

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Private Passenger Automobile Insurance Territorial Rating Plans

Reproposed New Rules: N.J.A.C. 11:3-16A

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, N.J.S.A. 17:29A-48 et seq. and 17:29A-36

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

Proposal Number: PRN 2004 - 327

Submit comments November 6, 2004 to:

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The agency proposal follows:

Summary

Rating territories are geographic areas that are utilized as one of the factors in determining automobile insurance rates or premiums. Territories are used as one of many rating factors in automobile insurance rating systems in most states, including New Jersey. A purpose of the territorial factor is to reflect the variation in the risk of loss based on vehicle garage location. Territorial differences affect the risk of loss, and thus the insurance rates.

In New Jersey, the current territorial map was created over 50 years ago. Since that time, there have been significant demographic and traffic pattern changes, for example, many formerly rural or suburban areas have become more urban. It is necessary to reflect those changes in

determining auto insurance rates and premiums.

In the Automobile Insurance Cost Reduction Act (AICRA), P.L. 1998, c.21, enacted May 19, 1998, the Legislature recognized that the current territorial boundaries needed revision. AICRA required that new territorial maps and rating factors be created and provided for the creation of alternatives to the single map used today. It created the Automobile Insurance Territorial Rating Plan Advisory Commission (Commission) to develop a common territory map to be available for use by insurers. It also required the Department of Banking and Insurance (Department) to establish standards to be used by the Commission for the development of territories. In addition, insurers and rating organizations would be permitted to develop their own territory maps with the approval of the Department using the standards promulgated by the Department. All insurers will be required to file new rating systems to implement the new territorial map they choose to utilize.

In AICRA, the Legislature recognized that development of new territorial maps should include consideration of not only the application of actuarial data and loss experience, but also public policy concerns reflecting the unique characteristics of New Jersey as a State: New Jersey is relatively small geographically; it is the most densely populated state; it is the only state considered entirely “urban” under Federal census definitions; it has a mobile population that relies heavily on automobiles; and it mandates that all motorists purchase automobile insurance.

In order to implement the statute, the Department proposed new rules, N.J.A.C. 11:16A, which appeared in the July 21, 2003 issue of the New Jersey Register. See 35 N.J.R. 3089(a). In developing standards to implement this statute and redraw the territories, the Department has tried to balance statistical and actuarial indications with the other standards and considerations set forth in the statute, which reflect Legislative public policy concerns.

Based on comments received on the proposed rules, the Department has determined it is

appropriate to make substantive changes to the rules proposed in July 2003. Accordingly, the Department is reproposing these rules. As set forth in more detail below, the changes relate to various topics, including permitting filers to develop their own territory maps using any relevant industry data, the minimum size of territories, and the use of PIP losses subject to reimbursement pursuant to N.J.S.A. 17:30A-8a(11).

When the rules were originally proposed, the Department received timely written comments from the following:

1. A joint comment from the Insurance Council of New Jersey, the American Insurance Association and the National Association of Independent Insurers;
2. State Farm Indemnity Company;
3. Insurance Services Office, Inc.;
4. Allstate New Jersey Insurance Company;
5. Alliance of American Insurers; and
6. Independent Insurance Agents of New Jersey.

COMMENT: One commenter was generally supportive of the proposal, noting that the territory map in New Jersey needs to be updated to help insurers accurately determine rates.

RESPONSE: The Department appreciates the support.

COMMENT: One commenter sought clarification about whether a new Territorial Rating Commission would be appointed to complete the common territorial map before the adoption of the rules. The commenter also noted that maps previously developed for the Territorial Rating

Commission used data from the year 2000 and recommended that more recent data be used.

RESPONSE: The Department expects that the Territorial Rating Commission will meet again when the rules are adopted. The common territory map must be drawn according to the requirements set forth in this rule, so the Commission cannot create a map until these rules are in place. The Department would consider whether updated data is needed if the Commission so recommended.

COMMENT: The Department received a comment on the definition of “common territory map” in N.J.A.C. 11:3-16A.2. The commenter questioned how the definition, “the territory map filed by the Commission and approved by the Commissioner or, where no map filed by the Commission is approved, a substitute map certified by the Commissioner” reconciles with N.J.S.A. 17:29A-50. That statute provides that “[t]he common territory rating plan shall be subject to the prior approval of the Commissioner.” The commenter stated that no provision exists in the statute for a substitute map to be certified by the Commissioner.

RESPONSE: The Department believes that the provisions of the statute and the repropose rule are consistent. The rule provides for the circumstance where the Commission either fails to submit a map at all or submits one that the Commissioner cannot approve. In that eventuality, the Commissioner will, consistent with the statutory prior approval requirement, approve a common territorial map so that the process can move forward.

COMMENT: One commenter requested that the modifications permitted to the common territorial map or a rating organization’s map by N.J.A.C. 11:3-16A.3(b)3 not be limited to 10 additional

territories. The commenter believes that establishing a maximum in any quantity would be arbitrarily selective and that insurers should enjoy unilateral authority in how they divide their territories.

RESPONSE: Upon review of this issue, the Department has determined it is appropriate to revise the rule upon reproposal to eliminate the requirement in N.J.A.C. 11:3-16A.3(b)3 and 4, and to provide that a territory map may be an individual territorial map approved by the Commissioner pursuant to the rules. The Department has also revised proposed N.J.A.C. 11:3-16A.4(c) to provide that an individual filer may use its own data or any other relevant industry data that may be available for the filer's use. These proposed changes will provide flexibility to insurers that otherwise may not have sufficient exposures to develop their own map based solely on their own data. This also will eliminate any potential unfair disadvantage to smaller insurers that, absent this proposed change, would be required to use the Commission map.

COMMENT: One commenter objected to the requirement in N.J.A.C. 11:3-16A.4(a) that the territories be defined by zip code boundaries and suggested that filers be permitted to use municipal boundaries as an alternative. The commenter noted that zip code boundaries can change, which can cause confusion. Another commenter suggested that the rules should permit insurers with enough exposures to comprise territories by criteria other than municipal boundaries or zip codes.

