INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Private Passenger Automobile Insurance - Use of Alternate Underwriting Rules

Adopted New Rules: N.J.A.C. 11:3-2.13 and 35A
Adopted Amendments: N.J.A.C. 11:3-2.2, 2.8 and 2.11; 11:3-35.3; and 11:3-40.3

Proposed: October 6, 2003 at 35 N.J.R. 4429(a)

Adopted: March 26, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: March 26, 2004 as R.2004 d.165, 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, 17:33B-15, 17:29D-1, 17:29A-46.2, and 17:22-6.14a1

Effective Date: April 19, 2004

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from the following:

1. A joint comment from The American Insurance Association, The Insurance Council of New Jersey, and The National Association of Independent Insurers;

2. The New Jersey Personal Automobile Insurance Plan;

3. The Alliance of American Insurers;

4. State Farm Indemnity Company;

5. The Professional Insurance Agents of New Jersey;

6. The Independent Insurance Agents of New Jersey;

7. Allstate New Jersey Insurance Company;

8. High Point; and

9. New Jersey Auto Agents Alliance

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-2.11, which relates to the determination and fulfillment of quotas.

One commenter requested that the Department explain how the additional credits set forth in N.J.A.C. 11:3-2.11(a)6 and 7 will be administered. This commenter requested that the Department recognize the statutory provisions regarding credits. N.J.A.C. 11:3-2.11(a)7 provides that risks cannot earn multiple credits, but rather those risks that qualify for multiple credits shall receive the highest applicable credit only. The commenter stated that there is no statutory authority to offset one credit against another. The commenter cited as an example that the Urban Enterprise Zone (UEZ) credit in the statute states, "a qualified insurer who writes automobile risks in those automobile insurance enterprise zones designated by the Commissioner…shall receive assigned risk credits." The commenter stated that this statute uses similar language to describe the other Personal Automobile Insurance Plan (PAIP) credits.

The commenter also stated that offsetting multiple credits against each other will be difficult because insurers report totals and aggregate numbers when reporting exposures for credit purposes, not individual risks. The commenter thus believed that the rule would be practically impossible to implement, excessively burdensome to insurers, and exceeds statutory authority. Alternatively, the commenter suggested that the rule should be modified to eliminate the prohibition against multiple credits. The commenter further suggested that N.J.A.C. 11:3-2.11(a)6 be clarified to reflect that credits for

exceeding the growth requirements, as established in the statute, will apply to all business written by PAIP, not just a Voluntary Rating Tier (VRT) business as the rule as currently proposed provides.

Another commenter expressly supported this provision but believed that a better approach would have the PAIP plan of operation spell out how these matters would be handled rather than the rules. The commenter stated that the PAIP plan of operation is approved by the Department and this would provide maximum flexibility on these matters and the ability to make changes as market conditions warrant.

Another commenter stated that N.J.A.C. 11:3-2.11(a)4 referred to the territorial credit program established prior to the UEZ program and that, therefore, the proposed amendment does not reflect the current approved credit program in the UZAR and PAIP plans of operation. The commenter stated that although the amendment is necessary to incorporate changes resulting from the UEZ program, the actual approved credit basis is one assigned risk credit for every three voluntary risks written in excess of a company's UEZ quota. As proposed, the rule allows one assigned risk credit for every two voluntary risks written, and does not mention that the risks must be in excess of the company's UEZ quota. The commenter suggested that the amendment be modified in these two aspects to reflect the provisions of the current UEZ credit program.

This commenter also stated that N.J.A.C. 11:3-2.11(a)6 provides that the new credit program for insurers writing in excess of the growth requirements in N.J.A.C. 11:3-35A.4 will apply only against assignment of qualified eligible persons in the VRT of the PAIP. The commenter stated that N.J.S.A. 17:29D-1, as amended by P.L. 2003, c.89, does not restrict the credit program to the VRT assignments, but rather appears to

contemplate a credit program that is applicable to a company's PAIP assignment obligation, or quota, as a whole. The commenter stated that if the rule were adopted as proposed, it would require the establishment of an entirely new quota and assignment system for the VRT, resulting in substantial costs to the PAIP. The commenter thus suggested that the rule be changed to eliminate the reference to "qualified eligible persons" and the "voluntary rating tier" so that the credit may be applied against a company's entire assigned risk obligation.

This commenter also stated that N.J.A.C. 11:3-2.11(a)7 presents challenges to the PAIP administration of the credit programs in that it appears that companies may earn credits against their PAIP obligation for additional risks written in those territories or locations where a benchmark loss ratio has been established. The commenter stated, however, that the rule does not define how those loss ratios shall be determined or applied in an equitable manner. The commenter stated that this may be very difficult to implement and calculate fairly, particularly when territories are remapped by the companies. The commenter stated that it is not clear whether the loss ratios would be those of the voluntary market or the PAIP, or how often the loss ratios would be evaluated. The commenter stated that without greater specificity, administration of the program would be difficult. In addition, the commenter stated that the application of territorial loss ratios to credit programs was not provided for in the statute. The commenter believed that sufficient incentives exist for companies to write in under-served areas without the addition of the territorial loss ratio calculations in all three credit programs.

The commenter stated that if the Department provides the loss ratios for a single set of territories or zip codes that could be applied for all companies, it might be feasible for the PAIP to apply those loss ratios to the new territorial credit program for writing risks in excess of a company's growth requirements. The commenter did not recommend that the same procedure be applied to the other credit programs, as they have been in existence for some time and operate effectively without further adjustment.

This commenter raised concerns similar to another comment that restricting insurers from earning multiple credits and applying the rule only to the highest credit against the PAIP obligation will be both difficult to implement and potentially ineffective in providing incentives in under-served areas. The commenter believed that the changes in systems for data reporting and collection would be required at significant costs to the PAIP and member companies. In addition, limiting credits to the highest credit available on a multi-credit risk may cause companies to restrict their writings and limit the effectiveness of the program. The commenter believed that multiple credits could actually create increased incentive for companies to write such risks, and reduce PAIP volume. The commenter believed that the credit programs in other state assigned risk plans have successfully allowed all available credits to be received by companies. Currently, the PAIP permits multiple credits to be applied. Accordingly, the commenter suggested that N.J.A.C.11:3-2.11(a)7 be eliminated or clarified, and the restriction on multiple credits be removed.

This commenter also stated that N.J.S.A. 17:29D-1 permits credit to be given to the voluntary first renewal of an eligible person written in the VRT. The commenter stated that it has been determined that the assignment period for a VRT insured will be

one year, at which point the insured would be required to seek coverage in the voluntary market or, if declined, reapply for VRT coverage. Accordingly, the commenter believed that there will not be a renewal according PAIP rules. Additionally, if the applicant is written by the current VRT company at the end of the policy period, the company may be eligible for another type of credit. The commenter expressed concern that the rules do not address or clarify the statutory language creating a credit for voluntary first renewals.

RESPONSE: In response to the comments received and after consultations with the PAIP, the Department has reviewed the credit program outlined in the proposed amendment. The Department agrees with the commenter that N.J.A.C. 11:3-2.11(a)4 refers to a credit program that is no longer being administered since it has been superceded by the UEZ program. N.J.A.C. 11:3-2.11(a)4 has been amended upon adoption to refer to the calculation of UEZ credits that is contained in the PAIP Plan of Operation.

