

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF PROPERTY AND CASUALTY
OFFICE OF CONSUMER PROTECTION SERVICES

Commercial Automobile Insurance Plan; New Jersey Personal Automobile Insurance Plan; Renewal and Nonrenewal of Automobile Insurance Policies; Rate Filing Requirements; Voluntary Market Private Passenger Automobile Insurance; Rate Process for Limited Rate Changes: Calculations for Private Passenger Automobile Insurance Rate Change; Tier Rating Plans and Underwriting Rules; Appeals from Denial of Automobile Insurance; Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule; Private Passenger Automobile Insurance Underwriting Rules; Private Passenger Automobile Insurance - Use of Alternate Underwriting Rules; Insurers Required to Provide Automobile Insurance Coverage to Eligible Persons; Special Rules for Effecting Coverage for Private Passenger Automobile Insurance; Insurers Required to Provide Survey Information; Automobile Insurance Urban Enterprise Zone Program; Fraud Prevention and Detection Plans; Activities for which a Person must be Licensed as an Insurance Producer

Proposed New Rules: N.J.A.C. 11:3-8.9, 8.10 and 8.11

Proposed Repeals and New Rules: N.J.A.C. 11:3-8.4 and 8.5 and 11:3-8 Appendix

Proposed Amendments: N.J.A.C. 11:3-1.1, 2.2, 2.8, 2.11, 8.2, 8.3, 8.6, 16.2, 16.3, 16B.2, 16B.3, 19A.1, 19A.3, 19A.4, 19A.5, 19A.6, 33.1, 34.2, , 45.1, 45.2, 46.2, 46.4, 46.6 and 46.7, 11:16-6.2, and 6.6 and 11:17A-1.2 and 1.7

Proposed Repeals: N.J.A.C. 11:3-2.13, 19A.7, 35, 35A, 40, 44, and 47

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.14a1 through 6.14a3 and 17:33B-15

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

Proposal Number: PRN 2008-203

Submit comments by August 15, 2008 to:

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The agency proposal follows:

Summary

N.J.S.A. 17:33B-15, originally adopted as part of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c. 8, required that on or after April 1, 1992, all private passenger automobile (PPA) insurers provide coverage to all eligible persons. Specifically, the statute provided:

- a. On or after April 1, 1992 every insurer, either by one or more separate rating plans filed in accordance with [N.J.S.A. 17:29A-45] prior to March 1, 1998 or [N.J.S.A. 17:29A-46.1] on or after March 1, 1998, or through one or more affiliated insurers, shall provide automobile insurance coverage for eligible persons.
- b. No insurer shall refuse to insure, refuse to renew, or limit coverage available for automobile insurance to an eligible person who meets its underwriting rules as filed and approved by the [Commissioner of Banking and Insurance (Commissioner)] in accordance with the provisions of [N.J.S.A. 17:29A-46] prior to March 1, 1998 or [N.J.S.A. 17:29A-46.2] on or after March 1, 1998].

Both of these subsections were amended by P.L. 2003, c. 89 to provide that “[t]his subsection shall become inoperative on January 1, 2009.”

Many administrative rules have been adopted and are currently in effect to reflect the requirement that insurers provide coverage to all eligible persons and to implement other aspects of the statutory framework related thereto. As the requirement that PPA insurers offer coverage to all eligible persons will become inoperative on January 1, 2009, the Department of Banking and Insurance (Department) is proposing amendments to existing rules and proposing to repeal other rules to conform the Department’s administrative rules to the new statutory structure that will be in effect after that date and eliminate references to the requirement that insurers write all

eligible persons. Consistent with the date set forth in the statute as set forth above, the proposed amendments and repeals will become operative January 1, 2009.

It should also be noted that, pursuant to N.J.S.A. 17:33B-15d(3), the Commissioner may make operative the provisions of N.J.S.A. 17:33B-15a and b if: the Commissioner determines, after a hearing, that a competitive market does not exist among insurers authorized to write private passenger automobile insurance in this State, which determination is made pursuant to N.J.S.A. 17:33B-15f; or the Commissioner certifies that the New Jersey Personal Automobile Insurance Plan (PAIP) is insuring 10 percent or more of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State.

The Department is also proposing other amendments to reflect changes to the existing statutory scheme made pursuant to P.L. 2003, c. 89, to reflect existing practice, and to make appropriate codification changes as a matter of form.

In making this proposal it is the intention of the Department to delete any references related to the requirement that insurers provide coverage to eligible persons in any of its administrative rules.

A summary of the proposed amendments, new rules and repeals follows.

N.J.A.C. 11:3-1.1(a)1 is proposed to be amended to delete the phrase “and any other private passenger vehicle that is owned or driven by a person that meets the definition of an eligible person pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.”

In N.J.A.C. 11:3-2.2, the definition of “qualified eligible person” is proposed to be deleted as no longer being applicable.

N.J.A.C. 11:3-2.8(a)1, which provides that a qualified applicant to the PAIP is a person who is not an “eligible person” as defined in N.J.A.C. 11:3-34.4 or who is a qualified eligible person, is proposed to be deleted. Eligibility for coverage in the PAIP will now be determined in accordance with the PAIP plan of operation.

Existing N.J.A.C. 11:3-2.8(a)2 is proposed to be recodified as (a)1.

A new N.J.A.C. 11:3-2.8(a)2 is proposed to provide that a qualified applicant is a person who certifies that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in this State and that he or she is a qualified applicant as set forth in N.J.A.C. 11:3-2.8(a), (b), (c). This proposed amendment further provides that an applicant so certifying shall be considered for assignment upon making application in good faith to the PAIP. An application shall be considered to have been made in good faith if the applicant reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form approved by the Commissioner. This essentially recodifies existing N.J.A.C. 11:3-2.8(d), which is proposed to be deleted and recodified as a matter of form. Existing N.J.A.C. 11:3-2.8(e) and (f) are proposed to be recodified as (d) and (e).

N.J.A.C. 11:3-2.11(a)5 and 6, which relate to credits against PAIP assignments for eligible persons written, and to credits for risks written when an insurer activates alternate underwriting rules, which as discussed below no longer applies, are proposed to be deleted. Existing paragraphs (a)7 and 8 are proposed to be recodified as paragraphs (a)5 and 6. In addition, newly codified paragraph (a)5 is proposed to be revised to delete the reference to paragraph (a)6, since that paragraph is proposed to be deleted, and instead to refer to the PAIP Plan of Operation with respect to allocation of credits.

N.J.A.C. 11:3-2.11(f) is proposed to be amended to delete the reference to a plan of orderly withdrawal, which is approved pursuant to N.J.A.C. 11:2-29, and instead refer to “an informational filing withdrawal,” to reflect the current statutory terminology and scheme regarding insurer withdrawals from transacting business pursuant to N.J.S.A. 17:17-10 and 17:33B-30, as implemented by N.J.A.C. 11:2-29.

Numerous changes are proposed to distinguish between criteria used by insurers to accept, reject or renew a risk, and those used to determine rating or tier placement of a risk. Currently, the term “underwriting rules” is often used in both situations. This distinction was not significant under the scheme that will become inoperative on January 1, 2009, in that all insurers were required to accept all eligible persons. Subsequent to that requirement becoming inoperative, insurers may utilize other criteria to accept, reject or renew a risk. As a result, the Department is proposing amendments to N.J.A.C. 11:3-8 and 19A to clarify their application to these two distinct functions (that is, acceptance, rejection, renewal; and tier placement for rating purposes). Many of the proposed changes entail a restructuring and recodification of existing requirements in order to better group similar subjects together under one rule or subchapter. The specific proposed changes are set forth below.

In N.J.A.C. 11:3-8.2, which sets forth definitions for the rules governing the renewal and nonrenewal of automobile insurance policies, the definitions of “automobile insurance eligibility points” or “eligibility points,” and of “eligible person” are proposed to be deleted as they are no longer applicable. Also, new definitions of “acceptance criteria” and “insurance score” and an amendment to the definition of “tier rating plan” are proposed.

The heading of N.J.A.C. 11:3-8.3 is proposed to be changed to read “standards for renewal” to more accurately reflect the subject of the rule.

N.J.A.C. 11:3-8.3(a) is proposed to be amended to delete the phrase “or conditioned renewal as specified in (h) below,” as subsection (h) is proposed to be deleted.