RESPONSE: The Department does not agree with the commenters. Although zip codes were not created for this purpose and do sometimes change, they have become a commonly used standard for delineating small geographic areas. The fact that the rating agencies use them to collect premium

and loss experience makes them the ideal building block for territories. The Department has also revised the rules upon reproposal to delete the reference that insurers may create territorial maps defined by municipality. The Department believes that approach might cause confusion by implying that zip codes could be split into separate territories to follow municipal boundaries. This would be inconsistent with N.J.A.C. 11:3-16A.4(a).

COMMENT: Two commenters asked for clarification on what constituted a State border in the provision of N.J.A.C. 11:3-16A.4, which requires that “[e]ach territory shall border on at least two other territories, or one territory and a State border.” The commenters also requested that the Department explain if a body of water (a bay or an ocean) is a “State border” for the purposes of establishing territories.

RESPONSE: According to the map of New Jersey published by the New Jersey Division of Travel and Tourism, New Jersey borders three states. The border with New York runs from the Delaware Water Gap east to the Hudson River, then south along the Hudson River to the Upper New York Bay, and finally around Staten Island along the Kill Van Kull and the Arthur Kill into the Raritan Bay. The border with Pennsylvania runs south from the Water Gap along the Delaware River until the Delaware State line below Chester, Pennsylvania. The border with Delaware continues south along the Delaware River from the Delaware State line and runs into the Delaware Bay until approximately the outlet of the Cohansey River. The remainder of New Jersey borders the Atlantic Ocean, the Raritan Bay or the Delaware Bay. The rule has been changed upon reproposal to include a definition of “State border” to mean a land or water border with New York, Pennsylvania, Delaware, the Atlantic Ocean, Raritan Bay or Delaware Bay.

COMMENT: N.J.A.C. 11:3-16A.4(c) identifies the requirements for the common territory map. As initially proposed, it provided:

(c) In establishing the common territory map, the Commission shall use data representing the largest available compilation from insurers. A rating organization that files a territory map shall use the combined data of its subscribers. An insurer filing its own territory map shall use its own data. The territory map filing shall include an explanation of any adjustments or weighting of the raw data used.

Several commenters requested that the Department explain if an individual company can use the Territorial Commission data or the rating organization data to develop its own map and requested that this be permitted. One commenter also wanted to know how this section reconciles with N.J.A.C. 11:3-16A.5(g), which provides that “[t]o the extent that the filer’s own historical experience by territory is less than 100 percent credible, the filer shall weight the territorial indexes from its own experience with an alternate territorial index.” Another commenter stated that this subsection should prohibit any insurer from using the Commission’s data to develop its own map.

RESPONSE: N.J.A.C. 11:3-16A.4(c) specifies what data the various types of filers can use to establish a map. N.J.A.C. 11:3-16A.5(g) sets forth what complement of credibility filers may use if their data is not credible. The two requirements are not related. Further, as set forth in a Response to a previous Comment, the repropose rules have been revised to permit a filer to develop its own map using any relevant industry data that may be available for its use, such as Commission data or rating bureau data.

COMMENT: One commenter questioned why an insurer could not use the approved territorial map of another company. The commenter does not agree with the Department's interpretation that the legislative intent is to not permit this. The commenter states further that this prohibition would force some companies to use the common territorial map, which would put them at a competitive disadvantage.

RESPONSE: In support of its position, the Department notes that an earlier version of the statute included a provision that permitted a company to adopt the territorial plan of another filer, and that this provision was removed in amendments made by the Senate in response to the Governor's recommendations. Further, the statute specifically permits insurers to examine the maps of other companies and challenge them. The Department believes that if the Legislature wanted to permit an insurer to use the map of another insurer, it would have so provided. In addition, as noted above, the repropose rule permits companies to use any relevant industry data to develop their own maps. The ability to do so will provide insurers with additional flexibility and enable them to be more competitive, which is consistent with the Legislature's intent.

COMMENT: The Department received several comments concerning N.J.A.C. 11:3-16A.4(d), regarding the minimum and maximum size of territories. One commenter asked for justification for the Department's decision to use a 2,000 exposure minimum for individual company territories. The commenter stated that this minimum requirement will be difficult for some companies to meet, and will not provide greater statistical accuracy than a minimum of 500 or 1,000 exposures.

Several commenters noted that N.J.A.C. 11:3-16A.4(d), referring to the minimum number of exposures a rating territory may have, does not define the term "exposure." Two commenters

recommended that the term be defined as a property damage exposure, noting that all basic and standard policies have property damage liability. The commenter noted that although PIP coverage is also mandatory, its many options are coded separately, which would make PIP coverage more complicated to use as the indicator for exposures. Another commenter suggested that “exposure” be defined to mean the latest year’s mandatory coverage from the data used to determine territory boundaries. This commenter also requested that the rule be clarified to state that an insurer’s territorial map will not be reopened if, in the future, the number of exposures in a territory declines due to competition.

RESPONSE: The Department has revised the minimum number of exposures required for a territory. The Department initially notes that it has deleted the requirement that insurers filing their own maps must base them solely on their own data. Accordingly, different minimum exposure amounts for Commission, rating bureau and individual insurers is no longer necessary.

Moreover, the Department has revised the repropoed rules to provide a minimum number of exposures of 20,000. The Department believes that this minimum amount is appropriate because it will provide approximately 40 percent credibility with respect to bodily injury coverage and higher credibility for other coverages. It also reflects growth in population since data was first collected. It also provides responsiveness to individual zip code experience while promoting stability in rates between adjoining territories. In addition, the minimum amount is consistent with N.J.S.A. 17:29A-48d, which requires that territories must provide for an equable distribution of exposures among territories throughout the State. The Department is also eliminating the stated maximum size of a territory, but is providing that there shall be no more than 50 territories. This is intended to help ensure that there is an equable distribution of exposures among territories throughout the State

pursuant to N.J.S.A. 17:29A-48d, and to implement the requirement set forth in that statute that territories shall not be significantly disproportionate in the number of exposures per territory.

