

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF PROPERTY AND CASUALTY

Private Passenger Automobile Insurance – Use of Alternate Underwriting Rules

Proposed Amendments: N.J.A.C. 11:3-35.3, 35A.1, 35A.3, 35A.4, 35A.6 and 35A.7

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, and 17:29D-1

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

Proposal Number: PRN 2004-376

Submit written comments by December 3, 2004 to:

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The agency proposal follows:

Summary

P.L. 2003, c. 89 (the “Act”) substantially revised the requirements for the provision of private passenger automobile insurance in this State to address automobile insurance availability problems facing New Jersey consumers, insurers and regulators. Among other things, the Act amended N.J.S.A. 17:33B-15 and 17:29D-1 to establish a structure for the return to a competitive market by the gradual phase-out of the requirement that insurers offer coverage to all eligible persons. Pursuant to those statutes, the Department of Banking and Insurance (Department) adopted amendments and new rules effective April 19, 2004, regarding the use of alternate underwriting rules by insurers that permit them to minimize their exposure to new business. See

36 N.J.R. 1929(a). Upon further review of the rules, and based on filings submitted pursuant thereto, the Department has determined that the rules should be clarified to address areas where there is apparent confusion.

N.J.A.C. 11:3-35A.4 and 35A.6 establish general requirements for the use of alternate underwriting rules, including the time periods during which specified growth requirements must be met in order to utilize the alternate underwriting rules. N.J.A.C. 11:3-35A.6(a) is proposed to be amended to require that filings to use alternate underwriting rules include a proposed effective date. N.J.A.C. 11:35A.6 is proposed to be amended to provide a new subsection (d) to clarify that an insurer may use its alternate underwriting rules beginning on the first day of the second calendar month after the end of the applicable six-month reporting period, as set forth in N.J.A.C. 11:3-35A.4(a)1 through 10 (which have been recodified from N.J.A.C. 11:3-35A.4(a) through (j)), or 15 days following the date the certification required to be filed pursuant to N.J.A.C. 11:3-35A.6(b) is filed, whichever is later. N.J.A.C. 11:3-35A.6(d) is also being proposed to reflect the statutory requirement in N.J.S.A. 17:33B-15 that an insurer may utilize its alternate underwriting rules for a period of six months, related to the applicable reporting period set forth in N.J.A.C. 11:3-35A.4(a)1 through 10.

This approach recognizes the statutory requirement in N.J.S.A. 17:33B-15 that alternate underwriting rules may be used on the first day of the second calendar month after the end of the applicable reporting period, and the requirement that no alternate underwriting rules may be utilized until a certification that the insurer has satisfied the applicable growth requirement is filed with the Department. The Department is also proposing to recodify and revise various provisions in N.J.A.C. 11:3-35A.4 and 35A.6 to eliminate repetition and to clarify their intent, including the relocation of N.J.A.C. 11:3-35A.4(k) to N.J.A.C. 11:3-35A.6(e). In addition,

relocated N.J.A.C. 11:3-35A.6(e) is proposed to be amended to permit an insurer that reaches a growth standard before the next report date to make the required filing upon doing so and to begin using its alternate underwriting rules within 30 days of filing the certification. Since an early filing is not linked to the filing of a consolidated report, it is not necessary to verify the filer's data. N.J.A.C. 11:3-35A.6(e) is also proposed to be amended to clarify how long an insurer that makes an early filing to use its alternate underwriting rules may use them. As proposed, N.J.A.C. 11:3-35A.6(e)2 clarifies that an insurer that makes an early filing must make another filing to continue using its alternate underwriting rules on or before the due date of the next consolidated report to show that it continues to meet the growth requirements. An insurer that does not make the required filing must cease using its alternate underwriting guidelines as of the due date of the next consolidated report.

In addition, N.J.A.C. 11:3-35A.4 is proposed to be amended to provide a new subsection (d) to explicitly provide that, in determining whether an insurer has satisfied an applicable growth requirement, business assumed from another insurer during the reporting period shall not be considered. This will be achieved by the assuming insurer adding the in-force exposures of the company whose business is being assumed at the beginning and end of the reporting period. This reflects the original intent of the Act and existing rules that insurers may utilize alternate underwriting rules where the insurer has met its growth requirement by actively writing new business. The Department notes that the existing reporting periods and the growth requirements related thereto are not being changed by these proposed amendments.

N.J.A.C. 11:3-35A.6(c) is also proposed to be amended to delete the reference to the e-mail address for the filing of the certification. This e-mail address is utilized for the filing of

other reports. Insurers may file the certification electronically with the Department pursuant to the existing System for Electronic Rates and Forms Filings (SERFF) procedures.

