

(e) In addition to the motor vehicle violation and insurance eligibility points specifically enumerated on Schedule 2 of the Appendix pertaining to the New Jersey Turnpike, Atlantic City Expressway, and the Garden State Parkway, for any other motor vehicle violations that occur on the New Jersey Turnpike (N.J.A.C. 19:9), the Atlantic City Expressway (N.J.A.C. 19:2–2.1), the Garden State Parkway (N.J.A.C. 19:8) or for any other moving violation at any location, Schedules 1 and 2 shall be consulted for identification of the specific misconduct committed and the determination of the appropriate number of insurance eligibility points to be assessed.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Added (e).

Amended by R.2002 d.330, effective October 7, 2002.

See: 34 N.J.R. 368(a), 34 N.J.R. 3525(a).

Added (f).

Amended by R.2003 d.469, effective December 1, 2003.

See: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

Rewrote (b); deleted (c) and recodified former (d) through (f) as (c) through (e).

Case Notes

Police report established five-point at fault accident which, when combined with six-point speeding violations, justified insurer in declining to renew automobile policy. *Fichera v. Liberty Mutual*, 95 N.J.A.R.2d (INS) 41.

Renewal of automobile policy for one period despite accumulation of points did not preclude nonrenewal in next period for same points. *Liberty Mutual v. Lee*, 95 N.J.A.R.2d (INS) 38.

Accident in which insured was at fault, when combined with two other accidents in period of coverage, justified nonrenewal for accumulation of too many points. *New Jersey Manufacturers v. Sandor*, 95 N.J.A.R.2d (INS) 36.

Accumulation of nine or more points by member of insured's household justified nonrenewal of auto policy, *Pandola v. State Farm*, 95 N.J.A.R.2d (INS) 32.

Accident resulting in payment of \$500 or more not recouped from another tort-feasor and not specifically excepted, and driver not excused under proportionate responsibility standard, was "at-fault accident" warranting eligibility points. *Amica Mutual Insurance Co. v. Kern*, 93 N.J.A.R.2d (INS) 55.

Insured at-fault for automobile accident; insured could decline to renew insurance. *AMICA Mutual Insurance Co. v. Farley*, 93 N.J.A.R.2d (INS) 51.

APPENDIX

Schedule of Automobile Insurance Eligibility Points

Schedule 1

N.J.S.A. Section Number If applicable	Event Description	DMV Event Identifier(s) If applicable	Points
39:4–50	Operating a motor vehicle under the influence of alcohol or drugs	0450; 3261	9
39:4–50.4	Refusal to submit to a chemical test	4504	9
2C:11–2	Vehicular homicide	C115	9
39:3–40	Operating a motor vehicle while driving privilege is suspended	0340	9
39:6B–2	Operating a motor vehicle without liability insurance	06B2	9

N.J.S.A. Section Number If applicable	Event Description	DMV Event Identifier(s) If applicable	Points
39:6A–15	Misrepresentation of insurance coverage	6A15	9
	Each at fault accident		5
	* For each full year of a court imposed driver's license suspension within the preceding 3 years		3
	* For each full year within the immediately preceding 3 years that a person has not held a driver's license		1
	Involved in a fatal accident	EFTL;	4
		NFTL	2
39:3–37	Obtaining a driver's license or registration through deception	0337; 0312; 05D5; 1312; MSNJ; MSOS	5
39:3–38	Make or use counterfeit plate or plates other than issued	0338	5
39:3–38.1	Make, alter or counterfeit driver's license or registration	3381	5
	Failure to verify insurance involved in an automobile accident	FVIA	2

* Points for failure to hold a driver's license in the previous three years are not cumulative to points for driver's license suspension.

Schedule 2

N.J.S.A. Section Number	Offense	Points
27:23–29	Moving against traffic—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
27:23–29	Improper passing—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4
27:23–29	Unlawful use of median strip—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
39:3–20	Operating constructor vehicle in excess of 30 mph	3
39:4–14.3	Operating motorized bicycle on a restricted highway	2
39:4–14.3d	More than one person on a motorized bike	2
39:4–35	Failure to yield to pedestrian in crosswalk	2
39:4–36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4–41	Driving through a safety zone	2
39:4–52 & 39:5C–1	Racing on highway	5
39:4–55	Improper action or omission on grades and curves	2
39:4–57	Failure to observe direction of officer	2
39:4–66	Failure to stop vehicle before crossing sidewalk	2
39:4–66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4–71	Operating a motor vehicle on a sidewalk	2
39:4–80	Failure to obey direction of officer	2
39:4–81	Failure to observe traffic signals	2
39:4–82	Failure to keep right	2
39:4–82.1	Improper operating of vehicle on divided highway or divider	2
39:4–83	Failure to keep right at intersection	2
39:4–84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4–85	Improper passing on right or off roadway	4
39:4–85.1	Wrong way on a one-way street	2
39:4–86	Improper passing in no passing zone	4
39:4–87	Failure to yield to overtaking vehicle	2
39:4–88	Failure to observe traffic lanes	2
39:4–89	Tailgating	5