Further, as individual filers may use any relevant industry data to develop their own maps, special rules for “small insurers” are no longer needed. Accordingly, reference to “small insurer” is deleted from repropose N.J.A.C. 11:3-16A.5(c). This allows any filer who intends to fully adopt the Commission plan to avoid having to produce detailed zip code experience. These filers will still be required to produce the information necessary to demonstrate rate neutrality.

Further, as was noted in the Summary of the initial proposal, at the time it enacted AICRA in 1998, the Legislature recognized that the territorial boundaries established by the current map were in need of revision. In addition, AICRA also provided for the creation of the basic and the standard auto insurance policies, and recognized that, to provide a healthy and competitive auto insurance market, insurers are entitled to earn an adequate rate of return through the ratemaking process. See N.J.S.A. 39:6A-1.1(b). Thus, it is evident that the Legislature did not intend that the revised territorial map, which will be an integral component of the ratemaking process under AICRA, be formulated on the basis of standard policy data alone, to the exclusion of basic policy data. Consequently, the Department agrees with the commenter that it is necessary to make clear that the term “exposure” as used in N.J.A.C. 11:3-16A.4(d) encompasses basic policy data. Accordingly, a definition of exposure as “one car insured for property damage liability coverage in a basic or standard policy for a period of 12 months” has been added to N.J.A.C. 11:3-16A.2.

The Department will determine whether the filer meets the territorial minimums at the time of the filing, and intends to review the sizes of territories prior to the five-year review required by the regulation and statute.

COMMENT: One commenter requested clarification on which of the three minimum territory sizes in N.J.A.C. 11:3-16A.4(d) applies to territory maps approved by the Commissioner that modify either the common territory map or an approved rating organization map pursuant to N.J.A.C. 16A.3(b)3.

RESPONSE: As noted above, this provision has been revised upon reproposal to provide one minimum exposure standard for all filers.

COMMENT: Two commenters requested that the provision of N.J.A.C. 11:3-16A.4(e) be amended to read (addition in boldface; deletions in brackets):

No territorial rating plan shall result in territories that are arbitrary, unfairly discriminatory, or created in a manner that is primarily for [marketing] purposes [rather] **other** than measuring relativity of exposure to probable loss, or created in a manner that can be used to avoid the filer's obligations under N.J.S.A. 17:33B-15.

One commenter noted that using the language in the rule as proposed could authorize an insurer to make sure that certain management employees or their relatives were in a lower-rated territory.

RESPONSE: The language suggested for revision by the commenters comes directly from the statute at N.J.S.A. 17:29A-48(d). Moreover, the Department does not believe that this language could reasonably be interpreted in the way the commenter suggests.

COMMENT: Several commenters requested that the zip code information required in N.J.A.C. 11:3-16A.5(b) should be confidential and not subject to Open Public Records Act (OPRA) requests

because it is a trade secret and/or contains proprietary information.

RESPONSE: The confidentiality of documents filed with the Department is addressed in OPRA.

The Department notes that OPRA recognizes trade secrets and proprietary commercial or financial information as types of government records that may be kept confidential.

COMMENT: Several commenters suggested that the last part of the sentence in N.J.A.C. 11:3-16A.5(b)1 be deleted as shown below (deletion in brackets):

(b) Filers shall provide the following New Jersey direct data by coverage and by zip code:

1. Not less than three-year:

i. Basic or total limits incurred losses, net of subrogation and other recoveries, [net of PIP in excess of \$75,000 pursuant to N.J.S.A. 39:6-73.1]

One commenter noted that some companies write PIP limits in excess of \$250,000, which ought to be reflected in the territorial rates and that, starting with policies issued or renewed on or after January 1, 2004, the UCJF will cease coverage of excess medical benefits.

RESPONSE: The Department agrees with the commenters and has revised the rule upon reproposal to reflect the phase out of the reimbursement of excess medical benefits.

COMMENT: Several commenters requested that N.J.A.C. 11:3-16A.5(d) should limit the Commissioner's ability to request any additional information only to "relevant actuarial or financial" information.

RESPONSE: The Department does not agree with the commenter. Pursuant to N.J.S.A. 17:29A-11, in her review of a rate request, the Commissioner is authorized to consider, among other things, the method of operation of the company and all factors reasonably related to the kind of insurance involved. Although actuarial and financial information are the predominate bases for the analysis, the commenters' suggestion would unreasonably restrict the Commissioner's statutory authority.

COMMENT: Several commenters requested that filers be permitted to use complements of credibility in addition to the two permitted in N.J.A.C. 11:3-16A.5(g)3, including the indicated rate relativity from industry-wide data or any other relativity approved by the Commissioner. One commenter also suggested modifying the term "relativity" throughout this subsection with "indicated," because the subsection deals with improving the statistical accuracy of a filer's data.

RESPONSE: The Department does not agree with the commenters. The complements of credibility provided in the rule are the filer's own average relativity or that of all insurers in New Jersey as filed by the Commission. If by "industry-wide data," the commenter means countrywide data, the Department believes that the two permitted relativities that use New Jersey data are a more accurate reflection of the New Jersey market than countrywide data. The commenter has not provided the details on what other relativities the Department could approve. The Department also does not believe that adding "indicated" to relativity does anything to improve the statistical accuracy of a filer's data.

COMMENT: Several commenters noted that N.J.A.C. 11:3-16A.5(b)2 requires that filers provide direct written premium data by coverage and by zip code for the most recent year. The commenters

requested that insurers be allowed to submit earned premium data as an alternative. One commenter stated that territorial ratemaking methodologies use earned premium data because it matches accident year data, while written premium does not. This commenter asked that filers be given the choice of which data to use, provided that it is consistent throughout the filing. Another commenter noted that earned premium is more consistent with the earned premium exposures that are also to be submitted under N.J.A.C. 11:3-16A.5(b)1iii.