N.J.A.C. 11:3-8.3(b)1 is proposed to be amended to provide that, where acceptance of the policy renewal is made by payment of the renewal premium on or before the expiration date of the policy, the premium shall be deemed to have been received timely if it was mailed prior to the due date and received by the insurer within three business days after the due date. The date of mailing may be determined by the postmark on the envelope. The proposed amendment further provides that, as an alternative to keeping the payment envelope, an insurer can presume that receipt of the renewal premium payment in the mail within three business days after the due date establishes that the payment was mailed prior to the due date. Further, the proposed amendment provides that an insurer may charge a late fee of not more than \$25.00 when the renewal premium was received after the due date but is deemed timely. These proposed amendments recodify existing requirements set forth in N.J.A.C. 11:3-19A.7

These proposed amendments recodify provisions currently set forth in N.J.A.C. 11:3-19A.7(g) related to when renewal premium is deemed to be received. Other provisions of N.J.A.C. 11:3-19A.7 also are proposed to be recodified in N.J.A.C. 11:3-8, and thus it is proposed for repeal in its entirety. The Department believes that insofar as these provisions relate to procedures for the renewal or nonrenewal of private passenger automobile insurance policies, they would be more appropriately codified in N.J.A.C. 11:3-8.3. Through this proposed change, the Department is proposing to eliminate the requirement that filed underwriting rules contain these procedures for these same reasons. N.J.A.C. 11:3-8.3(b)2i and ii are proposed to be amended to make technical changes as a matter of form.

N.J.A.C. 11:3-8.3(e) is proposed to be deleted. This section relates to standards for notices of nonrenewal. The relevant provisions of this section are proposed to be recodified in proposed new N.J.A.C. 11:3-8.5. Current subchapter Appendix Exhibit A, which is referenced in subsection (e) is also proposed to be repealed as it is not applicable to the remaining provisions in the rules.

Existing N.J.A.C. 11:3-8.3(f) and (g) are proposed to be recodified as (e) and (f). Technical changes are also proposed to be made to N.J.A.C. 11:3-8.3(f) as a matter of form.

N.J.A.C. 11:3-8.3(h), which provides that a notice of nonrenewal shall not be valid unless it is issued in accordance with N.J.A.C. 11:3-8.3 and authorized by the Commissioner pursuant to N.J.A.C. 11:3-8.4 and 8.5, is proposed to be deleted. The Department believes that this provision is duplicative of other provisions and, thus, is unnecessary.

N.J.A.C. 11:3-8.4 is proposed to be repealed and replaced with proposed new N.J.A.C. 11:3-8.4. The existing rule provides standards for nonrenewal for “ineligible persons.” The criteria of eligibility will no longer apply as set forth above. Proposed new N.J.A.C. 11:3-8.4 sets forth acceptable standards for the nonrenewal of automobile insurance policies. Acceptable criteria for nonrenewal include: when the policyholder or other person insured under the policy either has provided false or misleading information in connection with an application or claim for benefits; the policyholder failed to provide the minimum information necessary to accurately rate the policy; the insurer may nonrenew two percent of the insurer’s in-force voluntary market policies in each rating territory; the insurer may nonrenew one automobile for each two automobiles written by the insurer during the same calendar year and in the same rating territory; and the insured no longer satisfies the insurer’s acceptance criteria. The criteria, with the exception of the last, recodify those standards set forth in existing N.J.A.C. 11:3-8.5, which is

also proposed for repeal. The last standard (failure to satisfy acceptance criteria) is newly proposed to reflect that insurers may utilize various acceptance criteria to accept, reject or renew a risk, subject to law, effective January 1, 2009. References to sections of N.J.A.C. 11:3-8.5 set forth in N.J.A.C. 11:3-8.6(a), (c), (d) and (e) are proposed to be amended to refer to appropriate sections of recodified N.J.A.C. 11:3-8.4.

New N.J.A.C. 11:3-8.5 is proposed to set forth standards for the issuance of nonrenewal notices. The standards reflect those standards set forth in existing N.J.A.C. 11:3-8.3(e)1 and 2 (which as set forth above, are proposed to be deleted) and N.J.S.A. 17:29C-10, which sets forth standards for mailing of nonrenewal notices.

The Department proposes new N.J.A.C. 11:3-8.9 to set forth standards for cancellation of a policy. These include: nonpayment of premium; suspension or revocation of driver's license; conviction of operating a motor vehicle under the influence of alcohol or drugs; conviction of vehicular homicide; and conviction of driving a motor vehicle while driving privilege is suspended. These standards are currently set forth at N.J.S.A. 17:29C-7 and N.J.A.C. 11:3-19A.7(e)1, which is proposed to be deleted.

The Department proposes new N.J.A.C. 11:3-8.10 to set forth standards for cancellation notices, which reflect the standards set forth in N.J.S.A. 17:29C-8 and 17:29C-10.

The Department is proposing a new N.J.A.C. 11:3-8.11 to set forth prohibited standards for "acceptance criteria." The factors that may not be used as acceptance criteria are: any factor prohibited under N.J.S.A. 10:5-12(l) (the Law Against Discrimination); the territory in which the insured resides; the occupation, education or insurance score of the applicant or insured; and any mental or physical impairment of the insured, unless such disability impairs the ability to operate an automobile safely. These factors reflect those set forth in N.J.A.C. 11:3-35.3(c)1, 4 and 9,

with the exception of the factor that relates to the Law Against Discrimination, which has been amended several times since N.J.A.C. 11:3-35.3(c)4 was adopted. The prohibition relating to occupation shall not be construed to prohibit the operation of an insurer that, pursuant to its organizational by-laws, limits coverage to certain persons (so-called membership companies). There are several insurers transacting business in this State of long-standing that have by-laws that limit coverage to members or employees of members of certain organizations, such as trade associations or members of the military. It is not the intent of these proposed new rules to limit or proscribe this currently approved method of operation. The proposed rule also requires that an insurer file a certification that it is not using any of the prohibited factors, rather than continuing to require that copies of complete acceptance criteria be filed with the Department. A form of certification is also proposed to be included in the proposed new Appendix to this subchapter. This will eliminate unnecessary filings, while continuing to enable the Department to adequately monitor insurer compliance in this area.

Amendments to N.J.A.C. 11:3-16.2 and 16B.2 are proposed to amend the definitions of “tier” and “tier rating system” to replace the references therein to “underwriting rules” with “tier placement criteria” to reflect that tiers and tier rating systems relate to rating and tier placement as discussed above.

N.J.A.C. 11:3-16.3(b)1 and 2 and 16B.3(b)1 and 2 are proposed to be amended to replace the references therein to “underwriting guidelines” with “acceptance criteria.”

The heading of N.J.A.C. 11:3-19A is revised to replace the reference to “underwriting rules” with “tier placement criteria.”

In N.J.A.C. 11:3-19A.1(a), the purpose of the subchapter is revised to refer to “tier placement criteria” rather than the ambiguous “underwriting rules” in order to clearly indicate

that this subchapter does not address “acceptance criteria” but, rather, establishes standards for “tier placement criteria.” The latter relates to the standards by which insurers assign risks to a tier as part of a tier rating plan. The former provides the standards by which an insurer may accept or reject new business or renew or nonrenew existing business. Underwriting guidelines are now proposed to be designated as “acceptance criteria” and would no longer be referenced in N.J.A.C. 11:3-19A.1 as proposed to be amended. Currently, the rules refer to underwriting rules and underwriting guidelines interchangeably, which does not reflect the different functions of underwriting and tier placement.

In N.J.A.C. 11:3-19A.1(c), the reference to “eligible person” is proposed to be deleted.

In N.J.A.C. 11:3-19A.2, new definitions of “insurance score” and “tier placement criteria” are proposed. Also, the definition of “tier” is proposed to be amended to replace the reference therein to “underwriting rules” with “tier placement criteria.”

In N.J.A.C. 11:3-19A.3, the heading of the section is revised to read: “Tier rating plans - general provisions” as a matter of form. In addition, subsection (a) is proposed to be amended to eliminate the requirement that insurers’ “underwriting rules used to accept or reject new business” must be filed for prior review and approval for the reasons set forth above. Such standards are now designated as “acceptance criteria” and insurers must certify that the criteria they use do not contain any of the prohibited factors set forth in N.J.A.C. 11:3-8.11. Underwriting rules, which set forth the standards for tier placement, will still have to be filed and will continue to be subject to review and prior approval pursuant to N.J.S.A. 17:22A-46.2.