N.J.A.C. 11:3-35A.3(c)2 is proposed to be amended to delete references to filings being made on a “use and file” basis. Upon review, the Department has determined that, although it does not approve an insurer’s alternate underwriting guidelines, it is reasonable and appropriate to have a copy of revisions to an insurer’s previously filed guidelines prior to their use in order to be able to respond to inquiries from applicants for insurance.

N.J.A.C. 11:3-35A.1 is proposed to be amended to correct a statutory reference that caused some insurers to conclude that the rules related to application of tier rating for new business. The rules were never intended to permit a company to affect tier placement of business it otherwise could refuse to write under its alternate underwriting rules. This would be inconsistent with the statutory framework, which permits insurers that have met the requirements set forth in N.J.A.C. 11:3-35A to use underwriting rules to minimize their exposure to new business. Insurers are not permitted to use their alternate underwriting rules for rating purposes.

N.J.A.C. 11:3-35.3(a) refers to the use of underwriting guidelines in tier placement except as provided in N.J.A.C. 11:3-35A. This, in turn, resulted in the interpretation that a company’s alternate underwriting guidelines could also be used for tier placement. In order to properly reflect the application of the rules, N.J.A.C. 11:3-35.3 is proposed to be amended to state that the alternate underwriting rules may only be used to minimize their exposure to new business. In addition, N.J.A.C. 11:3-35A.1 is proposed to be amended to correct the statutory reference to N.J.S.A. 17:33B-15, as amended by P.L. 2003, c.89.

Finally, N.J.A.C. 11:3-35A.7(d) is proposed to be amended to reflect the recodification of various provisions in N.J.A.C. 11:3-35A.4(a).

A 60-day comment period is provided for this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### Social Impact

The proposed amendments clarify the existing rules to more accurately reflect their intent. Accordingly, the proposed amendments should further the positive impact on consumers from the existing rules 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 and the existing rules. The existing rules benefit insureds because the phase-out of the requirement that insurers offer coverage to all eligible persons will occur gradually and thus not disrupt the market. In addition, the proposed amendments do not alter the existing voluntary rating tier in the Personal Automobile Insurance Plan which provides a “safety net” for applicants for personal private passenger automobile insurance who have difficulty finding a company to provide coverage in the voluntary market.

#### Economic Impact

The proposed amendments will not directly impose any additional economic impact. As noted above, the proposed amendments clarify the intent of the existing rules and do not impose new reporting or recordkeeping requirements. The clarifications provided by the proposed amendments will further the intent of the existing rules, which is to provide increased flexibility and competition, which ultimately will benefit insureds and insurers.

### Federal Standards Statement

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

### Jobs Impact

The proposed amendments should not result in the generation or loss of jobs. As noted above, the proposed amendments do not alter the existing framework of the rules, but rather clarify their intent in certain areas to minimize confusion.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments together with their comments on other aspects of the proposal.

### Agriculture Industry Statement

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

### Regulatory Flexibility Statement

The proposed amendments will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the proposed amendments apply to small businesses, they will apply to insurers transacting private passenger automobile insurance in this State. As noted above, however, the proposed amendments do not impose any new reporting, recordkeeping or other compliance requirements. Rather, the proposed amendments clarify the existing rules to avoid confusion regarding their application. The

proposed amendments provide no different standards or requirements based on business size, and continue the standards set forth in the existing rules. The proposed amendments further implement the corresponding statutory provisions, which permit no variation of compliance requirements based on business size. Thus, any such variation in these proposed amendments would not be feasible or consistent with the intent of the Legislature or the existing regulatory framework.

#### Smart Growth Impact

The proposed amendments 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 35. PRIVATE PASSENGER AUTOMONBILE INSURANCE  
UNDERWRITING RULES

11:3-35.3 General requirements and filing format

(a) [Except as provided in N.J.A.C. 11:3-35A, all] **All** insurers 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. **Insurers may also utilize alternate underwriting rules pursuant to N.J.A.C.**

**11:3-35A.**

(b)-(c) (No change.)

SUBCHAPTER 35A. PRIVATE PASSENGER AUTOMONBILE 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] **17:33B-15, as amended by P.L. 2003, c. 89**, 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) (No change.)



11:3-35A.3 General requirements

(a) – (b) (No change.)

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

1. (No change.)

