

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Private Passenger Automobile Insurance - Use of Alternate Underwriting Rules

Proposed New Rules: N.J.A.C. 11:3-2.13, and 35A

Proposed Amendments N.J.A.C. 11:3-2.2, 2.8 and 2.11; 11:3-35.3; and 11:3-40.3

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

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

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

Proposal Number: PRN 2003 – 418

Submit comments by December 5, 2003 to:

Douglas A. Wheeler, Assistant Commissioner  
Legislative and Regulatory Affairs  
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](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

Summary

P.L. 2003, c. 89, (the “Act”) provides a well-balanced solution to the immediate automobile insurance availability crisis facing New Jersey consumers, insurers and regulators. Sections 38 and 39 of the Act set out a structure for the return of New Jersey to a competitive market in automobile insurance by phasing out the requirement that insurers must provide coverage to all eligible persons who apply.

The requirement that automobile insurers take all applicants who meet the definition of an eligible person was mandated by the Fair Automobile Insurance Reform (FAIR) Act of 1990. The requirement was intended in part to reduce the volume of risks insured by the automobile residual market mechanism, the New Jersey Automobile Full Insurance Underwriting Association (NJAI FUA, also known as the JUA).

The “take all eligibles” requirement has, however, become a barrier to creating a competitive market in auto insurance in New Jersey as it prohibits the operation of specialized or niche market insurers. The Act phases out the requirement over the next five years while providing authority to the Commissioner to reinstate the requirement if the market becomes uncompetitive. The Act also provides for the establishment of a voluntary rating tier in the Personal Automobile Insurance Plan (PAIP), the current residual market mechanism, for persons who cannot secure coverage in the voluntary market.

The Department is proposing new rule, N.J.A.C. 11:3-35A, Private Passenger Automobile Insurance - Use of Alternate Underwriting Guidelines.

Proposed N.J.A.C. 11:3-35A.1 sets forth the scope and purpose of the new subchapter.

Proposed new N.J.A.C. 11:3-35A.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:3-35A.3 provides that insurers may use one set of alternate underwriting rules to those filed and approved pursuant to N.J.A.C. 11:3-35, or may cease writing business in any territory where the insurer has met the growth requirements

of this subchapter. Insurers are required to make an informational filing of their alternate underwriting rules with a certification that they are in compliance with the N.J.A.C. 11:3-35A.5. Use of the insurer's alternate underwriting rules pursuant to this subchapter does not affect the insurer's obligations to renew policies in accordance with N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.3, or to meet its goals under the Automobile Urban Enterprise Zone program in accordance with N.J.A.C. 11:3-46.

Proposed N.J.A.C. 11:3-35A.4 sets forth the growth requirements that must be met in each territory where the insurer uses its alternate underwriting rules. Insurers currently file the number of in-force exposures by territory with the Department every six months. For each semi-annual filing, an insurer that meets the growth requirement for the previous 12 months in a territory may use the alternate underwriting rules. For calendar year 2004, the growth requirement for the previous 12 months is five percent, decreasing to one percent in 2008. Proposed N.J.A.C. 11:3-35A.4(k) permits insurers that have reached the growth target before the end of the 12-month period to file early to use its alternate underwriting rules.

Proposed N.J.A.C. 11:3-35A.4(l) explains how the growth targets will apply to new companies entering the market. Pursuant to N.J.A.C. 11:3-42.3(b)3, an insurer is not required to offer coverage to all eligible persons until the insurer has 1,000 in-force exposures. The subsection provides that the first consolidated report filed after an insurer reaches the 1,000 exposure threshold is the baseline for applying the growth targets.

Proposed N.J.A.C. 11:3-35A.4(m) permits insurers to request a lower percentage growth standard if they demonstrate that the standards mandated in this subchapter would result in the insurer being in financial difficulty.

Proposed N.J.A.C. 11:3-35A.5 sets forth the requirements for an insurer's alternate underwriting rules and identify items that are specifically prohibited for use in underwriting rules, such as race, color, creed, national origin or ancestry, or the lawful occupation of the insured. In addition, an insurer's alternate underwriting rules must apply uniformly in all exempted territories .