Further, a new subsection (g) is proposed to provide: “No insurer may assign any applicant for insurance to a rating tier solely on the basis of the applicant’s occupation, education or insurance score. Occupation, education and/or insurance score may be used to determine tier

placement only when used in combination with other approved criteria.” This reflects existing Department practice and codifies these requirements to ensure that all insurers are aware of these requirements. Existing (h) is proposed to be recodified as (i) without change.

Further, references to “underwriting rules” in N.J.A.C. 11:3-19A.3 through 19A.6 are proposed to be replaced with “tier placement criteria.”

N.J.A.C. 11:3-19A.5(a)2, which provides that a tier rating plan shall be disapproved if it does not provide that the insurer or affiliated companies shall insure all applicants and insureds defined as “eligible persons” in N.J.A.C. 11:3-34, is proposed to be deleted as no longer applicable. Further, existing paragraphs (a)3 through 5 are proposed to be recodified as paragraphs (a)2 through 4. Moreover, existing paragraph (a)3 (proposed to be recodified as paragraph (a)2) is proposed to be amended to delete a reference to N.J.A.C. 11:3-44.2, as that rule is no longer applicable.

N.J.A.C. 11:3-19A.5(b)4, which currently prohibits tier rating on the basis of the previous coverage of an insured or applicant by a substandard insurer in such a way that the new insurer is relying upon application of the previous insurer’s underwriting rules and not its own, is proposed to be deleted. This provision refers to a “substandard insurer,” which no longer applies.

N.J.A.C. 11:3-19A.5(b)5 is proposed to be deleted since it refers to actions taken by insurers prior to 1997, which are no longer relevant in tier placement.

N.J.A.C. 11:3-19A.5(b)6 is proposed to be amended to make reference to any factor prohibited under N.J.S.A. 10:5-12(1) (the Law Against Discrimination) and to be recodified as N.J.A.C. 11:3-19A.5(b)4.

N.J.A.C. 11:3-19A.5(c) is proposed to be deleted as no longer necessary. This rule provides that insurers who, as a result of the enactment of P.L. 2003, c. 89, revise their

underwriting rules based on the number of motor vehicle points accumulated by a named insured or a regular operator of a vehicle insured under the policy, shall certify to the Commissioner that the revised rules will produce rates that are revenue neutral based upon the insurer's current coverages and book of business. This provision referred to a “one-time” action only.

N.J.A.C. 11:3-19A.7, which relates to underwriting rules for eligible persons, is proposed to be repealed, with the relevant portion of it recodified in N.J.A.C. 11:3-8, as discussed above.

Existing N.J.A.C. 11:3-19A.8 is proposed to be recodified as 19A.7, without change.

N.J.A.C. 11:3-33, which relates to appeals from denials of automobile insurance, is proposed to be amended to make this subchapter inoperative on and after January 1, 2009, unless and until the Commissioner makes the requirements of N.J.S.A. 17:33B-15a and b operative pursuant to the limited circumstances set forth in N.J.S.A. 17:33B-15d(3). This revision reflects the statutory changes noted above, as insurers are no longer required to insure all eligible persons. Rather than repeal these rules in their entirety, however, if the Commissioner should make these requirements operative again under the limited circumstances set forth in the statute, the Department believes that the prior regulatory scheme would again become operative. Similar changes are proposed to N.J.A.C. 11:3-34.2(b), which relates to eligible person qualifications and the automobile insurance eligibility point schedule, for the reasons set forth above.

In N.J.A.C. 11:3-45.1(b), references to insurers that are not exempt from the obligation to insure, renew, or provide automobile insurance to eligible persons are proposed to be deleted as no longer applicable.

In N.J.A.C. 11:3-45.2, the definition of “automobile insurer” is proposed to be amended to delete references to insurers that are exempt from the requirement to provide automobile insurance coverage to eligible persons and to be relocated to its alphabetical location.

In N.J.A.C. 11:3-46.2, which provides definitions for the Automobile Insurance Urban Enterprise Zone (UEZ) Program, the definition of “eligible person” is proposed to be deleted as no longer applicable. In addition, references to application of the various rules to “an eligible person” in N.J.A.C. 11:46.4(b)1i and 46.6(a) are proposed to be deleted as no longer applicable. Also, the reference to “underwriting guidelines” in N.J.A.C. 11:3-46.4(b)1i is proposed to be replaced with “organizational by-laws” for the reasons set forth previously regarding application of the rules to membership companies.

Further, N.J.A.C. 11:3-46.4(g) is proposed to be amended to replace the reference to the “Right to Know” law, N.J.S.A. 47:1A-1 et seq. with the “Open Public Records Act” to reflect the proper title of the statute.

In addition, N.J.A.C. 11:3-46.6(g) is proposed to be amended to replace the reference to a “plan of orderly withdrawal” with a reference to an “informational filing withdrawal” to reflect the current terminology as set forth previously above.

In N.J.A.C. 11:3-46.7(a), the reference to UEZ agents being permitted to submit “eligible person” risks from UEZs to the PAIP for coverage is proposed to be deleted. The provision now refers simply to the submission of risks. Similarly, in N.J.A.C. 11:3-46.7(b), which relates to qualified producers under the UEZ program, subparagraph (b)2i is proposed to be revised to delete references to insurers that have had their obligation to insure all eligible persons suspended, or which are otherwise limited in their ability to insure all eligible persons pursuant to law, are proposed to be deleted as these provisions are no longer applicable.

In N.J.A.C. 11:16-6.2, which provides definitions related to fraud prevention and detection plans, the definition of “application” is proposed to be amended to delete reference to information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether an applicant is

an eligible person, as it is no longer applicable. In addition, the definition of “eligible person” is proposed to be deleted for this same reason.

N.J.A.C. 11:16-6.6(a) is proposed to be amended to delete the reference to a fraud prevention and detection plan providing for underwriting inquiries to verify that the insured is an eligible person, and to replace it with verifying that the insured satisfies the insurer’s acceptance criteria, as the current applicable standard. In addition, the rule is proposed to be amended to replace the reference to the New Jersey Division of Motor Vehicles with the New Jersey Motor Vehicle Commission, to reflect the current name of that entity.

In N.J.A.C. 11:17A-1.2, which provides definitions for the rules governing activities for which a person must be licensed as an insurance producer, the definition of “completed written application” is proposed to be amended to delete references to the minimum information necessary to determine whether the applicant is an eligible person and the definition of “eligible person” is proposed to be deleted.

In addition, the definition of “declination,” et al., is revised to amend paragraph 3 to delete the reference to “the offer to insure at a rate applicable to other than an eligible person,” and to revise paragraph 5 to delete references to eligible person status and replace such references with determining such eligibility in accordance with the insurer’s acceptance criteria.

In addition, paragraph 7 in that definition is proposed to be amended to delete a reference to the information in N.J.A.C. 11:3-44.3(a), as this rule is proposed for repeal as set forth below.

N.J.A.C. 11:17A-1.7(a)1, which requires that insurance agents and brokers shall not attempt to channel an eligible person away from an insurer to avoid an insurer’s obligation to accept eligible person risks, is proposed to be deleted as no longer applicable. Existing paragraph (a)2 is also proposed to be deleted to reflect the amendments to N.J.S.A. 17:33B-18

under P.L. 2007, c. 240, which delete this requirement. In existing paragraph (a)3, proposed to be recodified as paragraph (a)1, the reference to “eligible person” is proposed to be deleted, and existing subparagraph (a)3i is proposed to be deleted. These provisions relate to insurance producers submitting applications of an eligible person for automobile insurance coverage and the binding of such coverage related thereto. Existing subparagraphs (a)3ii and iii are proposed to be recodified as subparagraphs (a)1i and ii. Finally, existing paragraphs (a)4 through 6 are proposed to be recodified as paragraphs (a)2 through 4, without change.

In addition, the Department is proposing to repeal various other rules as no longer applicable.