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] **become** 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 due on or before January 31, 2004, exceed the in-force exposures as of December 31, 2002 by five percent or more, the ] **An** insurer **may make a filing in accordance with N.J.A.C. 11:3-35A.6(d) to** use its alternate underwriting rules in [those territories for the period February 1, 2004 through July 31, 2004.] **each territory where its in-force exposures as of:**

**1. December 31, 2003, as filed in the consolidated report due on or before January 31, 2004, exceed its in-force exposures as of December 31, 2002 by five percent or more;**

[(b)]**2.** [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] **its** 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)]**3.** [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] **its** 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)]**4.** [In each territory where its in-force exposures as of] June 30, 2005, as filed in the consolidated report due on or before July 31, 2005, exceed [the] **its** 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)]**5.** [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] **its** in-force exposures as of December 31, 2004 by three percent or more [, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2006 through July 31, 2006.];

[(f)]**6.** [In each territory where its in-force exposures as of] June 30, 2006, as filed in the consolidated report due on or before July 31, 2006, exceed [the] **its** 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)]**7.** [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] **its** 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)]**8.** [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] **its** in-force exposures as of June

30, 2006 by two percent or more [, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2007 through January 31, 2008.];

[(i)]**9.** [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] **its** 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.]; **or**

[(j)]**10.** [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] **its** 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)] **(b)** 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)1 through [(j)]10 above in which the insurer's total number of in-force exposures exceeds 1,000.

[(m)] (c) An insurer may file a request with the [commissioner] **Commissioner** to use a lower percentage growth standard than those listed in (a)1 through [(j)] 10 above and the [commissioner] **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.

**(d) For purposes of determining whether an insurer has satisfied the growth requirements in (a)1 through 10 above, an insurer that has assumed business from another insurer during the reporting period shall combine the in-force exposures of the company from which it is assuming business with its own exposures at the beginning and end of the reporting period. Example: Company X has 1,000 in-force exposures in a territory on December 31, 2003, the beginning of the reporting period. On August 1, 2004, Company X begins assuming business on renewal from Company Y, which had 600 in-force exposures in that territory on December 31, 2003. At the end of the reporting period on December 31, 2004, Company X has 1,200 in-force exposures in the territory and Company Y has 450 in-force exposures. To determine whether Company X grew in the territory, the in-force exposures of Company X and Y are combined at the beginning and end of the reporting period as follows: December 31, 2003:  $1000 + 600 = 1600$ ; December 31, 2004:  $1,200 + 450 = 1,650$  . For purposes of using its alternate underwriting rules, Company X has grown by 50 exposures or three percent in the territory.**

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

(a) An insurer shall [activate the] **initiate the process to** use [of] its alternate underwriting rules by making a filing with the Commissioner. The filing shall include **the proposed effective date of the filing and** the information set forth in (a)1 and 2 below for the territory(ies) 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)] **(e) below**. For example, Territory 1--June 30, 2004, 1,000 in-force exposures; June 30, 2005, 1,040 exposures = four percent growth; and

2. (No change.)

(b) (No change.)

(c) The filing shall be sent to:

New Jersey Department of Banking and Insurance

Office of Property and Casualty

PO Box 325

Trenton, NJ 08625-0325

[Email: [reports@dobi.state.nj.us](mailto:reports@dobi.state.nj.us)]

**(d) For purposes of N.J.A.C. 11:3-35A.4(a)1 through 10, an insurer may use its alternate underwriting rules for six months beginning no earlier than the first day of the second calendar month after the end of the applicable six-month reporting period set forth in N.J.A.C. 11:3-35A.4(a)1 through 10 or 15 days after the date of the filing of the certification set forth in (b) above, whichever is later.**

1. For example, if an insurer makes the filing in N.J.A.C. 11:3-35A.4(b) above on January 25, 2003 for the reporting period December 31, 2002 through December 31, 2003, it could begin using its alternate underwriting guidelines no earlier than February 1, 2004. If the insurer made the filing for the same reporting period on February 13, 2004, it could begin using its alternate underwriting guidelines no earlier than February 28, 2004.

(e) Notwithstanding (d) above, an insurer that reaches a growth standard in N.J.A.C. 11:3-35A.4(a)1 through 10 above before the report date may make the filing required in this rule when it meets the requisite growth standard. In such cases, the insurer may use its alternate underwriting rules no earlier than 30 days after the certification is filed and may continue to use those rules until the due date of the next consolidated report.

1. For example, on March 15, 2004, an insurer that has met the five percent growth requirement in N.J.A.C. 11:3-35A.4(a)2 in a territory and makes a filing with the Department on that date could use its alternate underwriting rules in that territory from April 14, 2004 until July 31, 2004.

2. In order to continue using its alternate underwriting rules, an insurer that makes an early filing pursuant to this section must make the filing in (a) and (b) above no later than the due date for the first consolidated report after its early filing, which filing must show that it continues to meet the relevant growth requirements. An insurer that fails to make a timely filing to continue using its alternate underwriting rules shall cease using its alternate underwriting rules on the due date for the first consolidated report due after its early filing.

**i. Using the example in (e)1 above, the insurer has until July 31, 2004, the due date of its consolidated report for the period ending June 30, 2004, to file a certification to continue using its alternate underwriting rules. If it failed to file the certification by that date, it would be required to cease using its alternate underwriting rules on July 31, 2004.**

Recodify existing (d) – (e) as **(f) – (g)** (No change in text.)

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

(a) – (c) (No change.)

(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)**1** through [(j)]**10**.

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