

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF PROPERTY LIABILITY

Private Passenger Automobile Insurance Territorial Rating Plans  
Territorial Rating Equalization Exchange

Proposed Amendments: N.J.A.C. 11:3-16A.1, 16A.2 and 16A.4  
Proposed New Rules: N.J.A.C. 11:3-16A.10, 16A.11 and 16A.12

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

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

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

Proposal Number: PRN 2007-10

Submit comments by March 3, 2007 to:

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The agency proposal follows:

Summary

Rating territories are geographic areas that are utilized as one of multiple factors in determining automobile insurance premiums in most states including New Jersey. The purpose of the territorial rating factor is to reflect the variation in the risk of loss based on vehicle garage location. The two most important elements of territorial differences are frequency and severity of losses.

In 1998, the Legislature addressed territories in the Automobile Insurance Cost Reduction Act, P.L. 1998, c. 21 (AICRA). First, the Legislature recognized that the then-existing territorial

boundaries, which dated from the 1940s, needed revision. Many areas of New Jersey had gone from rural to suburban or from suburban to urban. AICRA required that new territorial rating maps be created using up-to-date experience. Insurance companies and rating organizations would then file rates based on the new territorial maps. On April 18, 2005, the Department of Banking and Insurance (Department) adopted N.J.A.C. 11:3-16A that sets forth standards for the creation of new territory maps and establishes a process for their filing and approval.

Second, AICRA repealed the statute that mandated a cap of 135 percent in the variation in rates between territories except for Basic Policies. However, AICRA limited the effect of the repeal by requiring that rates for the new territories not be “significantly disproportionate” to those in effect in 1998 when AICRA was enacted. N.J.S.A. 17:29A-36b. Absent the “significantly disproportionate” language, the repeal of the rate caps could mean significant increases in rates in certain territories. The purpose of the proposed amendments and new rules is to implement this provision of AICRA so that the rates in the new territories are not “significantly disproportionate” to those in effect in 1998 in the capped territories by the establishment of an efficient industry-wide mechanism.

In order to meet this statutory mandate and ensure that insurance coverage is available in all areas of this State, the Department is proposing the Territorial Rating Equalization Exchange (TREE) plan. It will operate in a manner similar to the New Jersey Automobile Insurance Risk Exchange (NJAIRE) mechanism, which redistributes the additional premium collected by insurers from insureds who choose the no-limitation-on-lawsuit threshold to the insurers that incur the costs for the additional lawsuits permitted by no limitation threshold policies.

The proposed new rules would establish TREE as an unincorporated association operating on a no-profit, no-loss basis and establish its governing committee, to be composed of

insurer representatives and a public member. The purpose of the TREE is to promote sustainable competition in all areas of the State.

The TREE governing committee will determine the zip codes where member companies will be eligible to receive an equalization reimbursement, calculate the territorial equalization charge that will be levied by TREE against each member company, and calculate the territorial equalization reimbursement for those companies that write business in the designated zip codes. The equalization charge and reimbursement will be calculated on a per exposure/per coverage basis.

The operation of the exchange should eliminate the concern of insurers that they will be at a competitive disadvantage by actively seeking business in the previously capped territories. Under the pre-AICRA territorial rating system, an insurer benefits from not writing too much business in capped territories and can never be sure that what it does write there will be sufficiently offset by business in non-capped territories. Under the TREE plan, premium received by an insurer that writes a policy in one of the zip codes designated by the exchange governing committee will be supplemented by an equalization payment on a direct one-to-one basis. There will be no financial reason for an insurer to limit its writing in certain geographic areas.

The TREE program will promote a competitive automobile insurance market. It will establish an industry-wide system that will eliminate the disincentive for insurers to write more risks in higher loss territories. Over time, it will promote a more efficient market as insurers are able to concentrate on writing a group of risks regardless of where those risks are located in the State.

The proposed amendment to N.J.A.C. 11:3-16A.1 adds a reference to the creation of the

TREE within subsection (a). The proposed amendment to N.J.A.C. 11:3-16A.2 adds a definition of “TREE” to that section. The proposed amendment to N.J.A.C. 11:3-16A.4 adds new subsection (f), providing that, in accordance with the TREE, the Commissioner may waive the requirements of N.J.A.C. 11:3-16A.4(a), (b) and (d) for territories comprised of zip codes eligible for TREE reimbursement.

Proposed new N.J.A.C. 11:3-16A.10 creates the TREE, sets forth its purpose and membership, provides for its administration by a governing committee pursuant to a Plan of Operation approved by the Commissioner of Banking and Insurance (Commissioner), and mandates that its administrative offices be located within New Jersey.