N.J.A.C. 11:3-2.13 is proposed to be repealed. This rule relates to the voluntary rating tier for qualified eligible persons to be written in the PAIP if those persons are denied coverage under N.J.S.A. 17:33B-15d(1) and (2). These provisions relate to alternate underwriting rules insurers may file to limit their writing of eligible person risks in certain areas of the State subject to certain conditions. These provisions will no longer be applicable on or after January 1, 2009. Accordingly, this rule is no longer necessary.

N.J.A.C. 11:3-35, which provides standards for underwriting rules for eligible persons, is also proposed to be repealed as no longer necessary. This rule, by its terms, has not applied to filings made by private passenger automobile insurers on or after March 1, 1998. The Department had not repealed the rules at that time as they applied to filings by the PAIP. The Department has determined that, in order to avoid any confusion regarding the application of the rules to private passenger automobile insurers, it is appropriate to repeal the subchapter.

Similarly, N.J.A.C. 11:3-35A, which sets forth the regulatory scheme for alternate underwriting rules, is proposed to be repealed as no longer necessary.

N.J.A.C. 11:3-40, which sets forth those insurers required under N.J.A.C. 17:33B-15 to provide automobile insurance to eligible persons, is proposed to be repealed as no longer being necessary.

N.J.A.C. 11:3-44, which sets forth requirements for effecting coverage for private passenger automobile insurance to ensure that insurers and producers do not channel away eligible person risks in violation of N.J.S.A. 17:33B-15 and 18, is proposed to be repealed as no longer necessary.

Finally, N.J.A.C. 11:3-47, which provides the requirements for insurance scenarios, is proposed to be deleted to reflect that N.J.S.A. 17:29A-52c, which required such scenarios, has been repealed pursuant to P.L. 2007, c. 240.

A 60-day comment period has been 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

As noted extensively in the Summary above, the proposed new rules, amendments and repeals are intended to conform the existing administrative rule structure with the statutory scheme by which insurers will no longer be required to insure all eligible persons effective January 1, 2009, unless and until the Commissioner makes such a requirement operative under the limited circumstances set forth in the applicable statute. The proposed new rules, amendments and repeals also restructure the existing rules, particularly at N.J.A.C. 11:3-8, to clearly distinguish between criteria used to accept, reject or renew a risk, and those used to determine rating and tier placement. The Department believes that this proposed new structure,

while generally not altering existing requirements, will codify them in a more coherent manner. Thus, the proposed new rules, amendments and repeals will ensure that the rules reflect the current statutory requirements and will avoid confusion to insurers and the public regarding the applicable regulatory framework with respect to the provision of private passenger automobile insurance in this State.

Economic Impact

The Department does not expect that any negative economic impact will be imposed as a result of the proposed new rules, amendments and repeals. As noted above, the proposed new rules, amendments and repeals are intended to conform existing rules to the statutory framework related to the provision of private passenger automobile insurance in this State, particularly the elimination of the requirement that insurers provide coverage to all eligible persons. The structure to be created by the statutory scheme is intended to continue to foster competition, which has already increased in the private passenger automobile insurance market since the enactment of P.L. 2003, c. 89. The furtherance of competition in the private passenger automobile insurance market has benefited and will continue to benefit insureds, applicants and the market generally, as the availability of insurance has increased and the rates of many insureds have declined in recent years.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules, amendments and repeals 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, amendments and repeals. As noted above, however, the proposed new rules, amendments and repeals reflect the broader statutory reforms aimed at increasing competition and the availability of private passenger automobile insurance in this State. To the extent that a healthy private passenger automobile insurance market is achieved, it will contribute to a healthy business climate in this State.

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

Regulatory Flexibility Analysis

The proposed new rules, amendments and repeals generally impose no new reporting, recordkeeping or other compliance requirements on “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, amendments and repeals apply to small business, they will apply to New Jersey domestic insurers authorized to transact PPA insurance in this State. As noted above, many of the proposed new rules, amendments and repeals reflect the statutory structure under which insurers will no longer be required to insure all eligible persons beginning January 1, 2009. These proposed changes are intended to conform the regulatory framework to the statutory structure

that will exist on January 1, 2009 applicable to the provision of private passenger automobile insurance, specifically by reusing or deleting provisions that refer to providing coverage to eligible persons. Essentially, all of the other proposed new rules, amendments and repeals clarify the distinction between acceptance criteria applied by insurers to determine whether to accept, reject, nonrenew or cancel a risk, and underwriting rules related to tier placement rating decisions. The proposed amendment to N.J.A.C. 11:3-19A.3(g), which provides that insurers may not refuse to insure or renew insurance solely on the basis of the applicant's occupation, education or insurance score, reflects existing Department practice with respect to the approval of PPA underwriting rules and tier rating plans. Accordingly, no additional costs should be imposed by this proposed amendment. No new professional services should be required to comply with the proposed new rules, amendments and repeals. The requirement related to tier placement and acceptance criteria based on occupation, education or insurance score, reflects existing requirements and imposes no new impact on insurers. The statutory framework related to the provision of private passenger automobile insurance does not vary based on business size. Accordingly, the proposed amendments and repeals provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed new rules, amendments and repeals 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 rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-2.13, 8.4, 8.5 11:3-8 Appendix, 19A.7, 35, 40, 44 and 47.

Full text of the proposed new rules and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 3

AUTOMOBILE INSURANCE

SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN

11:3-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide the coverages described herein, subject to the conditions stated, for motor vehicles other than those vehicles subject to the New Jersey Personal Automobile Insurance Plan [and any other private passenger vehicle that is owned by or driven by a person who meets the definition of an eligible person pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34];

2. - 3. (No change.)

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

11:3-2.2 Definitions

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

...

["Qualified eligible person" means a person who meets the definition of an eligible person at N.J.A.C. 11:3-34.4 but who has been denied an automobile insurance policy by an insurer permitted to use its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.]

11:3-2.8 Eligibility

(a) PAIP shall provide coverage to all qualified applicants **as set forth in the PAIP plan of operation**. For purposes of this subchapter, a "qualified applicant" [means] **shall include:**

[1. A person who is not an "eligible person" as defined in N.J.A.C. 11:3-34.4 or who is a qualified eligible person; and]

[2.] **1.** A person domiciled in New Jersey, who is an owner of an automobile registered and principally garaged in this State or will be registered and principally garaged in this State within 60 days[.]; **and**

2. A person who certifies, in the prescribed application form approved by the Commissioner, that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in the State and that he or she is a qualified applicant as set forth in this section and (b) and (c) below. An applicant so certifying shall be considered for assignment upon submitting a complete application in good faith to the PAIP. An application shall be considered to have been made in good faith if the applicant reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form.

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

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

Recodify existing (e) and (f) and **(d) and (e)** (No change in text.)

11:3-2.11 Determination and fulfillment of quotas

(a) The governing committee shall establish procedures in the plan of operation to distribute risks eligible for coverage to insurers on an equitable basis based on the proportion that the insurer's share of the voluntary market for personal private automobile insurance relates to the Statewide total of the voluntary market for personal private passenger automobile insurance in the State.

1. - 4. (No change.)

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

6. Each insurer that activates its alternate underwriting rules pursuant to N.J.A.C. 11:3-35A.6 shall receive a credit against its respective portion of assigned risks for

private passenger automobile insurance for risks written voluntarily. The credits shall be in an amount established in the plan of operation.]

[7.] **5.** In order to encourage the writing of risks in traditionally underserved areas, the PAIP shall, in its allocation of credits as set forth in [(a)6 above] **the plan of operation**, consider the loss ratio of the municipality, identified by zip code, in which the risk is located. The loss ratios for municipalities shall be established by the Department from data compiled by the statistical agents and shall be included in the Plan of Operation.

[8.] **6.** No insurer whose surplus as regards policyholders is less than \$1,500,000, as reported on page three of the most recent statutory annual statement, shall be assigned a risk requesting or required by law to carry limits of liability in excess of 50/100/10 or in excess of a combined single limit of \$100,000.

(b) - (e) (No change.)

(f) If an insurer is ordered or permitted to discontinue writing automobile insurance in this State in accordance with [a plan of orderly] **an informational filing** withdrawal [approved] pursuant to N.J.A.C. 11:2-29, or other Order of the Commissioner, or Order by a court of competent jurisdiction, the insurer's obligations to pay assessments, receive assignments and run-off existing business shall be pursuant to such Order of the Commissioner or Order of a court of competent jurisdiction.