N.J.S.A. Section Number	Offense	Points
39:4-90	Failure to yield at intersection	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91 & 39:4-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-98 & 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
39:4-105	Failure to stop for traffic light	2
39:4-115	Improper turn at traffic light	3
39:4-119	Failure to stop at flashing red signal	2
39:4-122	Failure to stop for police whistle	2
39:4-123	Improper right or left turn	3
39:4-124	Improper turn from approved turning course	3
39:4-125	Improper "U" turn	3
39:4-126	Failure to give proper signal	2
39:4-127	Improper backing or turning in street	2
39:4-127.1	Improper crossing of railroad grade crossing	2
39:4-127.2	Improper crossing of bridge	2
39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39:4-128.1	Improper passing of school bus	5
39:4-128.4	Improper passing of a frozen dessert truck	4
39:4-129	Leaving the scene of an accident	2
	No personal injury	8
	Personal injury	2
39:4-144	Failure to observe "stop" or "yield" signs	2
39:5D-4	Moving violation out-of-state	2

Amended by R.1996 d.58, effective February 5, 1996.
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

SUBCHAPTER 35. PRIVATE PASSENGER AUTOMOBILE INSURANCE UNDERWRITING RULES

11:3-35.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-46 which requires that personal private passenger automobile insurers file for approval their underwriting rules used to accept or reject new or renewal business or to assign risks to the standard or non-standard rate levels. Approval of underwriting rules 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 standard or non-standard rate level.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to affiliated companies which insure risks through different individual insurance companies.

(c) No private passenger automobile insurer shall make any filing pursuant to this subchapter after March 1, 1998.

Amended by R.1998 d.129, effective March 2, 1998.
See: 29 N.J.R. 5253(a), 30 N.J.R. 839(a).
Added a new (c).

11:3-35.2 Definitions

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

"Affiliated companies" means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey and that are under both common ownership and common management.

"Automobile insurance eligibility points" means points accrued as provided in accordance with the schedule set forth in N.J.A.C. 11:3-34.

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

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

"Individual insurance company" means an insurance company licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless of whether it is one of a group of affiliated companies.

"Insurer" includes a group of affiliated companies.

"Renew" means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

11:3-35.3 General requirements and filing format

(a) Except as provided in N.J.A.C. 11:3-35A, all insurers that write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business to a tier in a tier rating plan in accordance with N.J.S.A. 17:29A-46.1 and 46.2 and this subchapter. No insurer shall use or implement any underwriting rule not filed and approved as set forth herein.

(b) Underwriting rules shall be submitted on 8½ by 11 inch paper using one side of the page. Each page shall be consecutively numbered. The first page shall show the filer's company name, the filer's identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s), and NAIC group number. The underwriting rules filing shall clearly identify the rate level to which the underwriting rules will be applied and whether the underwriting rules apply to new business, renewal business or both. All tables shall be clearly labeled.

(c) Underwriting rules shall meet the following standards:

1. No underwriting rule shall be based on the territory in which an insured resides.

2. An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristics of the driver(s) insured and the hazards insured against.

3. An underwriting rule shall be based on specific and verifiable measurements. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.

4. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

5. No underwriting rule shall be based on whether the applicant or insured was previously insured as a non-standard or sub-standard risk, was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminated insurance.

6. No underwriting rule shall be based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount.

7. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

8. No underwriting rule shall be based on whether the insured has changed employment in the recent past, except that this provision shall not prohibit a rate discount to an insurer's employees or agents.

9. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

In (a), substituted "a tier in a tier rating plan in accordance with N.J.S.A. 17:29A-46.1 and 46.2" for "the standard or non-standard rating plan, in accordance with N.J.S.A. 17:29A-46".

Amended by R.2004 d.165, effective April 19, 2004.