Proposed new N.J.A.C. 11:3-16A.11 provides for the appointment by the Commissioner of an 11 voting-member governing committee, comprised of eight industry representatives, two automobile insurance producers and one public member, and for the Commissioner or his or her representative to serve as an ex-officio, non-voting member. It also specifies certain affiliations that certain members of the committee are required to have and the terms of the governing committee members. Finally, it lists the powers and duties of the Governing Committee.

Proposed new N.J.A.C. 11:3-16A.12 sets forth the requirements applicable to the content of the Plan of Operation of the TREE and the method by which the Plan of Operation shall be adopted and amended. The initial Plan and any amendments will be subject to approval by the Commissioner.

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 establishment of the TREE will have a positive social impact in that, as noted in the Summary above, it will promote a competitive automobile insurance market throughout the State by establishing an industry-wide system that will eliminate the disincentive for insurers to write more risks in territories with higher losses. The proposed new rules and amendments will continue the implementation of the automobile insurance reforms established by AICRA, help maintain affordability and accessibility for automobile insurance in all areas of the State, and encourage the entry of new insurers into the market.

### Economic Impact

All insurers transacting personal lines private passenger automobile insurance will be required to be members of the TREE program and comply with the Plan of Operation. Any additional costs imposed on these insurers should be limited to costs associated with the collection and remission of the TREE equalization charge and the reporting of data to the TREE. The TREE program will collect and redistribute to companies amounts necessary to equalize significantly disproportionate territorial rating differentials. Currently companies redistribute these amounts on an internal company basis. As noted in the Summary above, the program should promote competition, which in turn should help reduce costs for insurance where there is currently a disincentive for insurers to write such business. The Department does not believe that any additional professional services should be required to comply with the proposed new rules and amendments.

Similarly, no additional costs should be imposed on policyholders, and in fact, to the extent competition is fostered, costs may ultimately be reduced.

### Federal Standards Statement

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

### Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments. To the extent that the proposed amendments and new rules help increase competition for private passenger automobile insurance in this state, the market for such insurance should be expanded, thereby having a positive business impact which may have a positive impact on jobs.

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

### Agriculture Industry Impact

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

### Regulatory Flexibility Analysis

The proposed amendments and new rules will apply to few, if any, “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules and amendments apply to small businesses, they will apply to insurers transacting personal lines private passenger automobile insurance in this state. As set forth more fully in the Summary and Economic Impact above, small businesses will be required

to comply with the TREE program Plan of Operation, including the collection and remission of the TREE equalization charge and the reporting of data to the TREE. No new professional services should be required to comply with the proposed amendments and new rules. As noted above, the proposed amendments and new rules should not impose any additional burden on small business, insofar as the TREE program is anticipated to involve a redistribution of currently collected premium dollars. As was noted above, the proposed new rules and amendments should increase competition, thereby benefiting all participants in the private passenger automobile insurance market in this state, including small businesses.

The proposed amendments and new rules provide no different reporting, recordkeeping or other compliance requirements based on business size. The proposed new rules and amendments establish the TREE program to implement the requirements in AICRA that rates between territories not be significantly disproportionate to those in effect that the time AICRA was enacted, eliminate disincentives for insurers to write in certain areas of the state, and thereby increase the affordability and availability of private passenger automobile insurance to all residents of the State, regardless of where they reside. These goals do not vary based on business size.

#### Smart Growth Impact

The proposed amendments and 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**; deletions indicated in brackets [thus]):

SUBCHAPTER 16A. 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, **the creation of the Territorial Rating Equalization Exchange** and for the amendments to rating plans by insurers and rating organizations.

(b) (No change.)

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.

...

**“TREE” means the Territorial Rating Equalization Exchange created pursuant to this subchapter.**

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

(a) - (e) (No change.)



(f) In accordance with the purpose of the TREE, the Commissioner may waive the requirements of (a), (b) and (d) above for territories comprised of zip codes eligible for TREE reimbursement.

#### 11:3-16A.10 Territorial Rating Equalization Exchange (TREE)

(a) There is hereby created in the State of New Jersey an unincorporated association that operates on a non profit, non loss basis to be known as the Territorial Rating Equalization Exchange (TREE).

(b) The purpose of the TREE is to promote sustainable competition in the private passenger automobile insurance market in all areas of the State.

(c) All insurers writing personal lines private passenger automobile insurance business in New Jersey shall be members of the exchange.