Proposed N.J.A.C. 11:3-35A.6 sets forth the requirements for an insurer to activate its alternate underwriting rules or determine not to write further business in the territories where it has met the applicable growth requirement. An insurer must file a certification with the Commissioner that demonstrates that the growth requirement has been met and informs the Department about whether an insurer will use alternate underwriting guidelines or cease writing new business in the territory.

The proposed new rule also requires that where an applicant for insurance does not meet the insurer's alternate underwriting guidelines or the insurer is not writing business in the territory, the applicant shall be provided with a notice of denial. The form of the notice is found in the subchapter Appendix.

Proposed N.J.A.C. 11:3-35A.7 sets forth the conditions that would cause the Commissioner to determine that the market is uncompetitive and issue an order reinstating the requirement to "take all eligibles" in all territories. This event will be triggered if the PAIP is insuring 10 percent or more of the automobiles in the state or if, after a notice and a hearing, the Commissioner finds that two or more of the market factors listed in the rule exist.

N.J.A.C. 11:3-35A.8 is being proposed to set forth the penalties for violation of any provision of this subchapter.

N.J.A.C. 11:3-35.3 is proposed for amendment to include a reference to the alternate underwriting rules permitted by N.J.A.C. 11:3-35A.

N.J.A.C. 11:3-40.3 is proposed for amendment to include a reference to N.J.A.C. 11:3-35A in the list of conditions where the “take all eligibles” requirement does not apply.

Finally, the Department is proposing to amend several sections of N.J.A.C. 11:3-2, the New Jersey Personal Automobile Insurance Plan. Proposed N.J.A.C. 11:3-2.2 is amended to add a definition of “qualified eligible person” to refer to persons who meet the definition of a person who is eligible for insurance in the voluntary market but has been denied coverage because he or she does not meet the alternate underwriting rules used by the insurer.

N.J.A.C. 11:3-2.8 is proposed for amendment to delete the requirement in subsection (a) that PAIP may only provide coverage to those who do not meet the definition of an eligible person and include “qualified eligible persons” among those to whom coverage in the PAIP is available.

N.J.A.C. 11:3-2.11 is proposed for amendment to specify that the urban areas eligible for credits are the Urban Enterprise Zones (UEZ) established by the Commissioner pursuant to N.J.A.C. 11:3-46. In addition, an outdated reference to the Market Transition Facility is being deleted. The amendment also implements the Act by providing for a PAIP credit for writing business in excess of the growth standards in N.J.A.C. 11:3-35A.4. The credits will be applied towards the insurer’s assignments in the voluntary rating tier. In addition, the proposal directs the PAIP to consider the rate relativity factor of various territories and of the UEZs in its credit program. The

Department believes that adjusting credits based on these loss ratios will encourage insurers to write business in traditionally underserved areas.

Proposed new N.J.A.C. 11:3-2.13 sets forth the requirements for a new Voluntary Rating Tier (VRT) in the PAIP for applicants who cannot find coverage in territories where an insurer is using its alternate underwriting guidelines. This VRT is separate and different from that created for UEZ assignments pursuant to N.J.A.C. 11:3-46.6 The new VRT shall be administered by the PAIP pursuant to a plan of operation, which shall include procedures for determining the eligibility of applicants, assignment of applicants to insurers and development of a statistical plan. The proposal also requires that the PAIP's new VRT plan of operation shall have a producer eligibility program. 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 Department believes that this eligibility standard provides a place for producers to write those voluntary insureds that are declined by a company that is using its alternate underwriting guidelines. Expansion of the eligibility standard to producers who cannot write any voluntary business would likely result in the PAIP quickly reaching, and thereafter exceeding the statutory 10 percent cap for the residual market.

#### Social Impact

It is anticipated that the proposed amendments and new rules will have a positive impact on consumers due to the likely increase in the number of insurers that will enter the New Jersey market as a result of the passage of the Act, the promulgation of these amendments and new rules and of other currently pending proposed new and amended rules. (See Department notices of proposal in the July 21, 2003 and August 4,

2003 issues of the New Jersey Register.) In recent years, several insurers have withdrawn from the New Jersey auto insurance market or experienced financial difficulties. One reason often cited for these problems is the over-regulation of the New Jersey automobile insurance market, typified by the present “take all eligibles” requirement. The result has been an availability crisis in the market with fewer and fewer choices of insurers available to New Jersey consumers. The absence of a viable competitive market has impeded regulatory efforts to reduce automobile insurance rates. Making the New Jersey automobile market more similar to those in other states by permitting insurers to better manage their business should deter current automobile insurers from exiting the New Jersey market, and may attract other insurers to enter the New Jersey market.

