule 1 for the at-fault accident, when the violation arises out of the same incident that resulted in the assessment of points for the at-fault accident.

A 60-day comment period is 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

These proposed amendments should have a favorable impact upon insurers, policyholders and the Department. The Legislature has determined that a person who operates a vehicle with a license that has been suspended because of a failure to pay parking tickets should not be penalized to the same extent as other drivers whose licenses were suspended for other reasons. In the same way, the Department has concluded that a driver’s failure to pay parking tickets does not necessarily make that person a higher insurance risk. Distinguishing persons who are convicted of driving while suspended where the suspension was due to a failure to pay parking tickets from those convicted of driving while suspended for other reasons will prevent persons in

the former category, and persons who are named insureds or are insured under the same policy as such persons, from unjustifiably losing their status as “eligible persons.” This will, in turn, allow such policyholders to obtain insurance at rates that are commensurate with the risk they pose. Insurers will benefit by setting rates consistent with the risk posed by their insureds, which will enhance their ability to compete in the private passenger automobile insurance market. The proposed amendment to N.J.A.C. 11:3-34.5(b)3 is clarifying only, and is not anticipated to have any social impact.

Economic Impact

These proposed amendments should have a favorable economic impact upon certain policyholders. Insurers may experience a slight reduction in total premiums collected, as certain persons who previously would not have met the criteria for classification as an “eligible person,” and, therefore, were subject to higher rates, will, upon the adoption of these amendments, qualify for eligible person status and, consequently, for lower premium rates. Notwithstanding this effect, as a result of these amendments, the policies on such persons will henceforth be rated more accurately, which should better enable insurers to better compete for the private passenger automobile insurance business of such insureds. The proposed amendment to N.J.A.C. 11:3-34.5(b)3 is clarifying only, and is not anticipated to have any economic impact.

Federal Standards Statement

The proposed amendments do not contain standards or requirements that are the subject of any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that these proposed amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments have no impact upon the agriculture industry.

Regulatory Flexibility Analysis

These rules directly impact all authorized automobile insurers. The Department believes that these proposed amendments will apply to few, if any, small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the affected insurers do not employ fewer than 100 full-time employees. No additional reporting or recordkeeping requirements are imposed by the proposed amendments. The compliance requirements and costs of compliance are discussed in the Summary and Economic Impact above, respectively.

The Department does not believe that insurers will be required to hire any consultants or bear the cost of any other professional services to comply with the proposed amendments. Existing staff should suffice to make any administrative and other changes necessary for compliance.

The Department does not believe that different requirements based upon insurer size would be appropriate or feasible since the proposed amendments affect the criteria applicable to the categorization of certain drivers covered by all private passenger automobile insurance policies regardless of the size of the insurer.

Smart Growth Impact

The proposed amendments have no impact upon the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

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

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. - 9. (No change.)

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] **other** evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension **or revocation**.

(b) (No change.)

11:3-34.5 Automobile insurance eligibility points

(a) (No change.)

(b) Automobile eligibility points are cumulative and accrue for all violations and occurrences set forth on Schedules 1 and 2. Automobile insurance eligibility points shall be deemed to accrue as follows:

1. (No change.)

2. Points for conviction of motor vehicle violations and other events that are set forth on an abstract of drivers license records available from the New Jersey [Division of Motor Vehicles] **Motor Vehicle Commission**, or **a** comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.

3. When an eligible person [has not accrued eligibility points during the preceding three-year period, and] is [subsequently] involved in an at-fault accident **and has not accrued any eligibility points during the three-year period immediately preceding the date of that accident**, no eligibility points for a two- or three-point violation, as set forth in Schedule 2 of the Appendix, shall accrue along with the points assessed in accordance with Schedule 1 for the at-fault accident, when the violation arises out of the same incident which results in the assessment of points for the at-fault accident. However, violations that arise out of the same incident may be considered by insurers for purposes of tier placement pursuant to N.J.A.C. 11:3-19A.

4. (No change.)

(c) - (e) (No change.)

APPENDIX

Schedule of Automobile Insurance Eligibility Points

Schedule 1

N.J.S.A. Section Number If applicable	Event Description	DMV Event Identifier(s) If applicable	Points
39:3-40 a through h and j	Operating a motor vehicle while driving privilege is suspended	0340	9

Schedule 2

(No change.)