See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

In (a), substituted "Except as provided in N.J.A.C. 11:3-35A, all insurers that" for "All insurers which".

11:3-35.4 Underwriting rules for eligible persons

(a) All insurers shall file for approval underwriting rules that provide that the insurer will make an offer to renew any of its insureds who is defined as an "eligible person" in N.J.A.C. 11:3-34.

(b) All insurers shall file for approval underwriting rules that provide that on or after April 1, 1992, the insurer shall not refuse to insure, refuse to renew or limit coverage available to any of its insureds, or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure any person not defined as an "eligible person" in N.J.A.C. 11:3-34.

(d) Underwriting rules for eligible persons applicable on and after April 1, 1992 shall not provide that coverage will be declined based on whether a member of the insured household is not an "eligible person" as defined in N.J.A.C. 11:3-34 unless the member of the insured household accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purposes of this section:

1. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

2. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.

(e) Insurers may file for approval underwriting rules by which it cancels coverage during the policy term under a policy insuring an eligible person pursuant to N.J.S.A. 17:29C-7(A)(b) when 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. The Department may approve such underwriting rules if they include the following provisions:

1. The underwriting rules provide for the cancellation of the policy when the driver's license or motor vehicle registration is suspended or revoked 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);

ii. Conviction of refusal to submit to a chemical test (N.J.S.A. 39:4-50.4);

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);

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

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).

2. The underwriting rules provide for the cancellation of the policy when:

i. A household member is convicted of a violation of N.J.S.A. 39:6B-2 during the policy term; or

ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during a period of suspension as outlined in 1 above.

3. The underwriting rules provide that coverage for eligible persons shall not be cancelled when the driver's license or motor vehicle registration of another named insured or any other operator insured under the policy is suspended or revoked for any reason other than those set forth in (e)1 above.

(f) Insurers may file for approval underwriting rules by which it declines coverage for one policy period not to exceed one year to eligible persons who have been nonrenewed pursuant to N.J.S.A. 17:29C-7.1(b) and (c) and N.J.A.C. 11:3-8.5(a)2 and 3.

(g) Insurers may file for approval underwriting rules which provide for the cancellation of coverage during the policy term under a policy insuring an eligible person if:

1. 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

2. An insurer determines, within 60 days of issuance of the policy, that the named insured does not meet the approved underwriting rules of the insurer in effect on the date of application.

Amended by R.1996 d. 246, effective June 3, 1996.

See: 27 N.J.R. 2048(a) 28 N.J.R. 3002(b).

Added (e) and (f).

Administrative correction.

See: 28 N.J.R. 3798(a).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

In (f), amended N.J.S.A. and N.J.A.C. references.

Amended by R.2003 d.502, effective December 15, 2003.

See: 35 N.J.R. 3529(a), 35 N.J.R. 5616(a).

Added (g).

Case Notes

Insured who was otherwise eligible for automobile insurance in voluntary market could obtain coverage for vehicles registered to her notwithstanding her husband's license suspension. *Kwok v. First Trenton*, 95 N.J.A.R.2d (INS) 29.

11:3-35.5 Underwriting rules for standard/non-standard rating plans

(a) Insurers shall file underwriting rules applicable to each rate level of a rating plan in accordance with N.J.A.C. 11:3-19A, which filing shall be made in accordance with, and in satisfaction of, the requirements of this subchapter.

(b) Insurers shall file underwriting rules that provide that its insureds and applicants who have accrued no automobile insurance eligibility points shall be assigned to a standard tier.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure at its standard tier any person who has accrued one or more automobile insurance eligibility points.

(d) Underwriting rules for tier rating plans shall provide that an automobile insured at a higher than standard tier shall be rated based upon the eligibility points of the principal driver; eligibility points of other household members or customary operators may additionally be used to rate the automobile only if not used to rate any other automobile.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Rewrote the section.

Case Notes

Insured who was otherwise eligible for automobile insurance in voluntary market could obtain coverage for vehicles registered to her notwithstanding her husband's license suspension. *Kwok v. First Trenton*, 95 N.J.A.R.2d (INS) 29.

11:3-35.6 Penalties

An insurer which knowingly fails to transact automobile insurance business consistently with its approved underwriting rules shall be subject to a fine of not less than \$500.00 for each violation, pursuant to N.J.S.A. 17:29A-46.1 and 46.2.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
Rewrote the section.