These proposed amendments and new rules benefit insureds because the phase out of the “take all eligibles” requirement will occur gradually and thus not disrupt the market. In addition, the voluntary rating tier in the Personal Automobile Assigned Risk Plan will provide a safety net for applicants for insurance who have difficulty finding a company to provide coverage to them.

#### Economic Impact

The proposed amendments and new rules will have an economic impact on auto insurance companies. Companies that wish to use the increased flexibility provided by the amendments and new rules will have to create alternate sets of underwriting rules and distribute them to their agents or customer service representatives. Insurers will have to produce the declination notice required by the amendments and new rules for applicants

who do not meet the insurer's alternate underwriting rules. Insurers will also have to take assignments of otherwise eligible persons through the Voluntary Rating Tier and implement the PAIP rating system for them. However, as noted above in the Social Impact, the increased flexibility in writing new business in those territories where the insurer has met the growth standard in the rule should have a beneficial effect on insurers.

The Department believes that the proposed amendments and new rules will have little economic effect on insureds. Permitting insurers to use alternate underwriting rules will have no effect on rates. The rates in the Voluntary Rating Tier will be competitive with those elsewhere in the voluntary market for similar risks. The anticipated increase in competition created by the phase-out of the "take all eligibles" requirement should put downward pressure on rates for most drivers.

The Department does not anticipate any significant economic impact as a result of the proposed amendments and new rules. Insurer's alternate underwriting rules do not have to be filed or approved. The certifications filed by insurers who qualify to use their alternate underwriting rules are informational filings only.

#### Federal Standards Statement

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

#### Jobs Impact

Although the Department does not anticipate that the amendments and new rules alone will result in the generation or loss of jobs, it believes that the package of statutory and regulatory amendments of which they are a part, taken as a whole, will contribute to

the attractiveness and competitiveness of the New Jersey automobile insurance market and help preserve and expand employment in the automobile insurance industry and in insurance agencies and brokerage firms. The Department invites interested persons to submit any data or studies about the job impact of these proposed amendments and new rules with their written comments.

#### Agriculture Industry Impact

The Department does not expect any agriculture industry impact from these proposed amendments and new rules.

#### Regulatory Flexibility Analysis

Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a "small business" means any business resident in this State which employs fewer than 100 full-time employees; is independently owned and operated; and is not dominant in its field. Some automobile insurers affected by these amendments and new rules may meet this definition.

These proposed amendments and new rules impose compliance requirements on insurers, as discussed in the Summary above. As noted in the Economic Impact above, insurers will have to bear any costs incurred in developing alternative underwriting rules, disseminating information to their producers or customer service representatives and accepting assignments under the voluntary rating tier. These costs may include the professional services of computer programming and systems consultants if such services are not available to the insurer in-house. These costs cannot be accurately estimated by the Department at this time since they vary greatly by insurer.

The proposed amendments and new rules provide no different compliance requirements based on business size. The proposed amendments and new rules implement a statutory mandate and variation of compliance requirements based on business size would not be feasible or consistent with the intent of the Legislature. However, the Department does note that insurers are not required to file or report alternate underwriting guidelines.

#### Smart Growth Impact

The proposed amendments and new rules will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

...

**“Automobile insurance urban enterprise zone” or “UEZ” means a geographic area identified by zip codes and designated by the Commissioner pursuant to N.J.A.C. 11:3-46.**

. . . .

**“Qualified eligible person” means a person who meets the definition of an eligible person at N.J.A.C. 11:3-34.2 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] The PAIP shall not provide coverage to an eligible person as defined in N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.]

[b)] **(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 **or who is a qualified eligible person;** and

2. (No change.)

Recodify existing (a) – (d) as **(b) – (c)** (No change in text.)