Concerning VRT credits, the Department agrees with the commenters that applying the credits to an insurer's VRT assignments rather than PAIP assignments as a whole is not feasible. In addition, the Department agrees with the commenters that the prohibition on multiple credits is too complicated to administer. Accordingly N.J.A.C. 11:3-2.11(a)6 has been amended upon adoption to state that an insurer will begin to accrue credits when it activates its alternate underwriting guidelines in a territory rather than the point at which it meets the growth requirements. This is a more accurate reference to the trigger. As noted above, the rule is being amended upon adoption to

apply the credits against PAIP assignments generally, not to an insurer's VRT assignments.

Concerning N.J.A.C. 11:3-2.11(a)7, the Department is committed to focussing credits on those areas where high loss experience makes the business less attractive to insurers. This is particularly important when an insurer is not required to take all eligible persons. Therefore, the Department is clarifying N.J.A.C. 11:3-2.11(a)7 to refer to the loss ratios of municipalities, rather than territories. The Department has compiled this information based on five years of combined industry data collected for the territorial rating commission. The details of the credit calculations will be contained in the PAIP Plan of Operation.

Similarly, the details regarding any credits for voluntary first renewals will be addressed in the PAIP Plan of Operation.

Finally, as noted above, the prohibition on multiple credits is not being adopted. It is the Department's intent to simplify PAIP credits and additional amendments to this section may be proposed in future rulemaking.

COMMENT: Several commenters suggested that the VRT provisions at N.J.A.C. 11:3-2.13 should be part of the PAIP plan of operation and not a separate plan. One commenter requested that the Department explain why the VRT is being proposed as a plan separate from PAIP. Another commenter stated that integration of the VRT into the PAIP plan of operation will reduce confusion to producers, companies and consumers. In addition, the commenter believed it will provide uniformity in the adherence to common provisions and application to PAIP, as well as reduced costs of processing and

publication. This commenter suggested that the reference to the separate VRT plan of operation be deleted.

RESPONSE: Upon review of the commenters' concern, the Department has amended the rule upon adoption to delete the requirement that the VRT rules be in a separate section of the Plan of Operation.

COMMENT: One commenter stated that N.J.A.C. 11:3-2.13 should specify the permissibility of a limited assignment distribution (LAD) option. In the alternative, the VRT rules should be included within the body of the current PAIP plan of operation, which already includes the appropriate LAD provisions.

RESPONSE: The rules in the PAIP Plan of Operation for the VRT will address the issue of a LAD option for companies that received assignments in the VRT.

COMMENT: One commenter suggested that N.J.A.C. 11:3-2.13(b)2, which makes reference to the credit program set forth in N.J.A.C. 11:3-2.11(a)6, should be amended to be consistent with the Department's proposed change to that rule, which is that the credit program apply to a company's assigned risk obligation as a whole and not to the VRT only. The commenter believed that this would make this rule consistent with its suggested change so that it would appear in the PAIP plan of operation under the general section on credits.

RESPONSE: The Department does not agree with the commenter. N.J.A.C. 11:3-2.13(b)2 simply refers to the credit provisions contained in N.J.A.C. 11:3-2.11(a)6, which have been amended upon adoption in accordance with a commenter's suggestion. The Department does not believe that it is necessary to repeat those amendments in N.J.A.C. 11:3-2.13(b)2.

COMMENT: One commenter stated that N.J.A.C. 11:3-2.13 should be revised upon adoption to include the authority for PAIP to require a company to notify the PAIP when a producer loses his or her voluntary market agency contract with that company. The PAIP would be required to administer the VRT certification program, and the commenter stated that it will be important to monitor the voluntary market agency contracts in order to determine continued certification to place VRT applicants. The commenter stated that the PAIP will require such notification from producers in the normal course, but believed it would be appropriate for the PAIP to have the regulatory authority to request such notification from companies.

RESPONSE: The Department agrees that provision for determining which producers have voluntary market agency contracts is important in implementing the VRT. However, the Department believes that this issue is best addressed in the VRT rules in the Plan of Operation or by Administrative Orders from the Department.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-2.13(b)5, which relates to the VRT producer eligibility program in the VRT plan of operation. It

was noted that the rule requires that producers eligible to place business in the VRT "have an agency contract with a voluntary market insurer that is actively writing automobile insurance in this State." The commenter stated that the intent is that the producer be an agent of the insurer to write private passenger automobile insurance. The commenter believed that the rule should be clarified to achieve this intent. The commenter stated that a producer who has an agency contract to write only non-auto lines with the insurer would technically qualify. The commenter further stated that a terminated agent would qualify who has a limited contract allowing him or her to service existing automobile insurance business pursuant to N.J.S.A. 17:22-6.14a.d. The commenter also stated that the rules use the defined term "personal private passenger automobile insurance" elsewhere instead of just "automobile insurance" as used in N.J.A.C. 11:3-2.13(b)5. This commenter thus suggested that the rule be amended to read as follows (additions in boldface): "A VRT eligibility program, which shall be available only to producers otherwise certified by the PAIP who have an agency contract **to write new personal private passenger automobile insurance** with a voluntary market insurer that is actively writing **personal private passenger** automobile insurance in this State."

Several commenters expressed concern with the term "agency contract." The commenters stated that there are a few companies doing business in New Jersey which have entered into "brokerage contracts" with their producers. These producers are given authority to solicit and write business for these companies despite the fact their contracts are called "brokerage contracts." Other companies may designate their contracts as "producer contracts." One commenter stated that any producers that have the ability to solicit business on behalf of an insurer should be able to place applicants denied coverage

by these insurers with the VRT. The commenter believed that the Department appears to recognize this in its Summary of the proposal where the Department states "eligibility to write business into the new voluntary rating tier shall be limited to producers who represent a voluntary market insurer that is currently writing business." The commenter suggested that to make it clear that all producers with authority to write insurance on behalf of a company have the ability to utilize the VRT, and not just those with contracts termed "agency contracts," the commenter suggested that the proposal be amended to read as follows (additions in boldface; deletions in brackets): A VRT producer program, which shall be available only to producers otherwise certified by the PAIP and who have [an agency] **a** contract with a voluntary market insurer that is actively writing automobile insurance in this State **that authorizes the producer to solicit business on the insurer's behalf."**

Another commenter suggested that the phrase "an agency contract" be replaced with "a producer agreement" or the phrase "or brokerage agreement" be added after "agency contract."

Several commenters also stated that it is not clear what is meant by the phrase "insurer that is actively writing automobile insurance in this State." One commenter stated that if a company has met its growth requirements under the proposal in all territories and is not accepting new business in any territory, the commenter questioned whether the company would be deemed to be actively writing insurance in this State. The commenter questioned if the company has met its growth requirement in 75 percent or similar amount of the territories and is not accepting business in those territories, whether that company would be deemed to be actively writing. The commenter believed

that this term should be defined. The commenter assumed that the Department would consider any company that has been granted relief from the requirement to insure all eligible persons pursuant to N.J.A.C. 11:2-35 or that is withdrawing from doing business in this State, as not actively writing insurance.

Another commenter expressed concern that improper placement of applicants into the VRT program could rapidly increase the market share of the PAIP to 10 percent. The commenter suggested that the rule be revised to read (additions in boldface): "actively writing **new business** in this State **under N.J.A.C. 11:3-35.4(b) or under N.J.A.C. 11:3-35A.3.**" The commenter stated that VRT producers should be required to represent a company who is subject to "take all comers" or has, through reaching the growth requirements, been permitted to use alternate underwriting rules. The commenter believed that this change would require that, to use the VRT plan, a producer would have to represent a company who has not been exempted from take all comers due to financial reasons, withdrawal orders or for other reasons and limit placement into the VRT plan solely if the company represented has met their growth quota in the territory.