SUBCHAPTER 35A. PRIVATE PASSENGER AUTOMOBILE INSURANCE—USE OF ALTERNATE UNDERWRITING RULES

Subchapter Historical Note

Subchapter 35A, Private Passenger Automobile Insurance—Use of Alternate Underwriting Rules, was adopted by R.2004 d.165, effective April 19, 2004. See: 35 N.J.R. 4429(a), 36 N.J.R. 1929(a).

11:3-35A.1 Scope and purpose

(a) This subchapter implements N.J.S.A. 17:29A-46.2, which permits insurers that have met the requirements of the subchapter to have underwriting rules that are used to refuse to issue or limit coverage for new business.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal lines private passenger automobile insurance in the voluntary market.

11:3-35A.2 Definitions

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

“Affiliated companies” means two or more individual insurance companies that are authorized to transact personal lines private passenger automobile insurance business in New Jersey and that are under common ownership and common management.

“Alternate underwriting rules” means a set of underwriting rules that an insurer may use in accordance with the provisions of this subchapter and instead of the underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.3.

“Automobile” or “private passenger automobile” means a vehicle that meets the definition of “automobile” set forth at N.J.S.A. 39:6A-2.

“Automobile insurance” means personal lines private passenger automobile insurance.

“Automobile insurer” or “insurer” means an insurer or group of affiliated insurers authorized or admitted to transact the business of personal lines private passenger insurance in this State.

“Commissioner” means the Commissioner of Banking and Insurance of the State of New Jersey.

“Consolidated report” means the report required to be filed by insurers pursuant to N.J.A.C. 11:3-3A.3.

“Declination,” “denied” or “denial” means:

1. Refusal by an insurance producer to submit an application on behalf of an applicant to the insurers represented by the producer;

2. Refusal by an insurer to issue an automobile insurance policy to an applicant upon receipt of an application for automobile insurance;

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an applicant;

4. The refusal by an insurer or producer to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage; or

5. 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 of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a).

“Department” means the New Jersey Department of Banking and Insurance.

“Eligible person” means an eligible person as defined in N.J.S.A. 17:33B-13.

“New business” means an automobile not currently insured by the automobile insurer or its affiliates that is other than:

1. A replacement automobile;

2. An added automobile; or

3. An automobile whose coverage is reinstated by the automobile insurer after a grace period with or without time out of force.

“PAIP” means the New Jersey Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-2.

11:3-35A.3 General requirements

(a) Notwithstanding the provisions of N.J.A.C. 11:3-35, an insurer may use alternate underwriting rules for new business or may cease writing new business in any rating territory where the insurer has met the growth requirements specified in N.J.A.C. 11:3-35A.4 and made the filing required by N.J.A.C. 11:3-35A.6.

1. Nothing in this subchapter shall reduce an insurer’s obligation to renew policies pursuant to N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.3.

2. Nothing in this subchapter shall reduce an insurer’s obligation to meet its Urban Enterprise Zone share pursuant to N.J.A.C. 11:3-46.

(b) The insurer's alternate underwriting rules must meet the requirements of N.J.A.C. 11:3-35A.5 and must be applied uniformly in all exempt territories.

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

1. An insurer's initial set of alternate underwriting rules shall be included in the filing made pursuant to N.J.A.C. 11:3-35A.6.

2. Revisions to an insurer's alternate underwriting rules may be submitted on a use and file basis within 30 days of their use and shall include the certification as set forth in N.J.A.C. 11:3-35A.6(b) and the date on which they became effective.

11:3-35A.4 Growth requirements

(a) In each territory where its in-force exposures as of December 31, 2003, as filed in the consolidated report due on or before January 31, 2004, exceed the in-force exposures as of December 31, 2002 by five percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2004 through July 31, 2004.

(b) In each territory where its in-force exposures as of June 30, 2004, as filed in the consolidated report due on or before July 31, 2004, exceed the in-force exposures as of June 30, 2003 by five percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2004 through January 31, 2005.

(c) In each territory where its in-force exposures as of December 31, 2004, as filed in the consolidated report due on or before January 31, 2005, exceed the in-force exposures as of December 31, 2003 by four percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2005 through July 31, 2005.

(d) In each territory where its in-force exposures as of June 30, 2005, as filed in the consolidated report due on or before July 31, 2005, exceed the in-force exposures as of June 30, 2004 by four percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2005 through January 31, 2006.