RESPONSE: The Department agrees with the commenters that ratemaking methodologies use earned premium rather than written premium. For example, the Department's regulation on "Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance," N.J.A.C. 11:3-16.8(a)1, requires that direct earned premium data be provided. N.J.A.C. 11:3-16A.5(b)2 has been revised upon reproposal to require that the latest on-level earned premium be used in the filing. The Department, however, does not agree that filers should have the choice of using either written or earned premium. A uniform methodology is necessary.

COMMENT: One commenter, noting that N.J.A.C. 11:3-16A.5(b)1i permits filers to use basic or total limits incurred losses, requested that language be added to N.J.A.C. 11:3-16A.5(e) to clarify what was meant by average factors for filers using basic limits versus total limits data (addition in boldface).

(e) For filers submitting based on a pure premium methodology, the indicated territorial relativity from a filer's own historical data shall be adjusted to take into account any differences in the distribution of business between territories that is already reflected in other rating variables. This can be done by dividing the historical incurred losses in (b)1i above

by the average rating factor in (b)1v above by zip code by year. Average factors in (b)1v above shall include all rating factors combined other than territory and increased limits factors **if using basic limits data, and shall include all rating factors combined other than territory if using total limits data.**

RESPONSE: The Department believes that most filers understand that increased limits factors would not be included when using basic limits data, while they would be included if using total limits data. However, in the interest of clarity, the Department has revised N.J.A.C. 11:3-16A.5(e) to state specifically that increased limits factors should not be included in a filing using basic limits data, and should be included in filings that use total limits data.

COMMENT: One commenter recommended that the credibility standard of 3,000 claims by territory in N.J.A.C. 11:3-16A.5(f) be either eliminated or reduced to a more customary value (for example, 1,082), in order to have loss data from individual insurers carry more weight in the calculation of territorial relativities. The commenter believes that this would allow territorial relativities to more closely reflect the loss histories of individual insurers.

RESPONSE: The Department does not agree with the commenter. The credibility standard of 3,000 claims accounts for both frequency and severity. A standard of 1,082 would only reflect frequency information, which would fail to measure the true loss experience of the territory.

COMMENT: One commenter stated that the full credibility standard should state clearly to what it applies. The commenter believes that it refers to the credibility of the data by territory in

determining territory loss costs/rates and not to credibility weighting that may occur in the determination of territorial boundaries.

RESPONSE: The Department believes that the rule as proposed is clear that the credibility standard applies to the determination of loss costs and rates only. N.J.A.C. 11:3-16A.4(c) requires that, “[t]he territory map filing shall include an explanation of any adjustments or weighting of the raw data used.”

COMMENT: Several commenters wanted to know whether the Automobile Insurance Territorial Rating Plan Advisory Commission would approve territorial relativities.

RESPONSE: The Department expects that the Commission will file a map with relativities for the Commissioner’s approval.

COMMENT: Several commenters noted that N.J.A.C. 11:3-16A.5(g)1, 2, and 3 provide guidelines for the use of alternate territorial indices when the filer’s own historical experience is less than 100 percent credible. No provision, however, is made for filers who use a modified version of either the common map or the approved map of a rating organization. The commenters request clarification on what may be used as alternate territorial indices in those cases.

RESPONSE: As noted in a response to a previous comment, N.J.A.C. 11:3-16A.4(d)3 and 4 in the original proposal have been deleted in the reproposal. The rules as repropoed permit an individual filer to develop a map using its own data or any other relevant industry data that may be available

for the filer's use. The concern raised by the commenters has been addressed.

COMMENT: One commenter objected to the use of the term "group of zip codes" in N.J.A.C. 11:3-16A.5(g)3 as the term is not defined elsewhere in the regulation.

RESPONSE: The Department has revised the rule upon reproposal to remove "group of" from the section, as the meaning is clear without it.

COMMENT: One commenter requested that the rule include additional guidance about the adjustment of relativities among territories with respect to the application of territorial rating caps and impacts on policy premiums.

RESPONSE: The Department does not agree with the commenter that additional guidance should or can be provided. The affect of the territorial change upon insurers will vary so much that it is not possible to provide guidance in the rule that would apply to all insurers. The statutory requirements for territorial filings will be applied to each filing.

COMMENT: Several commenters requested that the Department specify if it will accept filings via e-mail for N.J.A.C. 11:3-16A.6 and for N.J.A.C. 11:3-16A.5(a).

RESPONSE: The filings required by N.J.A.C. 11:3-16A.6 and 16A.5(a) will be voluminous and will include colored maps and are therefore not appropriate to be made by email.

COMMENT: One commenter believed that an analysis of the current and revised relativities is required in N.J.A.C. 11:3-16A.5(i). The commenter believed that the rule requires the analysis by coverage, but suggests that the analysis should focus on the impact of a package of the major coverages. The commenter stated that no insured buys one coverage, and that increases in one coverage can be offset by decreases in another. The commenter also questioned whether the analysis is to be performed by territory or by zip codes.

RESPONSE: The Department does not agree with the commenter that the analysis of relativities required by N.J.A.C. 11:3-16A.5(b) should be by group of coverages. The analysis will be performed by zip codes, because the goal is to determine the impact, on a zip-code basis, of the creation of new territories.

COMMENT: Several commenters suggested changes to N.J.A.C. 11:3-16A.6(b), which provides the time frames for the review of filings pursuant to the subchapter. These commenters suggested that the following additional alternative be added:

- (b)3 No approval period is necessary for insurers who use approved territorial rate relativities and boundaries.

Other commenters recommended that the rule be clarified to state what happens if the Department does not meet the time frames for review in the regulation. The commenter suggested that a provision be added that deems a filing approved if it is not disapproved within the time limits of the regulation.

RESPONSE: The Department does not agree with the commenters. The rule provides reduced

filing requirements for all insurers that use the common territory map or that of a rating organization, where the review of such filings may take less time. The Department, however, needs to review all filings made pursuant to this rule, and anticipates that it has sufficient resources to meet the deadlines established by the rule.