RESPONSE: The Department agrees with the comment that the intent of the rule is that producers eligible to place business in the VRT are those with a contract to place business with an insurer actively writing private passenger automobile insurance. The Department also agrees with the comment related to the term "agency contract." The Department did not intend to exclude companies doing business with brokerage agreements. Accordingly, the Department has revised the rule upon adoption to reflect this clarification. The Department also believes that the rules should be clarified, as

suggested by some of the commenters, to reflect that it applies to new applications. By definition, the rules address the eligibility of a producer to place business in the VRT, and require that the producer have a contract with an insurer that is actively writing private passenger automobile insurance business, which the Department intends to mean writing new business. The Department also agrees with one of the commenters that the eligibility to place an applicant in the VRT applies to those insurers that are required to take all comers or are accepting business pursuant to alternate underwriting rules as permitted by these rules, and not otherwise exempt from take all comers on the basis of hazardous financial condition or an approved plan of orderly withdrawal. Accordingly, in response to several of the commenters, if a company has met its growth requirements under the rules in all territories and is not accepting new business in any territory, the company still would be considered to be actively writing. Similarly, an insurer that is limiting the acceptance of new business pursuant to alternate underwriting rules would still be deemed to be actively writing business. To interpret the rule any other way would essentially preclude the operation of the rule.

In order to reflect these clarifications, N.J.A.C. 11:3-2.13(b)5 is revised as follows (additions in boldface; deletions in brackets): "A VRT producer eligibility program, which shall be available only to producers otherwise certified by the PAIP who have [an agency] **a** contract **to write new personal private passenger automobile insurance** with a voluntary market insurer that is actively writing **personal private passenger** automobile insurance in this State **that authorizes the producer to solicit business on the insurer's behalf**."

COMMENT: One commenter stated that N.J.A.C. 11:3-2.13(b) does not specify the rates the VRT should use. The commenter stated that for risks written under the Urban Zone Assigned Risk Program (UZAR), the statute requires that those risks be written at the voluntary rates of the assigned insurer pursuant to N.J.S.A. 17:29D-1i(2). However, the commenter stated that qualified-eligible persons in the PAIP are governed by N.J.S.A. 17:29D-1j. The governing provision as to rates would then be N.J.S.A. 17:29D-1g, which applies to the entire assigned risk plan, not just a particular subsection, and requires "that the plan should not be subsidized by any source external to the plan." The commenter stated that this means that plan rates for both ineligible persons and qualified persons must be self-supporting. The commenter believed that the plan of operation should state this requirement. The commenter suggested that the rule be amended to recodify N.J.A.C. 11:3-2.13(b)7 as (b)8, and add a new paragraph 7 reading: "Adequate rates for qualified eligible persons; and."

RESPONSE: Upon review, the Department has determined not to change this provision. The Department agrees that rate filings will be addressed in the PAIP plan of operation with respect to the VRT. Rate filings will be made by the PAIP with respect to the VRT subject to approval by the Commissioner in accordance with N.J.S.A. 17:29D-1. The Department believes that no further clarification is necessary.

COMMENT: One commenter stated that while the rule does not specifically address the details of the VRT plan, it urged the Department to monitor placement of eligible persons into the VRT plan in order to ensure that:

1. A proper declination of coverage is received to prove that the applicant has attempted to secure coverage in the voluntary market;

2. Producers who represent more than one company must submit the applicant to a company subject to N.J.A.C. 11:3-35.4(d) (take all comers), and may not submit the applicant to the VRT just because they do not meet the underwriting guidelines of a represented company who is using the alternate underwriting rules at N.J.A.C. 11:3-35A. For example, a producer represents two companies. Company A has met growth quota goals and is using alternate underwriting rules. The applicant does not meet the underwriting rules of company A and therefore the producer would have a declination. The commenter believed that the producer may not submit that business to the VRT plan; they must submit the business to company B which remains subject to the take all comers requirements;

3. The VRT plan maintains an accurate listing of company/producer appointments and verifies that applications are submitted only by eligible VRT producers under the terms outlined in paragraph 2 above; and

4. The VRT rates are not of such a competitive nature that the VRT becomes the market of choice for any consumer in New Jersey.

RESPONSE: Upon review, the Department has determined that no change is required. N.J.A.C. 11:3-2.13(b) sets forth various aspects that the VRT rules in the PAIP Plan of Operation must contain. N.J.A.C. 11:3-2.13(b)7 provides for other provisions deemed necessary by the PAIP. The Department believes that, in general, the types of provisions

the commenters suggest are reasonable, but that these issues would be more appropriately addressed in the filing of the VRT rules of the Plan of Operation.

COMMENT: Several commenters expressed concern with the definition of "declination," et al. at N.J.A.C. 11:3-35A.2. One commenter stated that the definition of the term includes a list of five circumstances and recommended that it include an additional occurrence, that is, those circumstances when a company has satisfied its quota. Another commenter stated that the definition includes the refusal by an "insurance agent" to submit an application to any insurer represented by the "agent." The commenter stated that this appears to unintentionally exclude brokers who have contracts allowing them to submit applications to voluntary insurers. The commenter suggested that the word "producer" replace "insurance agent" and "agent" in the definition.

One of the commenters also suggested that "an offer of coverage" be omitted from the definition in paragraph 3. Paragraph 3 of the definition includes, as a declination, an offer of automobile insurance coverage by an insurer to an applicant at a rate applicable to other than eligible persons. The definition would mean that once voluntary carriers write policies for ineligible drivers (for example, any person with seven or more eligibility points), the offer of insurance would still be construed as a declination. The commenter believed that this is inconsistent, confusing and a disincentive for insurers, as well as contrary to the Department's aim of expanding customer choice in New Jersey. If an insurer voluntarily writes an applicant using an insurance rate available to ineligible persons, the offer should not count as a declination. Accordingly, the commenter suggested that paragraph 3 be deleted.

Another commenter stated that the definition of "declination," et al. in paragraph 3 should be clarified to state (addition in boldface): "… or the offer to insure at a rate applicable to other than eligible persons, **assuming the operator is eligible**." The commenter stated that it may place insureds with less than three years prior insurance and ineligible operators in tier 2. The commenter believed that the additional language would provide for this contingency.

RESPONSE: With respect to the comment that the definition also include the circumstance when a company has satisfied its quota, the Department does not believe that this is necessary. This would be encompassed under paragraph 1 of the definition.

The Department agrees, however, that paragraph 1 should be revised to reflect brokers who have contracts allowing them to submit applications to voluntary insurers. Accordingly, paragraph 1 of the definition is revised upon adoption to replace the word "agent" with "producer." Similar changes have been made throughout the rules for the same reason.

The Department, however, disagrees that paragraph 3 should be deleted. An offer of automobile insurance coverage with less favorable terms or conditions than those requested by an applicant essentially does constitute a declination by the insurer of the coverage requested by the applicant. However, in order to clarify that the definition only applies to new business, the Department is deleting upon adoption the phrase "including the refusal to make requested changes to an existing policy that are available to other insureds by that insurer, or the offer to insure at a rate applicable to other than eligible

persons" as these actions would apply to existing business, rather than new business, the latter of which is the focus of the definition.

The Department further does not believe that it is necessary to add the phrase "assuming the operator is eligible" in paragraph 3 since the remainder of that sentence is deleted upon adoption as set forth above.