(g) - (i) (No change.)

11:3-[2.14] **2.13** (No change in text.)

SUBCHAPTER 8. ACCEPTANCE, RENEWAL, [AND] NONRENEWAL AND CANCELLATION OF AUTOMOBILE INSURANCE POLICIES

11:3-8.2 Definitions

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

["Automobile insurance eligibility points" or "eligibility points" means points calculated under the schedule set forth in N.J.A.C. 11:3-34.]

“Acceptance criteria” means the written standards by which an insurer accepts or rejects new business, and/or renews or nonrenews existing business. An insurer may have different acceptance criteria for new and renewal business.

...

["Eligible person" means an individual that meets the qualifications set forth in N.J.A.C. 11:3-34.]

...

“Insurance score” means a number or rating, including that which is derived from an algorithm, computer application, model or other process, that is based in whole or part on credit information.

...

“Tier rating plan” means a rating system used by an insurer that provides different rates for different risks to those insureds who qualify in accordance with the insurer’s [underwriting rules] **tier placement criteria**, which [has] **have** been filed and approved in accordance with N.J.A.C. 11:3-19A.

11:3-8.3 [General provisions] **Standards for renewal**

(a) Every insurer shall make an offer to the insured named policyholder subject to this subchapter to renew such policy upon its expiration date, unless a valid notice of nonrenewal [or conditioned renewal as specified in (h) below] has been sent by the insurer to the insured in accordance with this subchapter.

(b) Each renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal offer or bill. A renewal offer or bill shall indicate the date by which the renewal premium is due. The renewal bill or offer shall be mailed or delivered by the insurer to the insured not more than 45 days and not less than 30 days prior to the date the renewal premium is due.

1. Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the renewal offer by the insured. **Where acceptance of the policy renewal is made by payment of the renewal premium on or before the expiration date of the policy, the premium shall be deemed to have been received timely if it was mailed prior to the due date and received by the insurer within three business days after the due date. The date of mailing may be determined by the postmark on the envelope.**

i. As an alternative to retaining the payment envelope as proof of the date of mailing, an insurer may presume that receipt of the mailed renewal premium payment within three business days after the due date conclusively establishes that the payment was mailed prior to the due date.

ii. An insurer may file changes to its rating system to charge a late fee of not more than \$25.00 when the renewal premium was received after the due date but is deemed timely as provided in (b)1i above.

2. Where acceptance of the renewal is made by mailing payment of the renewal bill, the renewal notice shall state the following in a clear and conspicuous manner:

i. The due date for receipt of the renewal premium and a notice [of] **to** the insured designed to help the insured understand what "12:01 A.M." means as a deadline;

ii. The consequences to the insured if the insurer does not receive the renewal premium by the due date, including any late payment penalties for receipt of the premium by the insurer after the due date pursuant to [N.J.A.C. 11:3-19A.7(g)] **(b)1ii above**; and

iii. (No change.)

(c) (No change.)

(d) The requirements of [(b)] **(c)** above shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate.

[(e) A notice of nonrenewal shall not be valid unless it is mailed or delivered by the insurer to the insured named policyholder no less than 60 days and no more than 90 days prior to the expiration of the current policy, except that the Commissioner may direct by Order that a notice of nonrenewal must be mailed or delivered up to 90 days prior to the expiration of the current policy. Any such order shall apply to nonrenewal notices issued a minimum of 30 days after the date of the order. A notice of nonrenewal shall set forth the reason(s) for such nonrenewal.

1. A notice of nonrenewal shall not be valid unless it includes the designated provision(s) of this subchapter under which action is being taken and the facts relied upon by the insurer in determining to nonrenew the insured. The notice shall include reference to the underwriting provision(s), including dates and other facts necessary for identification of the incident(s).

i. In the event action is being taken under N.J.A.C. 11:3-8.4(a) (ineligible person), the notice shall provide the basis by which the insured fails to qualify as an eligible person. When notice of nonrenewals is based on automobile insurance eligibility points, the notice shall identify the number of eligibility points and the events and sources which resulted in their assessment.

ii. In the event action is being taken under N.J.A.C. 11:3-8.4(b) (underwriting rules) to nonrenew an insured who is not an eligible person in accordance with the approved underwriting rules, the notice shall provide the basis by which the insured fails to qualify as an eligible person and shall reference the specific underwriting rule by which the insured is disqualified. The notice shall set forth the specific facts upon which the insurer relied to determine that the insured is not an eligible person and is no longer qualified to be insured in accordance with the insurer's approved underwriting rules.

iii. In the event action is being taken under N.J.A.C. 11:3-8.5(a)2, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)2 (two percent territorial nonrenewal) and shall be consecutively numbered in each territory.

iv. In the event action is being taken under N.J.A.C. 11:3-8.5(a)3, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)3 (one

nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

2. Notices of nonrenewal shall include or be accompanied by the statement prescribed in (f)2i below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention.

i. Notices of nonrenewal must set forth: "If you have reason to believe that our decision to nonrenew your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you should file a written complaint with the New Jersey Department of Banking and Insurance, Division of Enforcement and Consumer Protection, PO Box 329, Trenton, NJ 08625-0329. Your written complaint should indicate the facts on which you are basing your complaint."

3. Each notice of nonrenewal sent in accordance with (f)liii and iv above shall be accompanied by a copy of the notice contained in Appendix Exhibit A, incorporated herein by reference.]

[(f)] **(e)** (No change in text.)

[(g)] **(f)** In any instance in which an insurer may, pursuant to [the provisions of] this subchapter, nonrenew an automobile policy, it may, in lieu of the nonrenewal and in compliance with [such] **all applicable** provisions **of this subchapter**, condition the renewal of the policy upon a change of limits or elimination of any coverage not required by law.

[(h)] A notice of nonrenewal shall not be valid unless it is issued in accordance with N.J.A.C. 11:3-8.3 and authorized by the Commissioner of Banking and Insurance pursuant to N.J.A.C. 11:3-8.4 and 8.5.]

11:3-8.4 Standards for nonrenewals

(a) Subject to the limitation set forth in N.J.A.C. 11:3-8.6, an insurer may issue a notice of nonrenewal to the named insured, in the following instances:

1. In accordance with N.J.S.A. 17:29C-7.1f, when the policyholder or other person insured under the policy either has:

i. Provided false or misleading information in connection with an application or renewal of coverage, or as part of a claim for benefits; or

ii. Failed to provide the minimum information necessary to accurately rate the policy or renewal;

2. In accordance with N.J.S.A. 17:29C-7.1b, an insurer may nonrenew the policies of two percent of the insurer's in force voluntary market policies in each rating territory;

3. In accordance with N.J.S.A. 17:29C-7.1c, an insurer may nonrenew one automobile for each two automobiles written by the insurer during the same calendar year and in the same rating territory; or

4. The insured no longer satisfies any of the insurer's acceptance criteria.

11:3-8.5 Issuance of nonrenewal notices

(a) A notice of nonrenewal shall not be valid unless it specifies the reason(s) underlying the action being taken and identifies the specific acceptance criteria that the insured being non-renewed has failed to fulfill. Non-renewal notices shall identify the

specific facts relied upon by the insurer in determining to non-renew the insured, including dates and other facts necessary to identify the incident(s), which form the basis for the insurer's determination that the acceptance criteria referenced in the notice has not been fulfilled.

1. In the event action is being taken under N.J.A.C. 11:3-8.4(a)2, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.4(a)2 (two percent territorial nonrenewal) and shall be consecutively numbered in each territory.

2. In the event action is being taken under N.J.A.C. 11:3-8.4(a)3, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.4(a)3 (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

(b) Notices of nonrenewal shall include or be accompanied by the statement prescribed in (b)1 below, which shall be clearly and prominently set out in boldface type or other manner, which draws the reader's attention.

1. "If you have reason to believe that our decision to nonrenew your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you may file a written complaint with the New Jersey Department of Banking and Insurance, Office of Consumer Protection Services, PO Box 329, Trenton, NJ 08625-0329, or electronically at www.njdobi.org. Your written complaint should indicate the facts on which you are basing your complaint."

(c) A notice of nonrenewal shall not be effective unless (c)3 below and either (c)1 or 2 below are satisfied:

1. The notice is sent by certified mail; or

2. The notice is sent by regular mail and at the time of the mailing of the notice the insurer has obtained from the U.S. Postal Service a date-stamped proof of mailing showing the name and address of the insured; and

3. The insurer retains a duplicate copy of the mailed notice of non-renewal that is certified to be a true copy.

11:3-8.6 Limitations on nonrenewal

(a) No insurer shall nonrenew a policy based on N.J.A.C. 11:3-[8.5(a)1i] **8.4(a)1i** without having first conducted an investigation and reported the matter in accordance with the insurer's Fraud Detection and Prevention Plan.

(b) No insurer shall nonrenew a policy for failure to complete and return a renewal questionnaire without having first given written notice to the policyholder one full policy cycle prior to the issuance of the notice of nonrenewal that:

1. (No change.)

2. Failure to complete and return that renewal questionnaire may result in the nonrenewal of the policy.

(c) No insurer shall nonrenew a policy pursuant to N.J.A.C. 11:3-[8.5(a)2] **8.4(a)2** and 3:

1. - 2. (No change.)

(d) No insurer shall nonrenew a policy pursuant to N.J.A.C. 11:3-[8.5(a)3] **8.4(a)3** in any rating territory containing a municipality designated as an automobile urban enterprise zone (UEZ) unless the insurer's aggregate voluntary market share in the UEZs is at least 95 percent of

the insurer's Statewide market share excluding UEZs as of the most recent UEZ in force report filed in accordance with N.J.A.C. 11:3-46.13 for the quarter ending September 30.

(e) Except as prohibited by (d) above, an insurer may nonrenew a policy pursuant to 11:3-[8.5(a)3] **8.4(a)3** in a rating territory where the number of its in-force exposures has increased in the previous year as indicated by the two most recent in-force exposure reports for the quarter ending December 31.

(f) (No change.)

11:3-8.9 Standards for cancellation

(a) Pursuant to N.J.S.A. 17:29C-7, a notice of cancellation shall be effective only when based on one or more of the following reasons:

1. Nonpayment of premium;

2. The driver's license or motor vehicle registration of the named insured has been suspended or revoked during the policy period;

3. The driver's license or motor vehicle registration of another named insured or person insured under the policy who either resides in the same household or customarily operates an automobile insured under the policy has been suspended or revoked during the policy term for one or more of the following reasons:

i. Conviction of operating a motor vehicle under the influence of alcohol or drugs (N.J.S.A. 39:4-50.4);

ii. Conviction of refusal to submit to a chemical test (N.J.S.A. 2C:11-2);

iii. Conviction of vehicular homicide (N.J.S.A. 2C:11-2);

iv. Conviction of operating a motor vehicle while driving privilege is suspended (N.J.S.A. 39:3-40), except for convictions under N.J.S.A. 39:3-40i;

v. Conviction of operating a motor vehicle without liability insurance (N.J.S.A. 39:6B-2);

vi. Conviction of misrepresentation of insurance coverage (N.J.S.A. 39:6A-15);

vii. Accumulation of motor vehicle penalty points pursuant to N.J.S.A. 39:5-30.5;

viii. By a court upon conviction of one of the following motor vehicle violations: racing on a highway (N.J.S.A. 39:5C-1); failure to pass to right of vehicle proceeding in opposite direction (N.J.S.A. 39:4-84); tailgating (N.J.S.A. 39:4-89); reckless driving (N.J.S.A. 39:4-96); exceeding a speed limit by 30 MPH or more (N.J.S.A. 39:4-99); improperly passing a school bus (N.J.S.A. 39:4-128.1); or leaving the scene of an accident in which personal injury occurred (N.J.S.A. 39:4-129); or

ix. Where evidence exists that the suspended or revoked operator has been driving the vehicle during the period of suspension or revocation;

4. The named insured knowingly provided materially false or misleading information in connection with any application for insurance, renewal of insurance, or in connection with the filing of a claim for benefits under an insurance policy; or

5. An insurer determines, within 60 days of issuance of the policy, that the named insured does not meet the acceptance criteria of the insurer in effect on the date of application.

11:3-8.10 Issuance of cancellation notices

(a) No notice of cancellation issued pursuant to N.J.A.C. 11:3-8.9(a), non-payment of premium, shall be effective unless it is mailed or delivered by the insurer in accordance with N.J.S.A. 17:29C-8 to the named insured at least 15 days prior to the effective date of the cancellation.

(b) No notice of cancellation issued pursuant to N.J.A.C. 11:3-8.9(b) through (e) shall be effective unless it is mailed or delivered by the insurer in accordance with N.J.S.A. 17:29C-8 to the named insured at least 20 days prior to the effective date of the cancellation.

(c) All cancellation notices shall include the reason for the cancellation or shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of the cancellation, the insurer will specify the reason for the cancellation.

(d) No cancellation notice shall be effective unless (d)3 below and either (d)1 or 2 below are satisfied:

- 1. The notice is sent by certified mail; or**
- 2. The notice is sent by regular mail and at the time of the mailing of the notice, the insurer has obtained from the U.S. Postal Service a date-stamped proof of mailing showing the name and address of the insured; and**
- 3. The insurer retains a duplicate copy of the mailed cancellation notice that is certified to be a true copy.**

11:3-8.11 Acceptance criteria

(a) An insurer is prohibited from using any of the following in its acceptance criteria:

1. Any factor set forth in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(l), except in the case of disability set forth in (a)4 below;

2. The territory in which the applicant or insured resides;

3. The occupation, education or insurance score of the applicant or insured; provided that, as it relates to occupation, this paragraph shall not be construed to prohibit the operation of an insurer that, pursuant to its organizational by-laws, limits coverage to persons who are members or employees of members of certain organizations, such as trade associations or the military (so-called membership companies); and

4. Any mental or physical impairment of the insured unless such disability impairs the ability to operate an automobile safely.

(b) Every insurer shall file a certification with the Department in the form set forth in the subchapter Appendix, incorporated herein by reference, signed by an individual authorized to sign such a certification on behalf of the insurer. The certification shall state that the insurer is not using any of the prohibited acceptance criteria set forth in (a) above.

(c) All certifications shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance

Office of Property/Casualty

20 West State Street

PO Box 325

Trenton, NJ 08625-0325

Recodify existing 11:3-8.9 and 11:3-8.10 as **11:3-8.12** and **11:3-8.13** (No change in text).

APPENDIX

CERTIFICATION OF COMPLIANCE WITH N.J.A.C. 11:3-8.11

I hereby certify _____ (Name of Insurance Company) _____

is in compliance with the above-captioned rule and is not using any of

the prohibited "Acceptance Criteria" as set forth in N.J.A.C. 11:3-8.11(a).

Signature

Print Name

Title

Telephone Number

Date

SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET PRIVATE
PASSENGER AUTOMOBILE INSURANCE

11:3-16.2 Definitions

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

...

"Tier" and "tier rating system" refer to one or more [underwriting rules] **tier placement criteria**, filed and approved pursuant to N.J.S.A. 17:29A-46.1 et seq. and N.J.A.C. 11:3-19A, which define and characterize one or more mutually exclusive groups of insureds.

...

11:3-16.3 General requirements and filing format

(a) (No change.)

(b) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship, and that choose to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.8, 16.9, and 16.10, either:

1. Separately for each company with a different rate level or different [underwriting guidelines] **acceptance criteria**; or

2. Combined for those companies of the group, which use a common rating system, including both base rates and [underwriting guidelines] **acceptance criteria**, or when the difference is based only on expense differences.

(c) – (f) (No change.)

SUBCHAPTER 16B. RATE PROCESS FOR LIMITED RATE CHANGES; CALCULATIONS
FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE RATE CHANGES

11:3-16B.2 Definitions

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

...

"Tier" and "tier rating system" refer to one or more [underwriting rules] **tier placement criteria**, filed and approved pursuant to N.J.S.A. 17:29A-46.1 et seq. and N.J.A.C. 11:3-19A, which define and characterize one or more mutually exclusive group of insureds.

11:3-16B.3 Rate process for limited rate changes; insurers and rating organizations

(a) - (b) (No change.)