[(e)]~~(d)~~As a prerequisite to consideration for assignment under the PAIP, the applicant must certify, in the prescribed application form approved by the Commissioner, that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in the State and that he or she is a qualified applicant as set forth in ~~(a)~~, (b)[,] **and** (c) [and (d)] above. An applicant so certifying shall be considered for assignment upon making application in good faith to the PAIP. An application shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form approved by the Commissioner.

Recodify existing (f) - (g) as ~~(e) - (f)~~ (No change in text.)

#### 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 [(including the insurer's apportionment share for the depopulation of the Market Transition Facility pursuant to N.J.S.A. 17:33B-11c(5))] 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 [those urban territories designated by the Commissioner.] **the UEZs.** Such

credit shall be given in the amount of one assigned risk credit for every two voluntary risks written in [those designated territories] the UEZs.

**5.** Each insurer shall [also] receive one assigned risk credit for each risk [which] that is not an eligible person written in accordance with the insurer's approved rating system, regardless of the territory in which the risk is located.

**6.** Each insurer that exceeds the growth requirements established in N.J.A.C. 11:3-35A.4(a) through (j) shall receive a credit against assignment of qualified eligible persons pursuant to N.J.A.C. 11:3-2.13. 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, consider the loss ratio of the territory in which the risk is located or the loss ratio of the UEZ, as appropriate. The loss ratios for the territories and the UEZs shall be established by the Department from data compiled by the statistical agents and shall be included in the Plan of Operation. Risks cannot earn multiple credits. A risk that qualifies for multiple credits shall receive the highest applicable credit.

[5. ] **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 plan of operation submitted by PAIP and approved by the Commissioner.

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

- 1. The procedure for determining eligibility of applicants for coverage in the VRT;**
- 2. Procedures for the assignment of qualified eligible persons to the member insurers of the PAIP pursuant to the apportionment methodology of the PAIP Plan of Operation and including any credits pursuant to N.J.A.C. 11:3-2.11(a)6;**
- 3. Procedures for the nonrenewal of policies;**
- 4. Performance standards for insurers and producers;**
- 5. A VRT producer eligibility program, which shall be available only to producers otherwise certified by the PAIP who have an agency contract with a voluntary market insurer that is actively writing automobile insurance in this State;**
- 6. Development and maintenance of a statistical plan and of manuals that incorporate the plan and a rating system; and**
- 7. Such other provisions as are deemed necessary by the Governing Committee for the operation of the PAIP.**

11:3-[2.13] **12.14** (No change in text.)

SUBCHAPTER 35. PRIVATE PASSENGER AUTOMOBILE INSURANCE UNDERWRITING RULES

11:3-35.3 General requirements and filing format

(a) [All] **Except as provided in N.J.A.C. 11:3-35A, all** insurers [which] **that** write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business to a tier in a tier rating plan in accordance with N.J.S.A. 17:29A- 46.1 and 46.2 and this subchapter. No insurer shall use or implement any underwriting rule not filed and approved as set forth herein.

(b) – (f) (No change.)

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

**11:3-35A.1 Scope and purpose**

**(a) This subchapter implements N.J.S.A. 17:29A-46.2, which permits insurers that have met the requirements of the subchapter to have underwriting rules that are used to refuse to issue or limit coverage for new business.**

**(b) This subchapter applies to all insurers that are licensed and authorized to transact personal lines private passenger automobile insurance in the voluntary market.**

**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.**

**“Affiliated companies” means two or more individual insurance companies that are authorized to transact personal lines private passenger automobile**

insurance business in New Jersey and that are under common ownership and common management.

“Alternate underwriting rules” means a set of underwriting rules that an insurer may use in accordance with the provisions of this subchapter and instead of the underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.3.

“Automobile” or “private passenger automobile” means a vehicle that meets the definition of “automobile” set forth at N.J.S.A. 39:6A-2.

“Automobile insurance” means personal lines private passenger automobile insurance.

“Automobile insurer” or “insurer” means an insurer or group of affiliated insurers authorized or admitted to transact the business of personal lines private passenger insurance in this State.

“Commissioner” means the Commissioner of Banking and Insurance of the State of New Jersey.