COMMENT: One commenter expressed concern that N.J.A.C. 11:3-35A.2 does not contain a definition of "new business." The commenter stated that a definition of new business should exclude replacement autos and added autos even if the insurer issues a new policy to cover the added or replacement auto. The commenter stated that it issues multi-car policies, but no more than four automobiles may be insured by one policy, so it issues a new policy if a fifth vehicle is added. In addition, autos whose coverage is reinstated after a grace period with or without time out of force should be excluded. Accordingly, the commenter suggested that the definition read as follows: "'New business' means an automobile not currently insured by the automobile insurer or its affiliates that is other than (i) a replacement automobile, (ii) an added automobile, or (iii) an automobile whose coverage is reinstated by the automobile insurer after a grace period with or without time out of force. An automobile covered by (i), (ii) or (iii) in the previous sentence does not become 'new business' because the insurer is covering automobile with a new policy."

RESPONSE: The Department agrees that a definition of "new business" should be provided to reflect that the term "new business" is not intended to refer to revisions or

expansions in existing policies. The definition suggested by the commenter appears to be reasonable. Accordingly, N.J.A.C. 11:3-35A.2 is revised upon adoption to include the definition of "new business" as set forth in the comment. The Department, however, does not believe that the last sentence of the proposed definition is necessary in that appears to be redundant and could cause confusion.

COMMENT: One commenter expressed concern with the term "affiliated companies" in N.J.A.C. 11:3-35A.2. The commenter recommended that the Department amend the definition by adding the following sentence at the end of the definition: "Upon notice to the Commissioner, companies not utilizing common underwriting rules may be treated as non-affiliates."

RESPONSE: Upon review, the Department has determined that no change in required. The definition of "affiliated companies" is consistent with the definition of affiliates in the New Jersey Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1, and also tracks verbatim the definition in N.J.A.C. 11:3-35.2, related to private passenger automobile insurance underwriting rules. Thus, the Department believes that the definition is appropriate for use in these rules. The Department also notes that the commenter did not cite any specific rationale for treating companies not utilizing common underwriting rules as "non-affiliates."

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-35A.3(b), which provides that an insurer's alternate underwriting rules must meet the requirements

of N.J.A.C. 11:3-35A.5 and must be applied uniformly in all exempt territories. One commenter questioned the intent of the provision. The commenter believed that the rules should be more flexible to encourage insurers to continue writing business in exempt territories. The commenter believed that giving companies more flexibility to find ways to continue to write business in exempt territories would benefit the marketplace. For example, an insurer may need to write more policies in UEZ areas within a territory in order to meet its UEZ obligations, even if that carrier does not wish to grow its non-UEZ business in that same territory. Accordingly, the commenter recommended that N.J.A.C. 11:3-35A.3(b) should read as follows: "The insurer's alternate underwriting rules must meet the requirements of N.J.A.C. 11:3-35A.5 below and must be applied uniformly in all exempt territories. However, non-uniform alternate underwriting rules may be filed and used if such rules will enable an insurer to continue to write more voluntary policies and/or enable the company to meet its UEZ obligations in the territory where the insurer might otherwise have chosen to stop writing business." The commenter also believed that the phrase "in all exempt territories" be revised to read "in all selected exempt territories."

Another commenter questioned whether an insurer can have an alternate underwriting rule that states that a certain set of rules will be applied to growth of a certain amount in any of the exempt territories, and a different set of rules will be applied if the growth in an exempt territory exceeds that amount. For example, the commenter stated that if the trigger for a territory to become exempt is four percent growth, the insurer may want to have a less restrictive set of alternate underwriting rules in an exempt territory until growth in that territory hits eight percent, rather than a more restrictive set

of underwriting rules. The commenter stated that it is a reasonable and proven business practice for insurers to maintain a balance in their growth and to avoid over concentration. The commenter believed that such a practice would apply to all territories, but the rules are not clear as to whether an insurer may do this. Accordingly, the commenter suggested that N.J.A.C. 11:3-35A.3(b) be amended to read as follows (addition in boldface): "The insurer's alternate underwriting rules must meet the requirements of N.J.A.C. 11:3-35A.5 and must be applied uniformly in all exempt territories. **Alternate underwriting rules that vary the underwriting rules based on the amount of growth in the territory in excess of the growth requirements of N.J.A.C. 11:3-35A.4 are permitted**."

Another commenter similarly questioned whether insurers may determine whether to use its alternate underwriting rules for a particular territory or territories. This commenter stated that if an insurer believes that there are other reasons why they would like to continue writing new business in certain territories, the rules should permit them to do so. The commenter further stated that permitting insurers to continue writing new business in certain territories that exceed the growth requirement would be revisited on a six-month basis as the percentages are recalculated to permit further oversight of this issue.

RESPONSE: Upon review, the Department has determined that no change is required. With respect to permitting non-uniform underwriting rules to be utilized in different territories, the Department believes that this would be inappropriate, could lead to arbitrary application of an insurer's underwriting rules, would be difficult to implement

and monitor by the Department, and could allow insurers to inappropriately discriminate against similar risks.

Similarly, for the same reasons, the Department does not believe that it would be appropriate for insurers to utilize different growth standards in different territories. Such action could permit insurers to structure their underwriting rules in such a way as to improperly discriminate against similar risks. Insurers are provided flexibility to change their alternate underwriting rules whenever they wish, but such rules must be applied uniformly in all territories.

COMMENT: Several commenters raised questions regarding N.J.A.C. 11:3-35A.3(c), which sets forth the requirements for the filing of alternate underwriting rules. Several commenters suggested that the rules state that alternate underwriting rules be filed for informational purposes only. One commenter expressly stated that the statute does not require that alternate underwriting rules be filed for approval. One of the commenters further suggested that the rule should be amended to confirm that the underwriting rules will be confidential as trade secrets. In order to accomplish this, the commenter suggested that a new paragraph 3 be added reading as follows: "An insurer may state that the alternative rules are confidential trade secrets and shall not be disclosed by the Department. If a request for disclosure of these alternate underwriting rules is made to the Department, the Department shall notify the insurer, so that the insurer will be able to assert the confidential trade secret nature of the filing in the relevant legal proceedings."

RESPONSE: Upon review of the commenter's concerns, the Department has determined not to change this provision. With respect to the comment that the rules provide that the alternate underwriting rules are filed for informational purposes only, N.J.A.C. 11:3-35A.6 sets forth the procedures for activation of an insurer's alternate underwriting rules. Prior approval is not required by the rule. The Department does not believe that further clarification is necessary.

With respect to concerns of confidentiality, an insurer's alternate underwriting rules, as well as its primary underwriting rules, are utilized in determining whether to decline or non-renew a risk. Insureds must be provided with the rationale and the basis for such a determination. Accordingly, an insurer may be called upon to provide a copy of its underwriting rules. In any event, the Department does not believe it appropriate to define by this rule that an insurer's alternate underwriting rules are confidential. The Department notes that N.J.A.C. 11:3-35, governing standard underwriting rules for private passenger automobile insurance, does not so provide.

COMMENT: One commenter strongly supported N.J.A.C. 11:3-35A.4(a) through (l). The commenter stated that the interpretations made by the Department are proper and will allow immediate relief for insurers that meet growth requirements. The commenter also cited two typographical errors in subsection (a) and subsection (f). Another commenter similarly supported the rules and agreed that the requirement to take all applicants who meet the definition of an eligible person has been a barrier to a competitive market place and believed that the elimination of this requirement will help move the automobile insurance industry to a more functional market place.