(e) In each territory where its in-force exposures as of December 31, 2005, as filed in the consolidated report due on or before January 31, 2006, exceed the in-force exposures as of December 31, 2004 by three percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2006 through July 31, 2006.

(f) In each territory where its in-force exposures as of June 30, 2006, as filed in the consolidated report due on or before July 31, 2006, exceed the in-force exposures as of June 30, 2005 by three percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2006 through January 31, 2007.

(g) In each territory where its in-force exposures as of December 31, 2006, as filed in the consolidated report due on or before January 31, 2007, exceed the in-force exposures as of December 31, 2005 by two percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2007 through July 31, 2007.

(h) In each territory where its in-force exposures as of June 30, 2007, as filed in the consolidated report due on or before July 31, 2007, exceed the in-force exposures as of June 30, 2006 by two percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2007 through January 31, 2008.

(i) In each territory where its in-force exposures as of December 31, 2007, as filed in the consolidated report due on or before January 31, 2008, exceed the in-force exposures as of December 31, 2006 by one percent or more, the insurer may use its alternate underwriting rules in those territories for the period February 1, 2008 through July 31, 2008.

(j) In each territory where its in-force exposures as of June 30, 2008, as filed in the consolidated report due on or before July 31, 2008, exceed the in-force exposures as of June 30, 2007 by one percent or more, the insurer may use its alternate underwriting rules in those territories for the period August 1, 2008 through December 31, 2008.

(k) An insurer that reaches a growth standard in (a) through (j) above before the report date may make the filing required in N.J.A.C. 11:3-35A.6 when it meets the requisite growth standard. The insurer may use its alternate underwriting rules on the first day of the second calendar month after the certification is filed.

1. For example, on March 15, 2004, an insurer who has met the five percent growth requirement in (b) above in one or more territories may make a filing with the Department and begin using its alternate underwriting rules in that territory on May 1, 2004.

2. Any insurer that makes an early filing pursuant to this paragraph must make another filing based on the June 30 or December 31 consolidated report, as applicable, to continue using its alternate underwriting rules.

(l) The growth requirements for an insurer newly authorized to transact automobile insurance in this State and that had no in-force exposures on December 31, 2002 shall be as follows:

1. The insurer's baseline for growth shall be the consolidated report in (a) through (j) above in which the insurer's total number of in-force exposures exceeds 1,000.

(m) An insurer may file a request with the commissioner to use a lower percentage growth standard than those listed in (a) through (j) above and the commissioner may approve such a filing upon a finding that meeting the growth standard in this subchapter would result in the insurer qualifying for relief from its obligations pursuant to N.J.A.C. 11:2-35 or being in hazardous financial condition pursuant to N.J.A.C. 11:2-27.

11:3-35A.5 Alternate underwriting rules

(a) Alternate underwriting rules shall meet the following standards:

1. An underwriting rule shall be based on specific and verifiable standards. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.

2. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

3. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

4. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

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

(a) An insurer shall activate the use of its alternate underwriting rules by making a filing with the Commissioner. The filing shall include the information set forth in (a)1 and 2 below for the territory(ies) where the insurer has met the growth standard established in N.J.A.C. 11:3-35A.4.

1. The in-force exposures in the territory, showing the required growth percentage over the year ending June 30 or December 31, or shorter period pursuant to N.J.A.C. 11:3-35A.4(k). For example, Territory 1—June 30, 2004, 1,000 in-force exposures; June 30, 2005, 1,040 exposures = four percent growth; and

2. Whether the insurer will:

i. Continue to use its underwriting guidelines filed and approved pursuant to N.J.A.C. 11:3-35;

ii. Use alternate underwriting guidelines that meet the requirements of N.J.A.C. 11:3-35A.5; or

iii. Cease writing new business.

(b) The filing shall be accompanied by the following certification signed by an officer of the insurer:

"I _____ certify that the attached filing complies with all statutory and regulatory requirements and that all the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(c) The filing shall be sent to:

New Jersey Department of Banking and Insurance
Office of Property and Casualty

PO Box 325

Trenton, NJ 08625-0325

Email: reports@dobi.state.nj.us

(d) An insurer may change its selection in (a)2i through iii above by making a supplementary filing with the Department. The change shall be effective on the first day of the second month after the filing is received.

(e) An eligible person declined automobile insurance in a rating territory where an insurer is using its alternate underwriting rules or has ceased writing new business shall be advised by the insurer or its producer of the specific underwriting rule(s) not met or that the insurer is not writing any new business in the territory. The applicant shall also be advised that coverage may be available from another insurer or that coverage is available in the Voluntary Rating Tier in PAIP.