“Consolidated report” means the report required to be filed by insurers pursuant to N.J.A.C. 11:3-3A.3.

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

1. Refusal by an insurance agent to submit an application on behalf of an applicant to any of the insurers represented by the agent;
2. Refusal by an insurer to issue an automobile insurance policy to an applicant upon receipt of an application for automobile insurance;
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 to insure at a rate applicable to other than eligible persons;

4. The refusal by an insurer or agent 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. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant or, if requested, to notify the applicant whether coverage will be provided or denied within five business days of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a).

“Department” means the New Jersey Department of Banking and Insurance.

“Eligible person” means an eligible person as defined in N.J.S.A. 17:33B-13.

“PAIP” means the New Jersey Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-2.

#### 11:3-35A.3 General requirements

(a) Notwithstanding the provisions of N.J.A.C. 11:3-35, an insurer may use alternate underwriting rules for new business or may cease writing new business in any rating territory where the insurer has met the growth requirements specified in N.J.A.C. 11:3-35A.4 and made the filing required by N.J.A.C. 11:3-35A.6.

1. Nothing in this subchapter shall reduce an insurer's obligation to renew policies pursuant to N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.3.

2. Nothing in this subchapter shall reduce an insurer's obligation to meet its Urban Enterprise Zone share pursuant to N.J.A.C. 11:3-46.

(b) 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.

(c) Alternate underwriting rules shall be filed with the Department as follows:

1. An insurer's initial set of alternate underwriting rules shall be included in the filing made pursuant to N.J.A.C. 11:3-35A.6.

2. Revisions to an insurer's alternate underwriting rules may be submitted on a use and file basis within 30 days of their use and shall include the certification as set forth in N.J.A.C. 11:3-35A.6(b) and the date on which they became effective.

#### 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 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 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, 20/06;

(f) In each territory where its in-force exposures as of June 30, 2006, as filed in the consolidated report 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 1, 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) An insurer that reaches a growth standard in (a) through (j) above before the report date may make the filing required in N.J.A.C. 11:3-35A.6 when it meets the requisite growth standard. The insurer may use its alternate underwriting rules on the first day of the second calendar month after the certification is filed.

1. For example, on March 15, 2004, an insurer who has met the five percent growth requirement in (b) above in one or more territories may make a filing with the Department and begin using its alternate underwriting rules in that territory on May 1, 2004.

2. Any insurer that makes an early filing pursuant to this paragraph must make another filing based on the June 30 or December 31 consolidated report, as applicable, to continue using its alternate underwriting rules.

(l) The growth requirements for an insurer newly authorized to transact automobile insurance in this State and that had no in-force exposures on December 31, 2002 shall be as follows:

1. The insurer's baseline for growth shall be the consolidated report in (a) through (j) above in which the insurer's total number of in-force exposures exceeds 1,000.

(m) An insurer may file a request with the commissioner to use a lower percentage growth standard than those listed in (a) through (j) above and the Commissioner may approve such a filing upon a finding that meeting the growth standard in this subchapter would result in the insurer qualifying for relief from its obligations pursuant to N.J.A.C. 11:2-35 or being in hazardous financial condition pursuant to N.J.A.C. 11:2-27.

11:3-35A.5 Alternate underwriting rules

(a) Alternate underwriting rules shall meet the following standards:

1. An underwriting rule shall be based on specific and verifiable

standards. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.

2. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

3. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

3. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

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 territory where the insurer has met the growth standard established in N.J.A.C. 11:3-35A.4.

1. The in-force exposures in the territory, showing the required growth percentage over the year ending June 30 or December 31, or shorter period pursuant to N.J.A.C. 11:3-35A.4(k). For example, Territory 1 - June 30, 2004, 1,000 in-force exposures; June 30, 2005, 1040 exposures = four percent growth; and

2. Whether the insurer will:

i. Continue to use its underwriting guidelines filed and approved pursuant to N.J.A.C. 11:3-35;

ii. Use alternate underwriting guidelines that meet the requirements of N.J.A.C. 11:3-35A.5; or

iii. Cease writing new business.