Another commenter suggested that N.J.A.C. 11:3-35A.4(a) through (k) be revised to add the phrase "any of " before "those territories" in each of the subsections.

RESPONSE: The Department appreciates the support of the proposal. With respect to the suggested addition to N.J.A.C. 11:3-35A.4(a) through (k), the Department does not believe that such change is necessary. The phrase suggested by the commenter is set forth in N.J.A.C. 11:3-35A.3, which refers to N.J.A.C. 11:3-35A.4.

The Department also notes that the typographical errors cited do not appear in the rule text as it appears in the New Jersey Register.

COMMENT: One commenter stated that the provisions in N.J.A.C. 11:3-35A.4(a), (d) and (f) define the growth requirements necessary for insurers to file alternate underwriting rules, which are based on reports of each territory where an insurer's in-force exposure as of a certain date is filed in the consolidated report due on or before a particular date. The commenter stated that the time for determining the in-force exposure should be filed based on when the consolidated report is due, not on a date specific. This would allow flexibility in changes to the timing of the filing for a company. The commenter believed that the word "due" was inadvertently omitted. The commenter believed that adding the word would make those provisions consistent with the rest of N.J.A.C. 11:3-35A.4.

RESPONSE: The Department agrees for the reasons expressed by the commenter and has made the suggested change upon adoption.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-35A.4(m), which provides that an insurer may file a request with the Commissioner to use a lower percentage growth standard than those listed in (a) through (j), and the Commissioner may approve such filing upon a finding that meeting the growth standard in the rules would result in the insurer qualifying for relief from its obligations under N.J.A.C. 11:2-35 or being in a hazardous financial condition pursuant to N.J.A.C. 11:2-27. The commenters believed that this standard is inappropriate because it requires a finding that the insurer must qualify for relief under N.J.A.C. 11:2-35 or be in a hazardous financial condition. The commenters believed that this language should be replaced with the statutory language that would permit the use of lower growth standard if "the insurer does not have the financial and business resources to accommodate growth Statewide at a higher percentage than that proposed in the filing." The statute does not require a finding of unsafe or unsound financial condition or a hazardous financial condition for a lower percentage growth standard to be approved. Rather, the statute requires a finding that the insurer does not have the resources necessary to accommodate a rate of growth higher than the growth percentage in the filing. One of the commenters stated that it is possible for an insurer to find itself overwhelmed by growth, regardless of its financial condition. Similarly, the term "financial resources" is broader than financial reasons referred to in the rules as proposed. The statute permits the Department to grant relief to an insurer before an insurer meets the financial test of N.J.A.C. 11:2-35 so that the Department can stop an insurer's slide before it hits certain benchmarks. In all cases, the Department must give prior approval for such relief to ensure that only legitimate cases for relief are

permitted. Accordingly, this commenter suggested that the rule be revised to add at the end of the sentence “or otherwise does not have the financial or business resources to meet the growth standard."

Another commenter questioned whether the lower percentage growth standard could be used for all territories or whether an insurer could submit a request to lower the growth standard for only certain territories.

RESPONSE: Upon review, the Department has determined that no change is required. The statute does not specify the standards by which the Department would determine whether an insurer has the financial and business resources to accommodate growth Statewide at a higher percentage than that proposed in the filing. Accordingly, the Department has proposed standards in the rules related to a finding of hazardous condition under N.J.A.C. 11:2-27 or whether the insurer will qualify for relief under N.J.A.C. 11:2-35. This provides objective standards under which the Department will make a determination as to whether a lower growth standard should be permitted. Without these standards, insurers could merely assert that they could not meet the growth standard based upon no objective criteria, and the Department would have no objective criteria by which to judge the insurer’s assertion. The Department thus believes that the rule is appropriate and is consistent with N.J.S.A. 17:33B-15.

Further, as set forth in a response to a previous comment, the Department does not believe that lower percentage growth standards may be used for only certain territories for the reasons set forth therein.

COMMENT: One commenter expressly supported the standards at N.J.A.C. 11:3-35A.5 for the alternate underwriting rules. The commenter believed that the proposed standards protect the public from undue discrimination while allowing insurers the maximum flexibility in designing the alternate underwriting rules. This commenter stated that there is a typographical error in that the last paragraph should be (a)4.

Several commenters expressed concern with N.J.A.C. 11:3-35A.5(a)3, which provides that no underwriting rules shall be based on the lawful occupation or profession of an insured. The commenters believed that insurers should have the right to evaluate a person's occupation as one of the factors in its underwriting rules, for example, in cases where people have occupations that pose greater exposure to risk. This commenter suggested that the rule be revised to read (addition in boldface): "No underwriting rule shall be based **solely** on the lawful occupation or profession of an insured."

RESPONSE: Upon review of the commenter's concern, the Department has determined that no change is required. N.J.A.C. 11:3-35A.5(a)3 tracks verbatim the existing standards for private passenger automobile insurance underwriting rules set forth at N.J.A.C. 11:3-35.3(c)7. Accordingly, the Department believes that these rules are appropriate and that they reflect standards for underwriting rules currently in place with respect to private passenger automobile insurers.

The Department also notes that the typographical error referenced by the commenter did not appear in the proposal as it appeared in the New Jersey Register.

COMMENT: One commenter believed that the use of underwriting rules as an exemption from take all comers at N.J.A.C. 11:3-35A.5 may cause some confusion in the marketplace during the transition. The commenter requested that the Department, when reviewing and approving alternate underwriting rules under N.J.A.C. 11:3-35A.5, assure that any applications submitted under the company's underwriting rules that are subsequently determined not to meet the underwriting rules be cancelled prospectively, with proper notice to the applicant and producer. The commenter believed that this would allow proper time for the applicant to secure replacement coverage, as opposed to having the application rejected or voided without coverage being placed into effect.

RESPONSE: The Department initially notes that alternate underwriting rules are not subject to prior approval under the rules. In addition, if coverage was bound and later cancelled, such cancellation would occur prospectively. If coverage were not bound, and was declined, no coverage would have been in effect and therefore the issue raised by the commenter would be moot.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-35A.6(a), which sets forth the information insurers must include in their filing with the Commissioner when seeking to activate the use of the alternate underwriting rules. The commenter suggested that the first sentence in N.J.A.C. 11:3-35A.6(a)2 be revised to indicate that the information requested is for "each individual territory." In addition, the commenter suggested that this paragraph also provide that insurers may use any combination of the factors listed in N.J.A.C. 11:3-35A.6(a)2i through iii, instead of just one factor. This

commenter suggested that an additional subparagraph iv be added to read as follows "Any combination of any of the factors listed in …. i, ii, iii." This would permit greater flexibility and accommodate the writing of UEZ business even if a company is exempt in a particular area, all of which the commenter stated would be positive for the consumer.

RESPONSE: Upon review, the Department has determined to revise N.J.A.C. 11:3-35A.6(a) upon adoption to provide that the filing should include information set forth in (a)1 and 2 for the territory or territories where the insurer has met the growth standard established in N.J.A.C. 11:3-35A.4. However, as set forth in responses to previous comments, insurers must apply their alternate underwriting guidelines or the approach they wish to take fairly among all territories. The second change suggested by the commenter would permit insurers to apply different rules and different standards in different territories, and thus is impermissible under N.J.A.C. 11:3-35A.3(b).