(c) Separate insurance companies that are affiliated by a parent-subsiary or any group relationship and that choose to submit a single filing for the group shall provide the data, either:

1. Separately for each company with a different rate level or different [underwriting guidelines] **acceptance criteria**; or

2. Combined for those companies of the group, which use a common rating system, including both base rates and [underwriting guidelines] **acceptance criteria**, or when the difference is based only on expense differences.

(d) – (f) (No change.)

SUBCHAPTER 19A. TIER RATING PLANS AND [UNDERWRITING RULES] **TIER PLACEMENT CRITERIA**

11:3-19A.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-46.1 et seq., which requires that personal private passenger automobile insurers file for approval their [underwriting rules] **tier placement criteria** used to [accept or reject business and to] assign risks to a tier rating plan. Approval of [underwriting rules] **tier placement criteria** shall serve to confirm that each insurer's business practices are consistent with law regarding [the acceptance of new business, the renewal of current business and] the assignment of a risk to an insurer's tier rating plan.

(b) (No change.)

(c) This subchapter does not apply to the New Jersey Personal Automobile Insurance Plan or to private passenger automobile insurance written in a commercial lines rating system filed pursuant to N.J.S.A. 17:29AA-1 et seq. except to those [eligible person] risks that are assigned to an insurer pursuant to N.J.S.A. 17:29D-1i.

(d) (No change.)

11:3-19A.2 Definitions

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

...

“Insurance score” means a number or rating, including that which is derived from an algorithm, computer application, model or other process, that is based in whole or part on credit information.

...

“Tier” refers to one or more [underwriting rules] **tier placement criteria**, filed and approved pursuant to N.J.S.A. 17:29A-46.1, which define and characterize one or more mutually exclusive groups of insureds.

“Tier placement criteria” means the written rules by which an insurer assigns a risk to a rating tier.

11:3-19A.3 [General] **Tier rating plans - general** provisions

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

(b) - (e) (No change.)

(f) The placement of applicants and insureds at or within a tier, and the movement of insureds between tiers, shall be based on [underwriting rules] **tier placement criteria** that

comply with N.J.A.C. 11:3-19A.5(b), are mutually exclusive per tier, **shall be** objective, and **shall not be** applied so as to violate any statute or regulation of the United States or the State of New Jersey.

(g) No insurer may assign any applicant for insurance to a rating tier solely on the basis of the applicant's occupation, education or insurance score. Occupation, education and/or insurance score may be used to determine tier placement only when used in combination with other approved tier placement criteria.

[(g)] (h) [Underwriting rules] **Tier placement criteria** shall be included in the insured's rule section of the manual. The [underwriting rules] **tier placement criteria** shall clearly identify the rating tier to which the [rules] **criteria** shall be applied and how the [rules] **criteria** apply to new business, renewal business or both. All tables shall be clearly labeled.

[(h)] **(i)** (No change in text.)

11:3-19A.4 Filing requirements for tier rating plans

(a) An insurer seeking to establish or to modify a tier rating plan shall file with the Commissioner the following items:

1. A complete set of [underwriting rules] **tier placement criteria** containing the standards for each tier and the rating differentials between the tiers;

2. - 4. (No change.)

(b) – (c) (No change.)

11:3-19A.5 Standards of approval, disapproval or modification of [underwriting rules] **tier placement criteria** and tier ratings plans

(a) A tier rating plan shall be disapproved for any of the following reasons:

1. (No change.)

[2. The plan does not provide that the insurer or affiliated companies shall insure all applicants and insureds defined as "eligible persons" in N.J.A.C. 11:3-34;]

[3.] ~~2.~~ The plan assigns a vehicle insured under the policy to a higher than standard tier solely for the accumulation of four or less motor vehicle violation points by any named insured or a regular operator [as defined in N.J.A.C. 11:3-44.2];

Recodify existing 4. and 5. as **3. and 4.** (No change in text.)

(b) [Underwriting rules for tier placement in a tier rating plan] **Tier placement criteria** shall meet the following standards:

1. No [rule] **criterion** shall be based on the territory in which an insured resides or any other factor which the Commissioner finds to be a surrogate thereof;

2. [Underwriting rules] **Tier placement criteria** shall be based on a reasonable and demonstrable relationship between the risk characteristic of the driver(s) and vehicle(s) insured and the hazards insured against;

3. [Underwriting rules] **Tier placement criteria** shall be based on objective, specific and verifiable criteria. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.; **and**

[4. Underwriting rules shall not be based on the previous coverage of an insured or applicant by a substandard insurer in such a way that the insurer is relying upon application of the previous insurers underwriting rules and not its own;

5. Underwriting rules shall not be based on the nonrenewal of an insured prior to June 30, 1997 in accordance with N.J.S.A. 17:29C-7.1b or 7.1c except as permitted by N.J.A.C. 11:3-19A.7(f); and]

[6.] **4.** [Underwriting rules] **Tier placement criteria** shall not be based on [race, color, creed, religion, national origin or ancestry] **any factor set forth in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(1).**

[(c) Insurers who, as a result of the enactment of P.L. 2003, c.89, revise their underwriting rules based on the number of motor vehicle points accumulated by a named insured or a regular operator of a vehicle insured under the policy, shall certify to the Commissioner that the revised rules will produce rates that are revenue neutral based upon the insurer's current coverages and book of business. That certification shall be provided to the Commissioner at the time that the revised underwriting rules are submitted for approval in accordance with N.J.A.C. 11:3-19A.3 and 19A.4.]

11:3-19A.6 Policy renewals and notice to insureds

(a) An insurer that has implemented a tier rating plan shall issue and renew its policies at the appropriate tier for which the risk qualifies in accordance with the insurer's approved [underwriting rules] **tier placement criteria.**

1 – 2 (No change.)

(b) (No change.)

11:3-[19A.8] **19A.7** (No change in text.)

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

11:3-33.1 Purpose; scope

(a) This subchapter sets forth an appeal procedure for a person who has been either denied personal private passenger automobile insurance or nonrenewed in the voluntary market by an insurer on the basis that they are not an eligible person as defined in N.J.A.C. 11:3-34.4. This subchapter applies to such persons, agents and insurers required to write personal private passenger automobile insurance pursuant to State statutes and rules.

(b) This subchapter shall become inoperative on and after January 1, 2009, unless and until the Commissioner by Order makes the requirements of N.J.S.A. 17:33B-15a and b operative pursuant to the limited circumstances set forth in N.J.S.A. 17:33B-15d(3), upon a determination made after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative Procedure Rules, N.J.A.C. 1:1, that a competitive market does not exist among insurers authorized to write private passenger automobile insurance in this State, or the Commissioner certifies by Order that the Personal Automobile Insurance Plan is insuring 10 percent or more of the aggregate number of private passenger automobile non-fleet exposures being written in this State. A notice of the issuance by the Commissioner of such an Order shall be published in the New Jersey Register.

SUBCHAPTER 34. ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

11:3-34.2 Scope

(a) The provisions of this subchapter apply to all insurers which write personal private passenger automobile insurance and all persons who are required to procure automobile insurance coverage in this State.

(b) This subchapter shall become inoperative on and after January 1, 2009, unless and until the Commissioner by Order makes the requirements of N.J.S.A. 17:33B-15a and b operative pursuant to the limited circumstances set forth in N.J.S.A. 17:33B-15d(3), upon a determination made after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative Procedure Rules, N.J.A.C. 1:1, that a competitive market does not exist among insurers authorized to write private passenger automobile insurance in this State, or the Commissioner certifies by Order that the Personal Automobile Insurance Plan is insuring 10 percent or more of the aggregate number of private passenger automobile non-fleet exposures being written in this State. A notice of the issuance by the Commissioner of such an Order shall be published in the New Jersey Register.

SUBCHAPTER 45. INSURERS REQUIRED TO PROVIDE SURVEY INFORMATION

11:3-45.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall apply to all auto insurers that have on file with the Department a current personal lines rating system for automobile insurance [and which are not

exempted from the obligation to insure, renew, or provide automobile insurance to eligible persons. Exempted insurers are listed in N.J.A.C. 11:3-40.3(b), (c) and (d)].

11:3-45.2 Definitions

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

“Auto insurer” means an entity authorized or admitted to write automobile insurance in New Jersey but does not include either any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq. or any other statute.