(b) The filing shall be accompanied by the following certification signed by an officer of the insurer:

"I \_\_\_\_\_ certify that the attached filing complies with all statutory and regulatory requirements and that all the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(c) The filing shall be sent to:

New Jersey Department of Banking and Insurance

Office of Property and Casualty

P.O. Box 325

Trenton, NJ 08625-0325

email: reports@dobi.state.nj.us

(d) An insurer may change its selection in (a)2 i through iii above by making a supplementary filing with the Department. The change shall be effective on the first day of the second month after the filing is received.

(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 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 shall provide the applicant with the denial notice  
found in the subchapter Appendix, incorporated herein by reference.

2. If the application or request was made orally, the insurer or  
agent 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.

11:3-35A.7 Determination of an uncompetitive market

(a) Notwithstanding the provisions of this subchapter, the Commissioner  
may make operative the provisions of N.J.A.C. 11:3-35 in all territories upon a  
finding that a competitive market does not exist among insurers authorized to write  
private passenger automobile insurance in this State pursuant to (a)1 or 2 below.

1. The Commissioner certifies that the PAIP is insuring ten  
percent or more of the aggregate number of private passenger automobiles for  
which coverage is being written in this State; or

2. After notice and a hearing, the Commissioner issues an order  
that finds two or more of the factors listed in (b) below exist.

i. A hearing under this subsection shall be convened in  
accordance with the procedures set forth in N.J.S.A. 52:14B-4(g). Any order issued

by the Commissioner pursuant to this subsection shall include specific findings of fact and be supported by clear and convincing evidence.

ii. Any ruling that finds that competition does not exist within the market for automobile insurance shall include specific findings regarding:

(1) The actions the State and the Commissioner have taken to return the market to a competitive market; and

(2) An explanation regarding why those actions have failed to return the market to a competitive market.

iii. 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 as to continued lack of a reasonable degree of competition.

(b) The following factors shall be considered by the Commissioner for purposes of determining if a reasonable degree of competition does not exist in automobile insurance:

1. The number of insurers actively engaged in providing coverage in the market, taking into account any specialization among insurers;

2. Measures of market concentration and changes of market concentration over time, including, but not limited to, the Herfindahl-Hirschman Index (HHI) and the United States Department of Justice merger guidelines for an unconcentrated market;

3. Ease of entry and exit and the existence of financial or

economic barriers that could prevent new insurers from entering the market;

4. The extent to which any insurer controls all or a dominant portion of the market and has actively sought to prevent competition;

5. Whether the total number of insurers in this State is sufficient to provide multiple options;

6. The availability of insurance coverage to consumers in the voluntary market; and

7. The opportunities available to consumers in the market to acquire pricing and other consumer information.

(c) The Commissioner shall monitor, and take all reasonable actions to maintain, the degree and continued existence of competition in this State on an on-going basis. In doing so, the Commissioner may utilize existing relevant information, analytical systems and other sources, or rely on any combination thereof. Monitoring activities may be conducted internally within the Department, in cooperation with other state insurance departments, through outside contractors and in any other manner deemed appropriate by the Commissioner.

(d) Any order issued by the Commissioner that determines that a competitive market does not exist may limit the form of policies to which the order applies and shall establish a maximum increase in an insurer's aggregate number of private passenger automobiles to which the order applies, which increase shall not exceed the maximum limits set forth in N.J.A.C. 11:3-35A.4(a) through (j).

11:3-35A.8 Penalties

**Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as authorized by law including the suspension, revocation or otherwise termination of the certificate of authority to transact automobile insurance business in this State pursuant to N.J.S.A. 17:33B-15e or the imposition of fines of up to \$1,000 for the first offense and up to \$2,000 for each subsequent offense, pursuant to the authority of N.J.S.A. 17:33-2.**

SUBCHAPTER 40. INSURERS REQUIRED TO PROVIDE AUTOMOBILE INSURANCE COVERAGE TO ELIGIBLE PERSONS

11:3-40.3 Insurers required to provide automobile insurance coverage to eligible persons

- (a) (No change.)
- (b) The requirements set forth in (a) above shall not apply to the following:

1 - 7 (No change.)

**8. Those territories in which an insurer is permitted to use its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.**

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 do 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 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](http://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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