COMMENT: One commenter stated that N.J.A.C. 11:3-35A.6(b), which requires that a filing of an insurer be accompanied by a certification signed by an officer of the insurer, should state that it is certified "to the best of my knowledge." The commenter stated that, if the language remains as proposed, the certification could be interpreted as requiring a strict liability standard, which is unduly burdensome to the officer of the insurer and inconsistent with other State standards in similar circumstances.

RESPONSE: Upon review, the Department has determined that no change is required. The Department believes that the certification is appropriate and consistent with certifications utilized and required by the Department in other circumstances.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-35A.6(e). One commenter stated that paragraph (e)1 requires that the denial notice in the Appendix be used for written denials. The commenter stated that the rules do not state whether the insurer or agent may add other information to the notice, and believed that insurers and agents should be permitted to add other information to the notice. For example, Federal law requires that a specific notice be given in all adverse actions in insurance underwriting if a consumer report was the source of any information used to make the decision to decline coverage. In addition, the agent may wish to add a notice about whether the applicant may be able to obtain insurance from another insurer that the agent represents or whether the agent can place the applicant in the PAIP VRT. This commenter suggested that the rule be amended to add a new sentence at the end reading as follows: "The insurer or agent may add other information to the denial notice found in the subchapter Appendix, if that information does not contradict or detract from the contents of the denial notice."

Several commenters also expressed concern with respect to paragraph (e)2, which also refers to the notice of declination that is attached as the Appendix. One commenter stated that the notice in the Appendix provides customers with alternatives to obtaining insurance coverage, but wrongly steers the applicant to the competitiveness of the VRT in PAIP. In order to stimulate greater choice and emphasize availability of alternative

insurers, the notice should encourage the applicant to shop for insurance in the voluntary market first. The commenter believed that the PAIP should only be available as a market of last resort and the applicant should be encouraged to seek quotes from the voluntary market. The notice thus should limit the description of PAIP availability and take out "competitive rates" when describing the PAIP. The commenter also stated that the notice should not provide customers with information about filing a written complaint with the Department's Office of Consumer Services. The commenter believed that it is unnecessary and could increase the number of complaints when an insurer is declining an applicant for legal reasons. Alternatively, the commenter suggested that information should refer applicants to their producer first and then to the Department's Office of Consumer Services.

Another commenter noted that paragraph (e)2 requires that insurers or agents provide oral denials in writing if requested by the applicant within 30 days. The commenter suggested that the request for written denial from the applicant should also be in writing to avoid disputes as to whether a request for a written denial was ever made. Accordingly, the commenter suggested that paragraph (e)2 be amended to read (addition in boldface): "… the written denial notice if requested **in writing** by the applicant … ."

This commenter further stated that the written notice of declination, which must use the form in the Appendix, does not distinguish between the declination of a non-bound application and the declination of a bound application by an insurer. The commenter stated that where an agent binds coverage and coverage has become effective, the insurer can only decline the risk by formally canceling the coverage with a cancellation notice under N.J.S.A. 17:29C-7, 17:29C-8 and 17:29C-10. Such notice is

already required by statute to give the reason for cancellation and notice of eligibility in the PAIP at N.J.S.A. 17:29C-8, 17:29C-11, and 17:29C-12. The commenter stated that the notice in the Appendix refers to N.J.S.A. 17:33B-15 rather than N.J.S.A. 17:29C-7, so that it cannot be used in this case. The commenter suggested that the Department should exempt cancellation of bound applications from this rule and allow those cancellations to continue to be governed by the cancellation statute. To address this issue, the commenter suggested that N.J.A.C. 11:35A.6(e) be amended by adding a new paragraph (e)3 reading as follows: "Where an insurer cancels a bound application, the insurer shall follow the procedures in N.J.S.A. 17:29C-6 et seq. in lieu of following the procedures in this subsection (e)."

Several commenters suggested that the notice of declination in the Appendix be amended to delete the words "at competitive rates" in the penultimate paragraph. One commenter believed that applicants should be encouraged to find coverage in the voluntary market, similar to the concerns expressed by comments above. Another commenter reiterated its comment that the VRT should have adequate rates which may or may not be competitive. The commenter also suggested that a comma be added in that sentence.

A commenter also expressed concern with the ability of insurers to issue the declination orally unless otherwise requested. The commenter believed that this would present the PAIP with administrative difficulties. An applicant for the VRT will need to provide specific, reliable documentation in order to receive the proper coverage and rating. In addition, if a company is permitted to wait 30 days to provide the written declination as the rule states, an applicant to PAIP may have difficulty obtaining timely

coverage. This commenter recommended that paragraph (e)2 be eliminated and that paragraph 1 be revised to require that the insurer provide the applicant with the written denial notice referenced in the Appendix.

Another commenter similarly questioned whether a producer must first attempt to obtain coverage from other insurers that he or she may represent before placing business in the VRT. The commenter assumed that if a producer represents other insurers that are still subject to the take all comers requirement, he or she would have to submit the application to these carriers first. The carrier believed that this could be problematic for the customer. The commenter cited as an example that many companies may have instituted a five-day waiting period for binding coverage. However, PAIP does not have any waiting period and applicants can obtain immediate coverage. An applicant would be able to obtain immediate coverage in the VRT as well. An applicant that is denied coverage by a company that has ceased to write new business under these rules, and who needs coverage immediately, would be unable to go directly to the VRT to obtain that coverage if his or her producer represents other insurers. Instead, the producer would have to submit the application to those other insurers who are likely using a waiting period. The commenter believed that consumers would be disadvantaged by the fact that his or her producer represents other companies. This commenter stated that if producers must seek coverage from other companies they represent before placing business in the VRT, the Department must address the use of the five-day waiting period by companies. The commenter also stated that it is unclear whether producers must seek coverage from other companies they represent when these companies have met the growth requirements under the rules, but have opted to use alternate underwriting rules instead of ceasing to

write new business. The commenter questioned whether the Department will require the producer to submit applications to these carriers and if so, the five-day waiting period will cause the same problems for the consumers as set forth above.

RESPONSE: With respect to the insurer and producer being permitted to add other information, the Department believes that this would be appropriate. Accordingly, the Department has revised the rule upon adoption to reflect the commenter's suggestion.

The Department, however, does not believe that the notice in the Appendix "wrongly steers," as some commenters suggest, the applicant to the VRT. The statement in paragraph (e)2 is merely a generic statement to provide information to applicants with respect to various options available to them. In addition, the reference to "competitive rates" is intended to alert applicants that they would not be charged rates for high risks or assigned risk drivers who are also in the PAIP.

Similarly, the Department does not believe that it would be appropriate to delete reference to an applicant being permitted to file a complaint with the Department's Office of Consumer Services. In all cases, all applicants and insureds are afforded this ability.

The Department also does not believe that it is necessary to require that an applicant's request for a written denial be made in writing. The Department does not believe that responding to a request for a denial in writing will impose unreasonable burdens on or create confusion for an insurer or producer. An applicant should be permitted to orally request that a denial be provided in writing. To the extent questions arise on this matter, a complaint could be filed with the Department for appropriate investigation and action.

The Department agrees, however, that the notice in the Appendix refers to non-bound applications and that once an application is bound, applicable statues governing cancellation of coverage would apply. The Department does not believe that the rules need to formally "exempt" cancellation of bound applications from the rule. Cancellation of existing coverage will continue to be governed by all applicable law.

The Department also agrees that a comma should be added to the second sentence in the paragraph referenced by the commenter, and this change has been made upon adoption.

The Department, however, does not believe that it is necessary to require that all denials be made in writing. Initially, the Department notes that companies are not permitted to wait 30 days to provide the written declination. Rather, the rule provides that the request by the applicant for a written denial must be made within 30 days. The Department expects that insurers would respond promptly to a request for a written denial. In addition, the Department does not believe that all denials will result in an application being placed in the VRT. Accordingly, a written denial will not necessarily be required in all cases.

Further, the commenter is correct that a producer must first attempt to obtain coverage from other insurers that he or she may represent before placing business in the VRT. The concerns and comments raised by the commenter regarding binding of coverage are outside the scope of this proposal. The proposed rules and amendments do not address the binding of coverage. The rules address the use of alternate underwriting rules by insurers for the transaction of private passenger automobile insurance and the ability for persons who are both denied coverage and unable to obtain private passenger

automobile insurance coverage to obtain coverage through the VRT, pursuant to N.J.S.A. 17:33B-15.

Finally, the Department is also revising the Appendix upon adoption to eliminate the phrase "specify underwriting rule(s) not met" which is reprinted twice, as a matter of form.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-35A.7, which relates to the standards for determination of an uncompetitive market. Several commenters suggested that the rule be clarified to indicate that the Commissioner will only use New Jersey data when analyzing the private passenger automobile insurance market. In addition, one commenter believed that N.J.A.C. 11:3-35A.7(b)1, 5 and 6 are redundant and requested clarification of their intent.

Another commenter expressed concern with N.J.A.C. 11:3-35A.7(a)2iii, which provides that an order finding that there is not a reasonable degree of competition can be renewed after a hearing and findings. The commenter believed that the rules should be clarified to state that the findings must be supported by clear and convincing evidence. Accordingly, the commenter suggested that paragraph (a)3 be revised to read as follows (additions in boldface): "An order issued pursuant to this subchapter shall expire one year after issued unless rescinded earlier by the Commissioner, or unless the Commissioner renews the ruling after a hearing and a finding **supported by clear and convincing evidence** as to continued lack of a reasonable degree of competition."

RESPONSE: With respect to the concerns regarding the standards for determination of an uncompetitive market, the Department believes that no change is required. The standards set forth in N.J.A.C. 11:3-35A.7 track the statutory language in N.J.S.A. 17:33B-15f. In addition, N.J.A.C. 11:3-35A.7(a)2i provides that the order shall include specific findings of fact and shall be supported by clear and convincing evidence. Accordingly, the rules track the statutory language at N.J.S.A. 17:33B-15f and should address the commenter's concerns.

COMMENT: One commenter stated that the last paragraph of the declination notice in the Appendix states that if the applicant believes that the reasons that he or she failed to meet the insurer's underwriting guidelines are incorrect, then the applicant may file a complaint with the Department. The commenter suggested that this provision be clarified to provide a complaint to the Department is not appropriate if the box on the declination notice is checked to indicate that the insurer currently is not writing new business in the territory. This will avoid the time and expense for the Department to process these complaints, and insurer's time and expense in having to respond to them, which the commenter believed have no merit under the law. The commenter thus suggested that the last paragraph of the declination notice in the Appendix to the subchapter be amended to read: "If <u>the box in front of 'You do not meet our current underwriting guidelines' is checked and</u> you believe that the reasons that you fail to meet the insurer's underwriting guideline(s) are incorrect, you may file a written complaint with the Department's Office of Consumer Services… ." (language to be added is underlined)

RESPONSE: Upon review, the Department has determined not to change this provision. The Department believes that the change suggested by the commenter is unnecessary and could be confusing to those receiving the notice as to whether they have the ability to file a complaint with the Department. The suggested change could appear to be prohibition against the filing of a complaint with the Department if a certain box is checked on the declination form, which is not factually correct.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-2.8(d), which provides that an applicant shall certify that he or she has attempted to obtain auto insurance in the last 60 days and is a qualified applicant for PAIP. The commenter stated that the rule does not contain any provision requiring a PAIP applicant who is an eligible person to present a written denial from an insurer that has met their territorial quotas and is using alternative underwriting rules to support his or her certification. This could result in numerous unqualified applicants being submitted to PAIP with PAIP not being able to verify whether the applicant is qualified. Accordingly, the commenter suggested that the rule should require that PAIP applicants who are qualified eligible persons present a written denial of insurance by an insurer who is authorized to use alternative writing rules. The commenter suggested that the Department add a new second sentence reading as follows: “A qualified eligible person is required to submit a written denial from the insurer that denied him or her insurance pursuant to alternative underwriting rules as part of the application.”

RESPONSE: The issue raised by the commenter will be addressed in the VRT rules in the PAIP Plan of Operation.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-40.3(b), which identifies seven circumstances when insurers are not required to provide automobile insurance coverage to eligible persons. The proposal adds an additional circumstance when an exception is warranted, that is, for those territories in which an insurer is permitted to use its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A. The commenter suggested that this rule also address those circumstances when an insurer has met the required growth standards.

RESPONSE: Upon review, the Department has determined that no changes are required. The circumstances when an insurer has met required growth standards are addressed under N.J.A.C. 11:3-35A. Accordingly, the circumstances proposed for inclusion in the rule by the commenter are already included in the rules by reference, and the Department believes that no further clarification is necessary.

Summary of Agency-Initiated Changes:

In N.J.A.C. 11:3-2.2 and 2.8, the Department is correcting the citation references to N.J.A.C. 11:3-34.2 to refer to N.J.A.C. 11:3-34.4 upon adoption as a matter of form.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules and

amendments are not subject to any Federal requirements or standards.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *__thus__*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

11:3-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

…

"Qualified eligible person" means a person who meets the definition of an eligible person at N.J.A.C. 11:3-***[**34.2**]* *34.4*** but who has been denied an automobile insurance policy by an insurer permitted to use its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.

11:3-2.8 Eligibility

(a) PAIP shall provide coverage to all qualified applicants. For purposes of this subchapter, a "qualified applicant" means:

1. A person who is not an "eligible person" as defined in N.J.A.C. 11:3-***[**34.2**]* *34.4*** or who is a qualified eligible person; and

2. (No change.)

(b) – (f) (No change from proposal.)

11:3-2.11 Determination and fulfillment of quotas

(a) The governing committee shall establish procedures in the plan of operation to distribute risks eligible for coverage to insurers on an equitable basis based on the proportion that the insurer's share of the voluntary market for personal private

automobile insurance relates to the Statewide total of the voluntary market for personal private passenger automobile insurance in the State.

1. - 3. (No change.).

4. Each insurer shall receive credit against its respective portion of assigned risks for private passenger automobile risks written voluntarily in the State that are garaged in the UEZs. Such credit*s* shall be *[given in the amount of one assigned risk credit for every two voluntary risks written the UEZs]* ***in an amount established in the plan of operation***.

5. (No change from proposal.)

6. Each insurer that *[exceeds the growth requirements established in N.J.A.C. 11:3-35A.4(a) through (j)]* ***activates its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.6*** shall receive a credit against *[assignment of qualified eligible persons pursuant to N.J.A.C. 11:3-2.13]* ***its respective portion of assigned risks for private passenger automobile insurance for risks written voluntarily***. The credits shall be in an amount established in the plan of operation *[for the Voluntary Rating Tier]*.

7. In order to encourage the writing of risks in traditionally underserved areas, the PAIP shall, in its allocation of credits *[for writing ineligible risks and exceeding growth requirements in (a) 4 and 6 above that are written outside of UEZs]* ***as set forth in (a)6 above***, consider the loss ratio of the *[territory]* ***municipality, identified by zip code,*** in which the risk is located *[or the loss ratio of the UEZ, as appropriate]*. The loss ratios for *[the territories and the UEZs]* ***municipalities*** shall be established by the Department from data compiled by the statistical agents and shall be

included in the Plan of Operation*[s]*. *[Risks cannot earn multiple credits. A risk that qualifies for multiple credits shall receive the highest applicable credit.]*

8. (No change in text.)

(b)- (i) (No change.)

11:3-2.13 Voluntary rating tier (VRT)

(a) The voluntary rating tier shall be administered by the PAIP in accordance with *[a VRT]* ***its*** plan of operation *[submitted by PAIP and approved by the Commissioner]*.

(b) The *[VRT]* plan of operation shall provide for :

1. - 4. (No change from proposal.)

5. A VRT producer eligibility program, which shall be available only to producers otherwise certified by the PAIP who have ***[**an agency**]*** ***a*** contract ***to write personal private passenger automobile insurance*** with a voluntary market insurer that is actively writing ***personal private passenger*** automobile insurance in this State ***that authorizes the producer to solicit business on the insurer's behalf*** ;

6. - 7. (No change from proposal.)

SUBCHAPTER 35A. PRIVATE PASSENGER AUTOMOBILE INSURANCE - USE OF ALTERNATE UNDERWRITING RULES

11:3-35A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Declination," "denied" or "denial" means:

1. Refusal by an insurance *[agent]* ***producer*** to submit an application on behalf of an applicant to *[any of]* the insurers represented by the *[agent]* ***producer***;

2. (No change from proposal.)

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an applicant *[, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer, or the offer at a rate applicable to other than eligible persons]*;

4. The refusal by an insurer or *[agent]* ***producer*** to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage; or

5. (No change from proposal.)

. . .

***"New business" means an automobile not currently insured by the automobile insurer or its affiliates that is other than:**

1. A replacement automobile;

2. An added automobile; or

3. An automobile whose coverage is reinstated by the automobile insurer after a grace period with or without time out of force.*

. . .

11:3-35A.4 Growth requirements

(a) In each territory where its in-force exposures as of December 31, 2003, as filed in the consolidated report ***due*** on or before January 31, 2004 exceed the in-force exposures as of December 31, 2002 by five percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2004 through July 31, 2004*[;]* ***.***

(b) In each territory where its in-force exposures as of June 30, 2004, as filed in the consolidated report due on or before July 31, 2004, exceed the in-force exposures as of June 30, 2003 by five percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2004 through January 31, 2005*[;]* ***.***

(c) In each territory where its in-force exposures as of December 31, 2004, as filed in the consolidated report due on or before January 31, 2005, exceed the in-force exposures as of December 31, 2003 by four percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2005 through July 31, 2005*[;]* ***.***

(d) In each territory where its in-force exposures as of June 30, 2005, as filed in the consolidated report ***due*** on or before July 31, 2005, exceed the in-force

exposures as of June 30, 2004 by four percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2005 through January 31, 2006; *[;]* ***:*

(e) In each territory where its in-force exposures as of December 31, 2005, as filed in the consolidated report due on or before January 31, 2006, exceed the in-force exposures as of December 31, 2004 by three percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2006 through July 31, 2006*[;]* ***:***

(f) In each territory where its in-force exposures as of June 30, 2006, as filed in the consolidated report ***due*** on or before July 31, 2006, exceed the in-force exposures as of June 30, 2005 by three percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2006 through January 31, 2007; *[;]* ***:***

(g) In each territory where its in-force exposures as of December 31, 2006, as filed in the consolidated report due on or before January 31, 2007, exceed the in-force exposures as of December 31, 2005 by two percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2007 through July 31, 2007*[;]* ***:***

(h) In each territory where its in-force exposures as of June 30, 2007, as filed in the consolidated report due on or before July 31, 2007, exceed the in-force exposures as of June 30, 2006 by two percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2007 through January 31, 2008*[;]* ***:***

(i) In each territory where its in-force exposures as of December 31, 2007, as

filed in the consolidated report due on or before January 31, 2008, exceed the in-force exposures as of December 31, 2006 by one percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2008 through July 31, 2008*[;]* ***:***

(j) In each territory where its in-force exposures as of June 30, 2008, as filed in the consolidated report due on or before July 31, 2008, exceed the in-force exposures as of June 30, 2007 by one percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2008 through December 31, 2008*[;]* ***:***

(k) – (m) (No change from proposal.)

11:3-35A.6 Activation of alternate underwriting rules

(a) An insurer shall activate the use of its alternate underwriting rules by making a filing with the Commissioner. The filing shall include the information set forth in (a)1 and 2 below for *[each]* ***the*** territory***(ies)*** where the insurer has met the growth standard established in N.J.A.C. 11:3-35A.4.

1. - 2. (No change from proposal.)

(b) - (d) (No change from proposal.)

[(c)] ***(e)*** An eligible person declined automobile insurance in a rating territory where an insurer is using its alternate underwriting rules or has ceased writing new business shall be advised by the insurer or its *[agent]* ***producer*** of the specific underwriting rule(s) not met or that the insurer is not writing any new business in the territory. The applicant shall also be advised that coverage may be available from another

insurer or that coverage is available in the Voluntary Rating Tier in PAIP.

1. If the declined application or request for coverage was made in writing, the insurer or *[agent]* ***producer*** shall provide the applicant with the denial notice found in the subchapter Appendix, incorporated herein by reference. ***The insurer or producer may add other information to the denial notice set forth in the Appendix if that information does not contradict or detract from the contents of the denial notice.***

2. If the application or request was made orally, the insurer or *[agent]* ***producer*** may provide the explanation of the reasons for denial orally but shall provide the written denial notice if requested by the applicant within 30 days of the oral denial.

APPENDIX

COMPANY LETTERHEAD

Producer Name
(if applicable)

NOTICE OF DECLINATION PURSUANT TO N.J.S.A. 17:33B-15

DATE: _____

NAME OF APPLICANT: _____
OR PROSPECTIVE APPLICANT
Territory: _____

Thank you for your interest in obtaining private passenger automobile insurance from COMPANY NAME. We regret that we are unable to issue you an auto insurance policy at this time because, Check one:

[ ] Our company is not writing business in this territory at this time.

[ ] You do not meet our current underwriting rules. The rule(s) you d not meet are:

_____

_____
SPECIFY UNDERWRITING RULE(S) NOT MET

The facts on which we relied to make this determination are:

_____
[**SPECIFY UNDERWRITING RULE(S) NOT MET**]

Please be aware that underwriting guidelines differ by company, so you may qualify for coverage from another insurer. If you are unable to obtain coverage from another insurer *~~,~~* you are entitled to coverage at competitive rates through the New Jersey Personal Auto Insurance Plan (PAIP).

For help contacting another insurer or PAIP, please ask your *[agent]* ***producer*** or call the New Jersey Department of Banking and Insurance (Department) at 1-800-446-SHOP. Information about other insurers and PAIP can also be found on the Department's website, www.state.nj.us/dobi.

If you believe that the reasons that you failed to meet the insurer's underwriting guideline(s) are incorrect, you may file a written complaint with the Department's Office of Consumer Services, P.O. Box 329, Trenton, NJ 08623-0329. Please attach a copy of this notice and provide other relevant information.

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