(d) The TREE shall be administered by a governing committee appointed pursuant to this subchapter and a Plan of Operation approved by the Commissioner.

(e) The administrative offices of the TREE shall be located within the State of New Jersey.

#### 11:3-16A.11 TREE governing committee

(a) The TREE shall be administered by a governing committee comprised of 11 voting members appointed by the Commissioner.

1. Eight members shall be salaried employees of insurers that write private passenger automobile insurance in this State.

2. Two members shall be licensed producers of private passenger automobile insurance in this State.

3. One member shall be a public representative appointed by the Commissioner who is knowledgeable about automobile insurance matters but is not employed by, or otherwise affiliated with, private passenger automobile insurers.

4. The Commissioner or his or her representative shall be an ex officio, non-voting member of the governing committee.

(b) The following insurer trade organizations shall each nominate two members to represent insurers:

1. The American Insurance Association, or its successor; and

2. The Property Casualty Insurers Association of America, or its successor.

(c) The Commissioner shall appoint:

1. Two members from insurers that are not members of the organizations identified in (b) above;

2. Two members from New Jersey domestic insurers which may be members of the trade associations in (b) above;

3. The licensed producer representatives as referenced in (a) above; and

4. The public representative as referenced in (a) above.

(d) The initial governing committee appointed pursuant to this subchapter shall serve for staggered terms of two or three years or until successors are appointed. Thereafter, all members of the governing committee shall serve for two years until a successor is appointed. Each member may designate an alternate.

**(e) All meetings of the governing committee shall be conducted in accordance with this subchapter and the Plan of Operation.**

**(f) The governing committee shall have the power and the duty to:**

**1. Develop and submit to the Commissioner for approval a Plan of Operation;**

**2. Appoint, conditionally appoint or terminate a Central Processor, subject to approval by the Commissioner, responsible for carrying out the functional and clerical work of the TREE in accordance with the Plan of Operation and an agreement between the governing committee and the central processor and any other employees, professionals or contractors necessary for the administration of the Exchange;**

**3. Hire an auditor(s) to audit the books and records of the TREE and perform compliance audits on members in accordance with the Plan of Operation;**

**4. Hire an actuary;**

**5. Budget expenses, levy assessments and disburse funds;**

**6. Enter into and/or negotiate contracts as are necessary or proper to carry out the provisions of this subchapter;**

**7. Appoint from among its members or from qualified nonmembers appropriate committees as necessary to provide technical assistance in the operation of the exchange. The Commissioner or his designee may serve as an ex-officio, non-voting member of any committee established pursuant to this section;**

**8. Investigate and hear complaints from members about any matter pertaining to the exchange;**

9. Assess member insurers and distribute to member insurers such amounts as it finds necessary and appropriate to equalize significantly disproportionate territorial rating differentials;

10. Indemnify on behalf of the member insurers, each member of the governing committee and all employees for any and all claims, suits, costs of investigations, costs of defense, settlements or judgments against them on account of an act or omission in the scope of the member's duties or the employee's employment. The Exchange shall refuse to indemnify if it determines that the act or failure to act was due to actual fraud, willful misconduct or actual malice; and

11. Perform such other functions as may be necessary and proper to administer the Exchange in accordance with this subchapter and the approved Plan of Operation.

#### 11:3-16A.12 TREE Plan of Operation

(a) The TREE Plan of Operation shall provide for, among other matters:

1. Methods and means for the collection, investment and disbursement of funds;

2. A methodology for determination of the zip codes eligible for TREE reimbursement; and

3. A methodology for determination of the amount of the equalization charge.

(b) The governing committee shall, within 60 days of the effective date of this subchapter, submit to the Commissioner for his review and approval, a proposed Plan of Operation.

1. If the governing committee does not submit a Plan of Operation within 60 days of the effective date of this rule, or a new Plan that is acceptable to the Commissioner within 30 days after the disapproval of the proposed Plan, the Commissioner may promulgate a Plan of Operation and certify same to the governing committee.

(c) Once the initial Plan of Operation is approved, the governing committee may submit amendments thereto to the Commissioner at any time. If approved, the Commissioner shall so certify to the governing committee.

(d) The Commissioner may review the Plan of Operation at any time and may propose amendments to the governing committee. If the governing committee does not adopt the amendments acceptable to the Commissioner within 30 days, the Commissioner may certify the amendments and their effective date to the governing committee.

1. For good cause shown, the Commissioner may certify proposed amendments two days after copies of the proposal are provided to the governing committee.

11:3-[16A.10] **16A.13** (No change in text.)