“Automobile insurance” means insurance for private passenger automobile including one or more of the following coverages: bodily injury liability and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection, additional personal injury protection coverage and any other automobile insurance required by law.

[“Auto insurer” means an entity authorized or admitted to write automobile insurance in New Jersey but does not include either any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq. or any other statute, or insurers which are exempted from the requirement to provide automobile insurance coverage to eligible persons in accordance with N.J.A.C. 11:3-40.3(b), (c) and (d).]

...

SUBCHAPTER 46 AUTOMOBILE INSURANCE URBAN ENTERPRISE ZONE
PROGRAM

11:3-46.2 Definitions

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

...

["Eligible person" means an eligible person as defined in N.J.S.A. 17:33B-13.]

...

11:3-46.4 Qualified insurers

(a) (No change.)

(b) The documents submitted pursuant to (a) above shall set forth with specificity:

1. The insurer's goal, which shall be the number of in-force exposures needed to meet its UEZ share, as calculated pursuant to N.J.A.C. 11:3-46.3(f)[;] .

i. In the case of an insurer that has approved [underwriting guidelines] **organizational by-laws** that include membership requirements [to be an eligible person pursuant to N.J.S.A. 17:33B-13e], its goal shall be to increase accessibility and marketshare in UEZs so that it insures at least the same percentage of potential eligible members in UEZs as its percentage marketshare of eligible members located outside the UEZs. The insurer also shall be able to demonstrate the potential number of eligible members in and outside the UEZs with credible data;

2. - 6. (No change.)

(c) - (f) (No change.)

(g) To the extent an insurer, in order to provide a complete plan to be a qualified insurer, submits proprietary information, the insurer shall identify and include such information

on separate documents. Proprietary information shall be confidential and shall not be subject to public inspection or copying pursuant to the [“Right-to-Know” law] **“Open Public Records Act”**, N.J.S.A. 47:1A-1 et seq. If the Department determines that such information is not proprietary, the Department shall notify the insurer prior to responding to any public records request.

11:3-46.6 PAIP voluntary rating tier

(a) Pursuant to N.J.S.A. 17:29D-1i, the PAIP Plan of Operation shall provide for the establishment of a voluntary rating tier in which [eligible] persons residing in UEZs may be written by certain UEZ agents and qualified producers, as set forth in N.J.A.C. 11:3-46.7. The rates utilized in the voluntary rating tier shall be the voluntary market rates in use by the insurer to which the risk is distributed.

(b) - (f) (No change.)

(g) Insurers that are exempt from participation in the PAIP pursuant to N.J.A.C. 11:3-2.4 shall not be subject to distributions pursuant to this section. To the extent that an insurer is exempted from the obligation to participate in the PAIP pursuant to N.J.S.A. 17:33B-23 and 17:33B-24, subject to [a plan of orderly] **an informational filing** withdrawal pursuant to N.J.A.C. 11:2-29, or under administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., and that specific orders address its obligations, those orders will continue to control, and an insurer's obligations under these rules shall be addressed in those orders or supplementary orders.

11:3-46.7 Qualified producers

(a) Only UEZ agents who have met any limit on exposures that may be written in accordance with the UEZ agent's agreement with the appointing insurer pursuant to N.J.S.A.

17:33C-4, and who is certified by the PAIP, or qualified producers as set forth below, shall be permitted to submit [eligible person] risks from UEZs to the PAIP for coverage under the voluntary rating tier, subject to any apportionment of distributions by the PAIP pursuant to N.J.A.C. 11:3-46.11(h).

(b) For purposes of this subchapter, a "qualified producer" is a producer who:

1. (No change.)

2. Has no affiliation with a voluntary market insurer for the placement of automobile insurance;

i. A producer shall not be deemed to have an affiliation with a voluntary market insurer if the insurer [has had its obligation to insure all eligible persons suspended pursuant to N.J.S.A. 17:33B-19 and 17:33B-20;] has been placed in rehabilitation or liquidation pursuant to N.J.S.A. 17:30C-1 et seq.; **or** has been placed under administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq.; [or is otherwise limited in its ability to insure all eligible persons pursuant to law;]

3. - 6. (No change.)

(c) - (d) (No change.)

CHAPTER 16

FRAUD PREVENTION AND DETECTION

SUBCHAPTER 6 FRAUD PREVENTION AND DETECTION PLANS

11:16-6.2 Definitions

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

"Application" means any document that [contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether an applicant is an eligible person or] is used in any way by the insurer to rate or underwrite a policy, including the coverage selection form and renewal questionnaire as provided at N.J.A.C. 11:3-15.7 and 11:3-8 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration of the principal vehicle to be insured and any additional proof of New Jersey residency.

The term "application" shall also mean those signed forms, data, reports, analysis and other documents supplied in support of an application when requested by an insurer or by any other person, and/or supplied by the insured/applicant, or other person(s), seeking coverage under a policy or plan of health insurance that is provided to or used by an insurer in assessing the risk, or premium, or which is relied upon by the insurer in agreeing to provide coverage under the policy or plan, including but not limited to that information submitted in accordance with N.J.A.C. 11:4-16.7, 11:20-4.1 and 11:21-6.1.

...

["Eligible person" means an individual who meets the qualifications set forth in N.J.A.C. 11:3-34].

...

11:16-6.6 Fraud prevention and detection plan

(a) The plan shall provide for underwriting inquiry to verify that the insured [is an eligible person] **satisfies the insurer's acceptance criteria** and **that** the policy is properly rated

within 60 days of receipt of the application. These underwriting inquiries shall verify the insured's residency provided by the insured on his or her application for insurance. The plan may provide that these inquiries are generally done "in-house" by telephone and by using information from the New Jersey [Division of] Motor Vehicle [Services] Commission (or similar agencies in other states) and prior insurers.

(b) - (f) (No change.)

CHAPTER 17A

INSURANCE PRODUCER STANDARDS OF CONDUCT; MARKETING

SUBCHAPTER 1 ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER

11:17A-1.2. Definitions

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

...

"Completed written application" means a signed application that contains the minimum information necessary [as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person,] to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration for the principal vehicle to be insured,

one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

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

1. - 2. (No change.)
3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by a person, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer[, or the offer to insure at a rate applicable to other than an eligible person];
4. (No change.)
5. The refusal by an insurer to renew a policy of automobile insurance [based on the eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5] **in accordance with its acceptance criteria**;
6. (No change.)
7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, or if requested to notify the applicant whether coverage will be provided or denied, within five business days from the date a completed written application is received [that includes the information in N.J.A.C. 11:3-44.3(a)]. When an application is transmitted to an insurer by first class mail, there is a rebuttable presumption that the application was received by the insurer two calendar days after mailing when the destination is in New Jersey or within a 300 mile radius of the place of mailing, or three calendar days when the

destination is outside a 300 mile radius of the place of mailing, as evidenced by a proof of mailing or postmark.

...

["Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.4.]

...

11:17A-1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

[1. Not attempt to channel an eligible person away from an insurer or insurance coverage so as to avoid the agent's or broker's obligation to submit an application or an insurer's obligation to accept an eligible person;

2. Provide each applicant seeking automobile insurance with premium quotations for the forms or types of coverage requested by the applicant, which are offered by all insurers represented by the agent or broker for personal private passenger automobile insurance or with which the agent or broker places personal private passenger automobile risks. If the request for a quotation was made orally, the agent or broker may provide the applicant with an oral quotation; but shall provide the applicant at minimum with information about rate levels in the territory;]

[3.] **1.** Upon request, submit an application [of an eligible person] for automobile insurance to the insurer selected by the applicant.

[i. Where a producer who, pursuant to the authority granted by an insurer, has the authority to immediately bind an application for private passenger automobile insurance, determines that the applicant is an eligible person, the producer shall bind the coverage, or if requested shall notify the applicant whether coverage will be provided or denied, and shall transmit the application to the insurer within five business days of receipt of the completed written application. Nothing in this section shall be construed to compel an insurer to provide a producer with the authority to bind coverage immediately except as provided at N.J.A.C. 11:3-44.4.]

Recodify existing ii and iii as **i. and ii.** (No change in text.)

Recodify existing 4., 5. and 6. as **2., 3. and 4.** (No change in text.)

(b) (No change.)