

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Private Passenger Automobile Insurance Territorial Rating Plans

Proposed 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 2003 –292

Submit comments by September 19, 2003 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 a rating factor 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. There are many factors that result in territorial differences, affecting 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. Many formerly rural or suburban areas have become more urban. There have been many changes in New Jersey since 1950

and the State's auto rating territories need to reflect those changes more fairly 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 to develop a common territory map to be available for use by insurers.

It also required the Department of Banking and Insurance 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, thereby requiring that automobile insurance be affordable.

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. In addition, the Commission members and other interested parties have been given an opportunity to provide

comments to the Department regarding these standards prior to their formal proposal.

A section by section summary of the 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 four 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; a map that modifies the common territory map or the rating organization map; or a territory map from an insurer's own data.

While AICRA permits individual companies to develop and file their own territory map, such territorial maps must be based on the company's own data. The language of the statute was specifically changed in committee to eliminate a provision that would have permitted companies to adopt another company's territorial map, thereby indicating that the Legislature intended to require individual filers to utilize their own data to develop their own maps, or, alternatively, either to adopt the map developed by the Commission or the map developed by a rating organization of which they are a member. These restrictions may limit choices to develop or utilize different maps, but are consistent with the legislative policy that insurers utilize the map developed by the Commission, while providing a degree of flexibility where there is credible data, to promote innovation and competition.

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 also that are 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 equable distribution of exposures throughout the State, and ensure that the creation of the map is based on credible data as required by AICRA, the following minimum and maximum size of territories shall apply: for the map established by the Commission, each territory shall be comprised of no less than 10,000 exposures for one year; for a map filed by a rating organization, each territory shall be comprised of no less than 5,000 exposures for one year; and for a map filed by an individual insurer, each territory shall be comprised of no less than 2,000 exposures for one year. The proposed new rules also require that no territory, regardless of the filer, comprise more than 200,000 exposures for one year.

This standard, which will allow some larger insurers to be able to file a map based on their own data, recognizes that individual companies have less data than the Commission or rating organizations, but that some minimum standard of data is required in order to develop credible experience.

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 obligation 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.

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. 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 1950's. The proposed 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 proposed 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 proposed 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 proposed 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 proposed new rules together with their comments on other aspects of the proposal.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The proposed 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 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, and 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 since they vary greatly by insurer.

The proposed new rules provide no different compliance requirements based on business

size. However, the rules provide alternatives for smaller insurers that may not have the resources to develop their own territory map. These insurers can subscribe to a rating organization or use the common territory map instead of developing their own map. The proposed 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 based on business size would not be feasible or consistent with the intent of the Legislature.

Smart Growth Impact

The proposed 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 proposal 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.

"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.

"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.

"Small insurer" means an insurer with less than 0.5 percent of the New Jersey written premiums in the voluntary market for private passenger automobile insurance for the most recent calendar year for which such information is available.

"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.

(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;
3. A territory map approved by the Commissioner that modifies the common territory map mentioned in (b)1 above or the approved rating organization map mentioned in (b)2 above by dividing its territories into two or more additional territories up to a maximum of 10 additional territories. The modifications shall be based on the insurer's own relativities and the additional territories must meet all other requirements of this subchapter; or
4. A territory map approved by the Commissioner based on the insurer's data in accordance with the requirements of 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 may create territorial maps defined by municipality, however, they must be able to 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. The territory map filing shall include an explanation of any adjustments or weighting of the raw data used.

(d) In order to create an equitable distribution of exposures throughout the State, the minimum and maximum size of territories shall be as follows:

1. Each territory in the common territory map shall be comprised of no less than 10,000 exposures for one year;

2. Each territory in the territory map filed by a rating organization shall be comprised of no less than 5,000 exposures for one year;

3. Each territory in the territory map filed by an insurer shall be comprised of no less than 2,000 exposures for one year; and

4. No territory in a map filed by any filer shall comprise greater than 200,000 exposures for one year.

(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. In the event the insurer is dividing territories from the common or approved rating organization map in accordance with N.J.A.C. 11:3-16A.3(b)3, it shall indicate in its filing, which map it is dividing and clearly indicate the territories that have been divided. 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:

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;

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 written 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) A small 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 include all rating factors combined other than territory and increased limits factors.

(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 bureau, the alternate index shall be that of the members of the rating bureau.

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 group of 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.

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 bureau 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 review the continued validity of the common territory map established by the Commission 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.

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 not later than 30 days from the effective date of this subchapter.

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 from the 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 from the 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, including any future increases in accordance with N.J.A.C. 11:3-16A.5(e), 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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