COMMENT: One commenter requested that the insurance industry participate in the five-year review of the common territory map required by N.J.A.C. 11:3-16A.7.

RESPONSE: N.J.S.A. 17:29A-50 authorizes the Commissioner to review the common territory map at least every five years. The statute also authorizes the Commissioner to convene the Commission to review the map and collect data from insurers. The Department has revised N.J.A.C. 11:3-16A.7(b) upon reproposal to require the Commissioner to convene the Commission to undertake the review of the common territory map. Because the Commission includes insurers, they will have an opportunity to participate in the review.

COMMENT: One commenter requested that insurers be afforded 60 days notice and an opportunity to comment on the format for reporting to be established by order in N.J.A.C. 11:3-16A.7(a), as data reporting formats are a difficult issue because insurers use different systems.

RESPONSE: The Department intends to provide insurers, through their trade organizations or otherwise, with an opportunity to review the reporting format at least 60 days prior to issuing the order.

COMMENT: Two commenters recommended that N.J.A.C. 11:3-16A.8, Objection to filings, be deleted in its entirety. One commenter found the provision inefficient and saw no reason why a previously approved filing should be subject to re-approval. Another commenter found the provision anti-competitive and that it could be used by a filer to delay the implementation of a competitor's rating plan.

RESPONSE: The objection procedure is provided for by N.J.S.A. 17:29A-49e.

COMMENT: One commenter suggested that N.J.A.C. 11:3-16A.9(c)3 be amended to provide that the Personal Automobile Insurance Plan (PAIP) be able to use relativities provided by the Commissioner as an alternative to those developed by the Commission. Another commenter suggested that there might be a need for a clarification of PAIP's territorial base rate procedures.

RESPONSE: The commenters did not specify what these changes would be, why they are necessary or what other relativities could be provided by the Commissioner. The Department believes that it is appropriate for the PAIP to use the relativities developed by the Commission and approved by the Commissioner. In addition, with respect to the comment that there might be a need for clarification of PAIP's territorial base rate procedures, the Department notes that the commenter did not cite any specific problem. If changes are deemed necessary, they will be addressed at the appropriate time. The commenter may also wish to contact PAIP directly for more information.

COMMENT: One commenter questioned whether an insurer who files a new territory map in the days or months prior to the new common map being approved or certified would satisfy the

requirement in N.J.A.C. 11:3-16A.9(c), which requires every insurer to file a territory map, territorial relativities and any amendments to its rating plan no later than 180 days from the approval or certification of the common territory map.

RESPONSE: The Department does not agree that the rule permits filing an insurer's territorial map prior to the approval of the common territory map. Every insurer should have the opportunity to examine the common territory map in order to determine whether to file using the Commission map or that of a rating organization, to deviate from one or the other of those, or to file its own map. The Department has clarified this in repropose N.J.A.C. 11:3-16A.9(c) by changing "from" to "after" the date of the approval or certification of the common territory map. The Department also notes that N.J.A.C. 11:3-16A.9(c)2 has been revised on reproposal to eliminate the phrase relating to future increases. The primary objective of the rule is to advise that initial filings must be revenue neutral by coverage in accordance with N.J.S.A. 17:29A-36d.

COMMENT: One commenter noted that N.J.A.C. 11:3-16A.9(c) requires rating organizations to file their territorial maps within 60 days of the approval of the common territorial map and insurers must file within 180 days of the approval of the common territorial map. The commenter suggested that the time frame for insurers to file should be based on the approval of both the common territorial map and that of a rating organization. The commenter believed that insurers would not have sufficient time to create a map based on an approved map of a rating organization.

RESPONSE: The Department does not agree with the commenter. The Department believes that there will be enough time for insurers to create a territorial map based on the rating organization map

to meet the deadline. In any case, the rule also provides for an extension of the deadline for good cause.

COMMENT: One commenter noted that pursuant to N.J.S.A. 17:29A-36a, basic policies continue to be subject to rate caps and asked for confirmation that the Department did not intend to require insurers and rating organizations to make separate filings of basic policy data. The commenter averred that there are such a small number of basic policies that loss data on them, even on a Statewide basis, would not be credible. The commenter suggested adding language for a new subsection of the rule that states that basic policies shall use the same territorial definitions and relativities as standard policies, except that the territorial rate caps shall continue to apply to the basic policy. The suggested amendment also included a provision authorizing filers to aggregate basic policy data with that of standard policies in any filing made pursuant to the rule.

RESPONSE: The Department agrees with the commenter's suggestions. Accordingly, the Department has clarified the rule upon reproposal concerning the basic policy. The definitions of "standard" and "basic" policies that are used throughout the automobile insurance rules in Chapter 3 of Title 11 have been added to repropose N.J.A.C. 11:3-16A.2. Repropose N.J.A.C. 11:3-16A.3 has been revised to state that insurers shall use the same territorial maps for basic and standard policies. Repropose N.J.A.C. 11:3-16A.5(b) has been revised to provide that insurers shall aggregate basic and standard data in filings made pursuant to that section. Repropose N.J.S.A. 11:3-16A.5(j) has been added to require that filings of basic policy rates comply with the provisions of N.J.S.A. 17:29A-36a.

A section by section summary of the repropose new rules follows:

Proposed N.J.A.C. 11:3-16A.1 sets forth the purpose and scope of the rules.

Proposed N.J.A.C. 11:3-16A.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:3-16A.3 sets forth the general requirements for the subchapter. Proposed N.J.A.C. 11:3-16A.3(a) requires every insurer to have an approved territorial rating plan that meets the statutory requirements and the requirements of this subchapter. Proposed N.J.A.C. 11:3-16A.3(b) sets forth the three types of territorial maps approved by the Commissioner that may be used by an insurer. They are: the common territory map filed by the Automobile Insurance Territorial Rating Plan Advisory Commission; a map filed by a rating organization; and a territory map developed by an insurer.

Proposed N.J.A.C. 11:3-16A.4 sets forth the standards for the establishment of territories. Territories shall be comprised of zip codes that, to the extent possible, recognize municipal boundaries. This recognizes that data is collected and compiled by statistical agents and insurers on a zip code basis, but that the State's political subdivisions also are important to identify geographic areas.

Territories must be comprised of areas that are not only contiguous, but are also reasonably delineated so as to avoid a gerrymandered or "snake-like" appearance. Territories must border at least two other territories or one other territory and a State border. This avoids a situation where one territory is an "island" surrounded by another territory.

In order to create an equitable distribution of exposures throughout the State, and ensure that the creation of the map is based on credible data as required by AICRA, each territory shall be comprised of no less than 20,000 exposures for one year. The maximum number of territories shall not exceed 50.

Finally, territorial maps shall not result in territories that are arbitrary, unfairly discriminatory, or created in a manner that is primarily for marketing purposes or could be used to avoid a filer's obligations under N.J.S.A. 17:33B-1 et seq.

Proposed N.J.A.C. 11:3-16A.5 sets forth the filing requirements for territorial rating plans, including the acceptable media and information on the data to be included in the filing. In addition, the standards for territorial rate filings set forth in N.J.S.A. 17:29A-48(e) and 17:29A-36 are reproduced in the proposed rule.

Proposed N.J.A.C. 11:3-16A.6 sets forth the time periods for the Department's review of territorial rating plan filings.

Proposed N.J.A.C. 11:3-16A.7 provides for a review of the continued validity of their territorial rating plans by filers and the Commission no less frequently than every five years.

Proposed N.J.A.C. 11:3-16A.8 sets forth the procedure for a filer to object to a territorial rating plan filed pursuant to this subchapter. The repropounded rules also provide a timeframe for the Department to respond to objections filed. As repropounded, the text of N.J.A.C. 11:3-16A.8(e) has been clarified by the addition of the phrase "of all information from the filer" at the end of the subsection, in order to indicate that the timeframe within which the Department must respond to an objection will not commence until all of the information referenced in subsections (a) through (d) has been received.

Proposed N.J.A.C. 11:3-16A.9 sets forth the transition requirements to move to the new territorial maps. The process is triggered when the Commission files its territory map. Once that map is approved, any rating organization that is going to file a territorial rating plan must do so within 60 days. As initially proposed, this rule provided that the Commission file the common territorial map within 30 days from the effective date of this subchapter. The timeframe for the Commission

to file the common map has been deleted upon reproposal, as the Department has determined that it is not necessary to impose such a deadline upon the Commission and it would be impractical and difficult for the Commission to meet the 30 day deadline previously proposed. Finally, all insurers must file a territorial rating plan within 180 days of the approval of the common territory map. In addition, pursuant to N.J.S.A. 17:29A-36(d), rate changes resulting from the new territory maps shall be revenue neutral.

Proposed N.J.A.C. 11:3-16A.10 sets forth the penalties for failure to comply with the provisions of this subchapter.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is exempted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

As noted above in the Summary, rating territories are one factor used to set insurance rates. Rating territories are geographic areas where automobile insurance losses are similar. The Legislature has mandated that the territories be redrawn to reflect the changes in population distribution, and hence loss experience, in New Jersey since the 1950s. The repropose new rules should have a positive social impact by preventing the unfair subsidization of some insureds by others. Insurance rates should be based on the most accurate determinations of the risk of loss for each insured.

Economic Impact

Insurers and the New Jersey Personal Automobile Insurance Plan (PAIP) will be required to bear any costs associated with filing and implementing system modifications necessary to redraw

the rating territories and provide all the associated rating materials. The Department, however, does not believe that the repropoed new rules will impose an undue burden on insurers. In other states, insurers frequently change their rating territories to obtain competitive advantages. Under the new territorial rating systems, some insureds will see an increase in premium while others will see a decrease. It is impossible to estimate these changes since they depend on what map the insurer uses and the insurer's current rating system. However, no overall rate change is permitted by this process. The changes in the premium of any insured will better reflect the risk of loss associated with where the insured garages his or her vehicle. The Department will incur costs to review the filings, but expects to absorb them under its current budget.

Federal Standards Statement

A Federal standards analysis is not required because the repropoed new rules relate to the provision of private passenger automobile insurance in this State, and are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the repropoed new rules. Insurers and producers should be able to utilize the same staff and resources to comply with these rules as are utilized currently in the normal course of business. The Department invites commenters to submit any data or studies concerning the jobs impact of the repropoed new rules together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The repropoed new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The repropoed new rules will impose compliance requirements on “small businesses,” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The small businesses to which these repropoed rules may apply are insurers domiciled in this State transacting private passenger automobile insurance. As noted above, small businesses will be required to bear any costs incurred in developing and implementing system modifications to implement a new system for territorial rating. These costs may include the cost of computer programming, systems consultants and other professional services if such services are not available to the insurer in-house. These costs cannot be accurately estimated by the Department at this time because they vary greatly by insurer.

The repropoed new rules provide no different compliance requirements specifically based on business size. However, the repropoed rules provide more flexibility for smaller insurers that otherwise may not have sufficient exposures to develop their own territory map based solely on their own data. The repropoed rules also eliminate any potential unfair disadvantage to smaller insurers that otherwise would be required to use the common territory map developed by the Commission. In addition, these insurers can subscribe to a rating organization or use the common territory map instead of developing their own map. The repropoed new rules implement N.J.S.A. 17:29A-48 requiring the establishment of new territorial rating systems. This goal does not vary based on business size, and variation of compliance requirements specifically based on business size would not be feasible or consistent with the intent of the Legislature.

Smart Growth Impact

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

Full text of the reroposal follows (additions indicated in boldface **thus**; deletion indicated in brackets

[thus]):

SUBCHAPTER 16A. [(RESERVED)] **PRIVATE PASSENGER AUTOMOBILE INSURANCE**
TERRITORIAL RATING PLANS

11:3-16A.1 Purpose and scope

(a) This subchapter sets forth the standards and requirements for the establishment of territory maps by insurers, rating organizations, and the Automobile Insurance Territorial Rating Plan Advisory Commission, pursuant to N.J.S.A. 17:29A-48 et seq. and 17:29A-36, and for the amendments to rating plans by insurers and rating organizations.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market, rating organizations and the Automobile Insurance Territorial Rating Plan Advisory Commission.

11:3-16A.2 Definitions

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

"Basic automobile insurance policy" or "basic policy" means a private passenger automobile insurance policy issued in accordance with N.J.S.A. 39:6A-3.1 and N.J.A.C. 11:3-3.

"Commission" means the Automobile Insurance Territorial Rating Plan Advisory Commission established pursuant to N.J.S.A. 17:29A-50.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Common territory map" means the territory map filed by the Commission and approved by the Commissioner or, where no map filed by the Commission is approved, a

substitute map certified by the Commissioner.

"Department" means the New Jersey Department of Banking and Insurance.

"Exposure" means one car insured for property damage liability coverage in a Basic or Standard policy for a period of 12 months.

"Filer" includes an insurer and rating organization.

"Insurer" means an entity or affiliated group of entities authorized or admitted to transact personal private passenger automobile insurance business in this State.

"PAIP" means the New Jersey Personal Automobile Insurance Plan established in accordance with N.J.S.A. 17:29D-1 et seq.

"PIP coverage" means personal injury protection coverage as described in N.J.S.A. 39:6A-4 or 39:6A-3.1.

"Rating organization" means an entity licensed as a rating organization pursuant to N.J.S.A. 17:29A-2.

"Standard automobile insurance policy" or "standard policy" means a private passenger automobile insurance policy issued in accordance with N.J.S.A. 39:6A-4.

"State border" means the land or water border between New Jersey and New York State, Pennsylvania, Delaware, the Atlantic Ocean, Raritan Bay or Delaware Bay.

"Territory map" means a list of territories defined by zip code and a representation of the territories on a map of New Jersey pursuant to N.J.A.C. 11:3-16A.4(a).

11:3-16A.3 General requirements

(a) Every insurer, including the PAIP, shall have an approved territorial rating plan, which shall include a territory map, territorial relativity factors and territorial base rates

that are in accordance with the provisions of N.J.S.A. 17:29A-48 et seq. and 17:29A-36, and this subchapter.

1. Insurers shall use the same territory map for basic and standard policies.

(b) The territory map in the insurer's territorial rating plan shall be one of the following:

1. The common territory map;

2. The territory map approved by the Commissioner for the rating organization of which the insurer is a member; or

3. An individual territorial plan developed by the insurer and approved by the Commissioner in accordance with this subchapter.

11:3-16A.4 Standards for establishment of territories

(a) A territory shall be a geographic area of the State defined by contiguous zip codes, that follow municipal boundaries as closely as possible. If a zip code crosses a municipal boundary that forms a territorial boundary, the filer shall place the zip code entirely in one territory. Filers shall report statistical data by zip code.

(b) Each territory shall border on at least two other territories, or one territory and a State border.

(c) In establishing the common territory map, the Commission shall use data representing the largest available compilation from insurers. A rating organization that files a territory map shall use the combined data of its subscribers. An insurer filing its own territory map shall use its own data or other relevant industry data that may be available for its use. The territory map filing shall include an explanation of any adjustments or weighting

of the raw data used.

(d) In order to create an equable distribution of exposures throughout the State, each territory shall be comprised of no less than 20,000 exposures for one year. The exposure count shall be based on data used by the Commission to determine the common territory map. The maximum number of territories in any territorial map shall not exceed 50 territories.

(e) No territorial rating plan shall result in territories that are arbitrary, unfairly discriminatory, or created in a manner that is primarily for marketing purposes rather than measuring relativity of exposure to probable loss, or created in a manner that can be used to avoid the filer's obligations under N.J.S.A. 17:33B-15.

11:3-16A.5 Territorial rating plan filing requirements

(a) An insurer's filing shall indicate which of the maps permitted by N.J.A.C. 11:3-16A.3(b) it intends to use. The filing shall be submitted on 3 ½ inch diskette, zip disk or CD, and in hard copy.

(b) Filers shall provide the following New Jersey direct data by coverage and by zip code for basic and standard policies:

1. Not less than three-year:

i. Basic or total limits incurred losses, net of subrogation and other recoveries. Total limits losses may include PIP losses subject to reimbursement pursuant to N.J.S.A. 17:30A-8a(11);

ii. Paid or incurred allocated loss expenses;

iii. Earned exposures;

iv. Incurred claims; and

v. Average rating factors (for filers submitting on a pure premium methodology);

2. The most recent year's on-level earned premium;

3. The most recent year's in-force exposures;

4. The current base rates;

5. Indicated base rates by territory; and

6. Proposed base rates by territory.

(c) An insurer that uses the common territory map and relativities or the approved territory map of a rating organization and its relativities is only required to file the items in (b)2 through 6 above to demonstrate the rate neutrality.

(d) The Commissioner may request any additional information that may be necessary to evaluate the territorial plan filing.

(e) For filers submitting based on a pure premium methodology, the indicated territorial relativity from a filer's own historical data shall be adjusted to take into account any differences in the distribution of business between territories that is already reflected in other rating variables. This can be done by dividing the historical incurred losses in (b)1i above by the average rating factor in (b)1v above by zip code by year. Average factors in (b)1v above shall, if using basic limits data, include all rating factors combined other than territory and increased limits factors, and shall, if using total limits data, include all rating factors other than territory.

(f) The credibility of the filer's data shall be based upon a full credibility standard of 3,000 claims by territory. Partial credibility by territory shall be calculated based upon the square root of the filer's number of claims by territory divided by the full credibility standard.

(g) To the extent that the filer's own historical experience by territory is less than 100 percent credible, the filer shall weight the territorial indexes from its own experience with an alternate territorial index.

1. If the filer uses the common territory map, then the alternate index shall consist of the territorial rate relativities filed by the Commission and approved by the Commissioner.

2. If the filer uses a territory map approved for a rating organization, the alternate index shall be that of the members of the rating organization.

3. If an insurer files its own territory map, then the alternate index shall consist of either the current average relativity applicable to the filer, or the territorial rate relativities filed by the Commission and approved by the Commissioner for the zip codes making up the proposed territory, with the relativities weighted together by the latest year of exposures in each zip code by coverage.

(h) Pursuant to N.J.S.A. 17:29A-48(e), territories created in accordance with this subchapter shall not result in disproportionate differences in territorial relativity factors between contiguous territories with similar driving environments or mix of driving environments.

(i) Pursuant to N.J.S.A. 17:29A-36, the initial territorial relativity for any territory shall not be significantly disproportionate to the current relativity for that territory. For the purposes of this subchapter, the current relativity means the relativity that is in effect on the date of the initial filing pursuant to this subchapter. The current relativity shall be calculated for each zip code and compared with the indicated or selected relativity in accordance with (h) above for the territory in which the zip code is now located. The territorial relativity for a zip

code shall be based on a Statewide average relativity of 1.000.

(j) Insurers shall not be required to make separate filings of basic policy data.

However, filings made in accordance with this subsection shall comply with the provisions of N.J.S.A. 17:29A-36a concerning the basic policy.

11:3-16A.6 Review of filings

(a) All filings and other items submitted to the Commissioner pursuant to this subchapter shall be sent to the Department at the following address:

New Jersey Department of Banking and Insurance

Office of Property and Casualty

20 West State Street

P.O. Box 325

Trenton, NJ 08625-0325

(b) The time periods for the Department's review of territorial rating plan filings made pursuant to this subchapter are as set forth below:

1. Sixty days for insurers that use the common territory map, the territory map approved for a rating organization or a map that modifies either the common territory or rating organization map, as provided in N.J.A.C. 11:3-16A.3(b)3. For good cause, the Department may extend the review period for 30 days.

2. Ninety days for filers that are filing their own territory map. For good cause, the Department may extend the review period for a reasonable time, not to exceed 45 days.

(c) If the filing is incomplete, the Department shall so advise the filer not later than 20 business days after the receipt of the filing. If the Department does not advise the filer that the filing is incomplete, it shall be deemed to be complete on the 20th business day after receipt.

1. Notice to the filer that the filing is incomplete shall specify the missing item(s) or information. The notice shall advise the filer that a new 20-day time period for the Department's completeness review of the filing starts again upon receipt by the Department of the information intended to cure the deficiency.

2. If the Department requests further information from the filer pursuant to N.J.A.C. 11:3-16A.5(c) , the time frame for the Department's review of the filing is tolled until the information is received.

3. A determination by the Department that a filing is complete relates solely to the inclusion in the filing of the items requested by N.J.A.C. 11:3-16A.5 and shall not be considered a finding regarding the accuracy or reasonableness of the information or calculations.

(d) The Department shall not approve any filing that does not comply with N.J.S.A. 17:29A-48 et seq. and 17:29A-36 and this subchapter.

11:3-16A.7 Territorial rating plan review

(a) Each filer shall periodically review, no less frequently than once every five years, the continued validity of its territorial rating plan and report its findings in a format to be established by the Commissioner by Order.

(b) The Commissioner shall convene the Commission to review the continued

validity of the common territory map at least once every five years.

11:3-16A.8 Objection to filings

(a) Any filer may object to an approved filing made in accordance with this subchapter on the grounds that it:

1. Is anti-competitive;

2. Does not meet the standards established in N.J.S.A. 17:29A-48 and this

subchapter; or

3. Results in the filer not meeting its obligations pursuant to N.J.S.A.

17:33B-15.

(b) The filer shall have the burden of proof in making an objection to an approved filing.

(c) Any objection to an approved filing shall be in writing with all supporting materials. Two copies shall be sent to the Department at the address for filings set forth at N.J.A.C. 11:3-16A.6(a).

(d) The Department will review the objection and may ask for additional information from the filer making the objection. The Department may also ask for a response to the objection from the filer against whom the objection was made.

(e) The Department shall respond to the objection within 90 days of receipt of all information from the filer.

11:3-16A.9 Transition requirements

(a) The Commission shall file a territory map in accordance with N.J.A.C. 11:3-

16A.4 and territorial relativities in accordance with N.J.A.C. 11:3-16A.5 for the Commissioner's approval.

1. The Commissioner shall approve or disapprove the filing within 30 days.

If the Commissioner disapproves all or any part of the Commission's filing, it shall be returned with recommendations. The Commission may accept the recommendations of the Commissioner or may propose a new territory map within 30 days after the return of a disapproved map. If the Commission does not file a map acceptable to the Commissioner within 30 days of the disapproval of the original map, the Commissioner shall certify his or her own map.

(b) If a rating organization intends to file a territory map and relativities, the filing shall be made no later than 60 days after the Commissioner's approval or certification of the common territory map. For good cause shown, the rating organization may request an extension of the filing deadline.

(c) No later than 180 days after the Commissioner's approval or certification of the common territory map, every insurer, including the PAIP shall file a territory map, territorial relativities and amendments to its rating plan that meet the requirements of this subchapter. For good cause shown, an insurer or the PAIP may request an extension of the filing deadline. The Department will review all filings within a reasonable time.

1. If an insurer that intends to use its own territorial map fails to make an acceptable filing, the Commissioner may by Order require it to use the common territory map.

2. The insurer shall demonstrate that the initial filing is revenue neutral by coverage in accordance with N.J.S.A. 17:29A-36d.

3. The PAIP shall use the common territory map and the relativities

developed by the Commission.

11:3-16A.10 Penalties

Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as authorized by law.

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