1. If the declined application or request for coverage was made in writing, the insurer or producer shall provide the applicant with the denial notice found in the subchapter Appendix, incorporated herein by reference. The insurer or producer may add other information to the denial notice set forth in the Appendix if that information does not contradict or detract from the contents of the denial notice.

2. If the application or request was made orally, the insurer or producer may provide the explanation of the reasons for denial orally but shall provide the written denial notice if requested by the applicant within 30 days of the oral denial.

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

(a) Notwithstanding the provisions of this subchapter, the Commissioner may make operative the provisions of N.J.A.C. 11:3-35 in all territories upon a finding that a competitive market does not exist among insurers authorized to write private passenger automobile insurance in this State pursuant to (a)1 or 2 below.

1. The Commissioner certifies that the PAIP is insuring 10 percent or more of the aggregate number of private passenger automobiles for which coverage is being written in this State; or

2. After notice and a hearing, the Commissioner issues an order that finds two or more of the factors listed in (d) below exist.

i. A hearing under this subsection shall be convened in accordance with the procedures set forth in N.J.S.A. 52:14B-4(g). Any order issued by the Commissioner pursuant to this subsection shall include specific findings of fact and be supported by clear and convincing evidence.

ii. Any ruling that finds that competition does not exist within the market for automobile insurance shall include specific findings regarding:

(1) The actions the State and the Commissioner have taken to return the market to a competitive market; and

(2) An explanation regarding why those actions have failed to return the market to a competitive market.

iii. An order issued pursuant to this subchapter shall expire one year after issued unless rescinded earlier by the Commissioner, or unless the Commissioner renews the ruling after a hearing and a finding as to continued lack of a reasonable degree of competition.

(b) The following factors shall be considered by the Commissioner for purposes of determining if a reasonable degree of competition does not exist in automobile insurance:

1. The number of insurers actively engaged in providing coverage in the market, taking into account any specialization among insurers;

2. Measures of market concentration and changes of market concentration over time, including, but not limited to, the Herfindahl-Hirschman Index (HHI) and the United States Department of Justice merger guidelines for an unconcentrated market;

3. Ease of entry and exit and the existence of financial or economic barriers that could prevent new insurers from entering the market;

4. The extent to which any insurer controls all or a dominant portion of the market and has actively sought to prevent competition;

5. Whether the total number of insurers in this State is sufficient to provide multiple options;

6. The availability of insurance coverage to consumers in the voluntary market; and

7. The opportunities available to consumers in the market to acquire pricing and other consumer information.

(c) The Commissioner shall monitor, and take all reasonable actions to maintain, the degree and continued existence of competition in this State on an on-going basis. In doing so, the Commissioner may utilize existing relevant information, analytical systems and other sources, or rely on any combination thereof. Monitoring activities may be conducted internally within the Department, in cooperation with other state insurance departments, through outside contractors and in any other manner deemed appropriate by the Commissioner.

(d) Any order issued by the Commissioner that determines that a competitive market does not exist may limit the form of policies to which the order applies and shall establish a maximum increase in an insurer's aggregate number of private passenger automobiles to which the order applies, which increase shall not exceed the maximum limits set forth in N.J.A.C. 11:3-35A.4(a) through (j).

11:3-35A.8 Penalties

Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as authorized by law including the suspension, revocation or otherwise termination of the certificate of authority to transact automobile insurance business in this State pursuant to N.J.S.A. 17:33B-15e or the imposition of fines of up to \$1,000 for the first offense and up to \$2,000 for each subsequent offense, pursuant to the authority of N.J.S.A. 17:33-2.

APPENDIX

COMPANY LETTERHEAD

Producer Name
(if applicable)

NOTICE OF DECLINATION PURSUANT TO N.J.S.A. 17:33B-15

DATE: _____

NAME OF APPLICANT: _____
OR PROSPECTIVE APPLICANT
Territory: _____

Thank you for your interest in obtaining private passenger automobile insurance from COMPANY NAME. We regret that we are unable to issue you an auto insurance policy at this time because, Check one:

☐ Our company is not writing business in this territory at this time.

☐ You do not meet our current underwriting rules. The rule(s) you do not meet are:

SPECIFY UNDERWRITING RULE(S) NOT MET

The facts on which we relied to make this determination are: