

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c) and 2312
(18 Del.C. §§311, 2501, 2304(15)(c) & 2312)
18 DE Admin. Code 906

FINAL

ORDER

906 Use of Credit Information [Formerly Regulation 87]

Proposed Regulation 906 relating to the use of credit scores in setting insurance premiums in automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners, manufactured homes and non-commercial dwelling fire insurance for personal or family protection, was first published in the *Delaware Register of Regulations* on November 1, 2007 with the original comment period open until December 4, 2007 and a public hearing on that same date. Public notice of proposed Regulation 906 was given in the *Register of Regulations* and two newspapers of general circulation in conformity with Delaware law. As a result of the public comment received, substantive changes were made to the proposed regulation and it was resubmitted for public comment. An amended proposed Regulation 906 was published in the *Delaware Register of Regulations* on January 1, 2008 with the comment period open until February 3, 2008.

Summary of the Evidence and Information Submitted

Public comment was received from the State Council for Persons with Disabilities, which endorsed the proposed regulations subject to two grammatical changes which are non-substantive and have been made.

The following summaries include comments received from Property Casualty Insurers Association of America, Nationwide Insurance, and State Farm Mutual Automobile Insurance Company:

1. The language of Section 5.1 of the regulation regarding not using credit reports that are more than two years old may be misinterpreted to prohibit insurers from relying on the residual effect of an insurance score based on a credit report obtained when the policyholder applied for coverage.
2. The phrase "credit information" is undefined and should be replaced with the phrase "consumer report" or "credit score," and the phrase "credit report" should in some cases be replaced with the terms "credit score" or "insurance score."
3. Notice of a consumer's right to request an insurance score review should be provided when the policy is issued and not at the time of application.
4. The requirement that annual notice of a policyholder's right to request an insurance score review be included with the policyholder's insurance renewal may be confusing, since the proposed regulation refers to Regulation 608 for the renewal requirement, and Regulation 608 applies to policies issued for less than six months, not annually.
5. Policyholders should not have to wait until their next renewal notice to find out that their request for an insurance score review was performed and did not result in changes to their premium. Such a notification system "keeps the policyholder in the dark." In addition, changing the renewal notices would require significant programming changes that could delay implementation of the regulation.
6. Policyholders should be permitted to request that their insurance score be reviewed by whatever means they choose, rather than having to use the form developed by the insurer. Policyholders should not have a time limit on when to submit the request.
7. Insurers who do not use insurance scores in their rating plan should not have to annually inform policyholders that they do not have the right to request a review of their insurance score.
8. The references to renewal notices required under Regulation 608 are incorrect, as Regulation 608 applies to automobile insurance, while this regulation applies to auto and homeowners insurance.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The language of the Regulation does not prohibit relying on the residual effect of an insurance score developed at the time of application and in fact recognizes that some insurers will rely on the residual effect from an initial insurance score, noting that such reliance triggers the Regulation's notice provisions. See §8.5. Further, the industry comments received after the November publication of the proposed changes raised this same concern and requested changes to three sections -- including Section 5.1 -- to accommodate the concern. Changes to all three of those sections were made as a result of the comments received and were included in the amended proposed Regulation 906 published on January 1, 2008. With regard to Section 5.1, the changes made were virtually identical to the language changes requested by industry members. Therefore, no additional change is warranted.

2. The phrase "credit information" is in fact defined -- although not found in the regulation, it is defined in the underlying statute, 29 Del.C. §8301(b). Further, many of the uses of the phrases "credit information," "consumer report," and "credit score" referenced in the comment were not changed by this amendment. The suggested changes in the use of these terms do not warrant changes to the proposed regulation as published.

3. The requirement that notification of the right to request an insurance score review be given at the time of application mirrors the requirement in current regulation that at the time of application, insurers must notify the applicant if they intend to obtain their credit information. There is no reason to not provide this additional information to an applicant at the same time.

4. Section 6.1.3 of the regulation specifically states that the notification of the right to request an insurance score review must be provided "[o]n an annual basis." While I believe that this language is sufficient to clarify the frequency, I have removed the incorrect reference to Regulation 608, which applies only to automobile policies issued for a period of less than six months.

5. In terms of keeping the policyholder in the dark, there is nothing in the regulation to prevent an insurer from informing a policyholder of the outcome of their request for an insurance score review whenever the insurer desires to do so. The requirement that the outcome of the prior year's insurance score review be provided in the next renewal notice does not mean that additional, more timely notice cannot be provided. The regulation permits the insurers to wait until the next renewal notice to inform the consumer of the outcome of the review in order to address a concern raised by insurers during discussions prior to publication of the proposed regulation that requiring separate notices would increase costs by, among other things, adding mailing costs. But if an insurer is willing to take on that expense in order to better inform their policyholders, there is nothing in this regulation that would prevent them from doing so. Additionally, since the Regulation requires notification to a policyholder within 90 days of a request for an insurance score review in the event that the review results in a lowered premium, insurers may wish to inform policyholders in the annual notification that if they do not hear from the insurer within 90 days of their request, the review did not result in any change to the premium.

Further, regarding the required programming changes and potential delay in implementation, since this notification would not be required until the first renewal notice after an insurance score review is requested, it should not be necessary to provide the notice until at least six months after such a request is received, which seems a sufficient amount of time to make any changes.

6. Providing consumers with a simple form that they can complete and mail back to the insurer to request an insurance score review does not seem onerous and will better ensure the receipt of the information needed to perform the review. Further, the imposition of a 2-week period in which to submit the form protects both the consumer and the insurer and allows the consumer to receive the benefit of any change in premium sooner rather than later.

7. Informing policyholders of an insurers exemption from the requirements of notice and a right to review of their insurance score will assist consumers in understanding why they are not getting the same notifications that other consumers are. The information required to be provided to the policyholder is not that there is a right that they do not have -- rather, it is to let them know that their insurer is exempt from these requirement because the insurer does not use credit scoring in determining premiums.

8. Agreed that the references to Regulation 608 were in error. The references did not add anything of substance to the regulation and have been removed.

9. It is in the public interest that insurance companies be prohibited from using consumer credit information in the setting of renewal premiums in insurance policies.

10. It is in the public interest that consumers whose credit information was relied upon in establishing

premiums be able to request the use of credit information in renewals if such information would result in a reduction of premiums. It is further in the public interest that policyholders be made aware of their right to request a review of their credit information.

11. The reasons given for suggested changes to Regulation 906 as published are not sufficiently persuasive to require me to make changes to the proposed regulation as published for comment.

Decision and Effective Date

Based on the provisions of 18 Del.C. §§311(a) and the record in this docket, I hereby adopt amended Regulation 906 and as may more fully and at large appear in the version attached hereto to be effective on January 1, 2008, except that subsections 6.1.2 and 6.1.3 shall take effect on April 1, 2008.

IT IS SO ORDERED this 15th day of February 2008.

Matthew Denn, Insurance Commissioner

906 Use of Credit Information [Formerly Regulation 87]

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101.

6 DE Reg. 1706 (6/1/03)

2.0 Scope

This regulation shall apply to all insurers offering automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners, manufactured homeowners and non-commercial dwelling fire insurance policies for personal or family protection. This regulation shall not apply to any line of commercial insurance.

6 DE Reg. 1706 (6/1/03)

3.0 Purpose

The purposes of this regulation are:

3.1 To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.

3.2 To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.

3.3 To assure that ~~consumers, whether on initial application or renewal,~~ applicants are given notice when consumer reports will be requested and reviewed in connection with ~~a consumer's~~ their eligibility for ~~and/or the continuance of~~ insurance coverage and/or ~~a consumer's~~ their tier or level of premium payment.

3.4 To prohibit the practice of assigning ~~a consumer~~ an applicant to a premium level based solely on the ~~consumer's~~ applicant's credit rating or credit score.

3.5 To prohibit the practice of using a policyholder's credit rating or credit score except as provided in 18 Del.C. §§ 8301 through 8304.

3.56 To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.

3.7 To establish a procedure for policyholders to request, on an annual basis, a recalculation of their insurance score based on a current credit report.

6 DE Reg. 1706 (6/1/03)

4.0 Definitions

"Adverse action" has the meaning given that term in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq. (referred to in this regulation as "the FCRA"). An adverse action includes but is not limited to the following:

- Cancellation, denial or nonrenewal of insurance coverage;
- Charging a higher insurance premium than would have been offered if the credit history or insurance score had been more favorable in the absence of a rate change occasioned by other applicable underwriting factors independent of credit related information, whether the charge is by:
 - application of a rating rule;
 - assignment to a rating category within a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates; or
- A reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score. A reduction or an adverse or unfavorable change in the terms of coverage occurs when:
 - coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or
 - the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.
- The placement of the consumer with an affiliated company shall not be considered an adverse action under this regulation.
- Notwithstanding the foregoing, a decision to reject an insurance application, to deny renewal or to condition renewal, to assign an application or renewal to a tier, class or group, or to issue the policy based on or with restrictions that would not apply but for the consideration of the consumer report.
- Notwithstanding the foregoing, if a consumer, upon renewal, is not assigned to a less favorable tier or if there is a change in premium not resulting from any use of credit information, such event shall not be deemed an adverse action.

"Applicant" shall mean an applicant for insurance coverage but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

"Commissioner" shall mean the Insurance Commissioner of the State of Delaware, or any person designated by the Commissioner to enforce the provisions of this regulation or any related statute or regulation.

"Consumer" shall mean applicants or policyholders.

"Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency (as defined in the FCRA) bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal lines automobile or homeowner insurance to be used primarily for person, family, or household purposes. Consumer report shall not include motor vehicle reports or claims history reports or any other report that is not credit related.

"Credit score" means any alpha, numeric and/or alpha-numeric rating or classification of any person based on information contained in said person's consumer report created by an insurer or any person, firm or entity for use by an insurer.

"Document" or "public record" shall have the same meaning as described in 29 Del.C. §10002(d) and 18 Del.C. §§ 320, 321.

"Insurance score" shall have the same meaning as "credit score."

~~**"Insured," or "consumer"**~~ **"Policyholder"** shall mean the applicant(s) for coverage or person or persons insured under a policy of insurance but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

6 DE Reg. 1706 (6/1/03)

5.0 Prohibited Practices

5.1 No individual consumer report or credit score shall be valid if the age of the consumer report upon which it is based is greater than two years from the date of its first use for an individual application, ~~or renewal of coverage or~~ if the consumer report or credit score utilizes in any manner, factors which include any or all of race,

color, creed, sex, religion, national origin, place of residency, marital status, nature of employment, physical disability, or any similar category prohibited by federal or state law.

5.2 Each insurer proposing to use an insurance score as part of its rating or underwriting criteria shall file with the Commissioner, as part of its rate filings required pursuant to 18 Del.C. Ch. 25, such supporting models, algorithms, actuarial and statistical data and reports sufficient, in the discretion of the Commissioner, to permit the Commissioner to determine ~~that the use of such credit report or score shall not~~:

5.2.1 That the use of such credit report or score shall not ~~Un~~fairly discriminate or assign a consumer to a class or tier based on criteria which are not actuarially supported and shown to be relevant to risk or experience, or

5.2.2 That the use of such credit report or score shall not be ~~Be~~ the sole basis upon which the insurer denies coverage, ~~or upon which the insurer cancels, refuses to renew~~ or sets a premium or rate for insurance coverage for an applicant without consideration of other underwriting or rating factors, ~~or~~:

5.2.3 That, with respect to any policy currently in force, the insurer's insurance scoring methodology does not result in any adverse underwriting decision based in any way upon changes in a policyholder's credit information or consumer report.

5.3 No insurer shall be permitted to use the services of a third party to develop a consumer report or credit score unless the third party shall, without qualification, consent to provide any information, documents, reports (except for consumer reports which may not be disclosed), actuarial and/or statistical bases or models, or other such information required by the Commissioner as part of the insurer's rate approval process.

5.4 In rating a policy or assigning a consumer to a premium level or tier, no insurer shall be permitted to consider the consumer report or score of any person other than the named applicant or policyholder or person(s) who have an insurable interest to be covered under the policy. In the case of homeowner's coverage, no insurer shall be permitted to deny, penalize, impose a higher rate or take any action adverse or detrimental to an applicant ~~current or prospective policyholder~~ based solely on the credit score of a spouse who has no title or ownership interest in the property to be insured and is not a named ~~policyholder~~ or applicant.

5.5 No insurer, or entity from which the insurer may obtain credit scoring information, shall use credit or consumer reports in any manner prohibited by law.

5.6 No insurer shall be permitted to use obsolete information which shall be defined as follows:

5.6.1 Bankruptcies which, from date of the adjudication of the most recent bankruptcy, antedate the report by more than 10 years;

5.6.2 Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

5.6.3 Paid tax liens which, from date of payment, antedate the report by more than 7 years;

5.6.4 Accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

5.6.5 Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; and

5.6.6 Any other adverse item of information which antedates the report by more than 7 years.

5.7 The following factors shall not be used by an insurer or by any entity retained by the insurer for the purposes of generating a credit score for underwriting, tier placement or rating purposes:

5.7.1 Information that is disputed by the consumer and has been identified by the consumer reporting agency and coded as such, if the use of such disputed information would result in an adverse action;

5.7.2 Information that has been identified by the consumer reporting agency as related to insurance inquiries and/or non-consumer initiated inquiries and coded as such;

5.7.3 Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;

5.7.4 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.5 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.6 The total available line of credit, however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

5.8 If a consumer has no available credit history or has insufficient credit history to develop a credit score, the consumer must be underwritten and rated in accordance with the remaining actuarial principles and standards of practice set forth in the appropriate rate filing that are exclusive of the credit score. However, an insurer may consider insufficient credit history or no available credit history in setting a premium or rate, or underwriting an insurance policy for an applicant, to the extent such use is actuarially justified and consistent with the rate filing in the office of the Commissioner.

5.9 No insurer shall, by underwriting standards or practices, use a consumer's credit score inconsistent with or in violation of this regulation.

6 DE Reg. 1706 (6/1/03)

6.0 Written Notice to Consumers

6.1 If an insurer uses credit information in underwriting or rating a consumer, the insurer ~~or its agent~~ shall make the following disclosures to the consumer:

6.1.1 ~~disclose,~~ either on the insurance application or at the time the insurance application is taken, the insurer shall disclose to the applicant that it may obtain credit information on the ~~consumer applicant~~, other persons residing in the ~~consumer's applicant's~~ home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement. The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit) (insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit) (insurance) score."

6.1.2 Either on the insurance application or at the time the insurance application is taken, the insurer shall inform the applicant that, if the application is approved and the applicant becomes a policyholder, he or she has the right to ~~[have their insurance score reviewed]~~ **[an insurance score review]** on an annual basis based on a new consumer report, in accordance with the procedures set forth in section 8 of this Regulation. The notice shall state that the review will be conducted for the sole purpose of determining whether the consumer's credit information would lead to a reduction in insurance premiums and will not be used for any other purpose, including an increase in premiums. The use of the following example disclosure statement constitutes compliance with this section: "If we do use a credit based score, you will have the right on an annual basis to request that we obtain a current credit report for you and determine whether use of the new credit report would result in a decrease in your insurance premiums. If the new credit report that we receive would result in a decrease in your insurance premiums, we will make that reduction. If the new credit information would not reduce your insurance premiums, the credit report will not be used to impact your premiums in any way." This paragraph does not apply if an insurer's filed rating plan does not use any credit information for the purpose of rating renewals, including any residual effect from the use of credit at initial underwriting.

6.1.3. On an annual basis, the insurer shall inform its policyholders of their right to have their credit information reviewed to determine whether the use of the current credit report would result in a lower premium, in accordance with the procedures set forth in section 8 of this Regulation. This notification shall be prominently included in at least 18 point type in the renewal notification **[required by Department of Insurance Regulation 608, Section 3]**. The notification shall be accompanied by a form that the policyholder must complete and send to the insured to request that the credit report be obtained and reviewed. The notification shall inform the policyholder that the policyholder must mail the request form within two weeks of the date of mailing of the renewal notification by the insurer in order for the re-rating to occur in time for a premium adjustment to be made for the upcoming policy period. The notification shall also inform the policyholder that they must comply with the renewal notice's requirements regarding the payment amount and due date regardless of whether they choose to request a review of their credit report, and that any decrease in premium as a result of the credit review will be effective as of the upcoming renewal date provided in the renewal notice. This subsection does not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including residual effect from the use of credit information at initial underwriting. An insurer that is exempt from this subsection shall inform its policyholder of the exemption and the reason for the exemption in the **[policyholder's]** renewal notification **[required by Department of Insurance Regulation 608, Section 3]**.

6.2 A notice denying an application for insurance ~~or a notice refusing to renew or cancel insurance~~ shall, to the extent that the insurer's action is based on information contained in a consumer report relating to the applicant, ~~insured~~ and/or other named person, contain the following:

6.2.1 The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;

6.2.2 A summary of the most significant reasons for the adverse action that relate to the ~~consumer's~~ applicant's credit history or to the credit factors of the credit score. The reasons need not exceed four, shall be specific and shall identify the information associated with each reason. The notice shall be sufficiently clear and specific that ~~a consumer~~ an applicant of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary, however standardized credit explanations provided by consumer reporting agencies or other third party vendors that satisfy the requirements of this section are deemed to comply with this section.

6.2.3 A statement advising the applicant ~~or insured~~ that, if the ~~insured~~ applicant wishes to inquire further about the credit information on which the refusal, ~~denial or nonrenewal~~ is based and obtain a free copy of the "consumer report," the ~~insured~~ applicant may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than thirty days after the date on which the notice of refusal, ~~denial or nonrenewal~~ was mailed to the ~~insured~~ applicant.

6.2.4 A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the applicant ~~or insured~~ the specific reasons why the adverse action was taken.

6.3 If the applicant ~~or insured~~ submits the written notification required under section 6.2.3, the refusal, ~~denial or nonrenewal~~ shall not become effective until thirty days after the accuracy of the credit information, which the applicant ~~or insured~~ has questioned and on which the refusal, ~~denial or nonrenewal~~ was based, has been verified and communicated to the applicant ~~or insured~~. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the applicant ~~or insured~~ has questioned and on which the refusal, ~~denial or nonrenewal~~ was based. The applicant ~~or insured~~ must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer or credit reporting agency no more than ten days after the date on which such communication subsequent to the notice required under section 6.2.3 was mailed to the applicant ~~or insured~~. If the applicant ~~or insured~~ fails to cooperate in the investigation of the credit information, the insurer may, after providing a minimum of fifteen days' written notice to the applicant ~~or insured~~, terminate such investigation and may refuse to insure the applicant ~~or cancel or nonrenew the policy~~.

6.4 If the applicant or insured, after receipt of a notice under this section, and pursuant to procedures established under the FCRA, obtains changes, modifications or corrections to his/her credit information maintained by one or more credit reporting agencies, the insured shall notify the insurer who shall recalculate or obtain **[an]** new credit score. In that case, the provisions of section 7.2 shall apply to any adjustments to be made to the insured's premium.

6 DE Reg. 1706 (6/1/03)

7.0 Corrections or Changes to a Consumer's Credit Score

7.1 When an insurer uses credit histories or credit scores for the purpose of rating, if the insurer receives notice of corrected information affecting the credit history or the credit factors of the credit score of a consumer from the consumer reporting agency of the insurer, the insurer shall correct the consumer's credit score or obtain a corrected credit score or credit history, as appropriate, based on the corrected information.

7.2 When an insurer has taken an adverse action against a consumer on the basis of the consumer's credit history or the credit factors of the consumer's credit score, if the insurer subsequently makes or obtains a correction or change under section 6.4 or 7.1, the insurer shall determine the difference between the premium paid by the consumer based on the prior credit history or credit score and the premium based on the current history or score. If the policy period is 12 months or more, the difference shall be determined for the most recent 12 months. If the policy period is less than 12 months, the difference shall be determined for the current period of the policy. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer. If the difference is in favor of the insurer, the insurer may charge the difference to the consumer or collect the difference from the consumer.

7.3 ~~An insured or an applicant for insurance~~ A consumer, upon written request to an insurer, shall have a right to seek review by the insurer of its use of a credit score in the event ~~an insured's or applicant's consumer~~ a consumer's credit report is adversely affected by extraordinary personal circumstances.

7.3.1 Extraordinary personal circumstance is defined as serious illness or injury, involuntary unemployment, divorce, identity theft, and involuntary interruption of alimony or support payments. An insurer may elect to extend this definition to consider an extraordinary personal circumstance not listed in this section. In no event is an insurer required to review repeated events or events the insurer reviewed previously as an extraordinary personal circumstance.

7.3.2 An insurer may require that ~~an insured or applicant~~ a consumer provide sufficient documentation to establish the existence and duration of such extraordinary personal circumstance.

7.3.3 An insurer may elect to eliminate the credit score from consideration in such instance and rely its other underwriting and rating guidelines, may assign a neutral credit score or may elect to establish such procedural guidelines as will allow the insurer to consider such requests in a consistent manner.

7.3.4 An insurer will not be considered out of compliance with any law or rule relating to underwriting, rating or rate filing as a result of granting an exception under this section.

6 DE Reg. 1706 (6/1/03)

8.0 Requesting Re-rating Based on Current Credit Report

8.1 Any policyholder whose credit report has been used by his/her insurer for the purpose of rating renewals or initial underwriting and who wishes to have a current credit report reviewed by his/her insurer to determine whether the current report will result in an improvement in the policyholder's insurance score must make the request to his/her insurer using the form provided pursuant to paragraph 6.1.3 of this Regulation. The policyholder must mail the completed request form within two weeks of the date the insurer mailed the notice and form required by paragraph 6.1.3.

8.2 After receiving notice from a policyholder that he/she is requesting that the applicable credit reports be obtained and reviewed for the purpose of improving the insurance score applicable to the policy, the insurer shall obtain the current credit information and recalculate the insurance score for the policyholder to determine whether the credit information will lower the policyholder's premium. The policyholder's premium adjustment, if he or she is entitled to one, shall be effective as of the renewal date provided in the renewal offer that accompanies the policyholder's notification of the request for re-rating, as described in paragraph 6.1.3 of this Regulation.

8.3 If the policyholder's premium is adjusted pursuant to Section 8.2, the insurer shall notify the policyholder of the premium adjustment within 90 days of the insurer's receipt of the policyholder's request for a new credit report.

8.4 If the credit report would result in no change or an increase in the premium or in any adverse action, the insurer shall take no further action regarding the credit report except that the policyholder's next notice of insurance renewal shall inform the policyholder that the review was conducted and that it did not result in any changes to the premium or policy.

8.5 Sections 8.1 through 8.4 do not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including any residual effect from the use of credit information at initial underwriting.

8.0 9.0 General Business Practices

89.1 Any insurer that elects to use credit scoring to determine, in whole or in part, the premium to be paid by the insured or the tier or class of risk to which the insured shall be assigned, shall be deemed to have done so under the provisions of 18 Del.C. Ch. 25.

89.2 No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 Del.C. Ch. 25. Policies and renewal notices issued on or before ~~the effective date of this regulation~~ September 1, 2003 in which credit information was used in the underwriting or rating of the policy shall be deemed valid for the term thereof but not for any renewal thereunder in the absence of compliance with this regulation.

89.3 No insurer shall alter or modify the approved tier or classification structure or change the premiums applicable to any such tier or classification system without having first obtained the Commissioner's approval to do so under 18 Del.C. Ch. 25.

89.4 When an insurer denies ~~or fails to renew~~ a policy, evidence of the notice of denial ~~or nonrenewal~~

shall be retained by the insurer and a record of the insurance score, related notice and correspondence with the insured applicant shall be maintained by the insurer and/or by the appropriate vendor (source of the credit score) pursuant to the insurer's agreement with such vendor for a minimum of three years from the date of notice to the insured applicant.

89.5 An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurer who obtains or uses credit information and/or credit scores from an independent source, provided that the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

6 DE Reg. 1706 (6/1/03)

~~9-0~~ 10.0 Confidentiality

910.1 Any document, report, model or other supporting information filed with the Commissioner, irrespective of the format or media in which it is contained, shall be considered proprietary or trade secret and subject to the confidentiality provisions of 18 Del.C. §321(g) and/or, upon the request of the insurer or owner of the document, 29 Del.C. §10002(d)(2). Where an insurer or third party is required to file proprietary or trade secret insurance scoring algorithms, models, documents or supporting information as part of its filed rates, the insurer or third party may elect to segregate such materials from the remainder of its rate filing by filing such materials separately in a sealed envelope or container. Materials filed in this manner shall remain segregated from the publicly accessible portions of the rate filing for so long as these materials are on file with the Department, or until the insurer or third party notifies the Department that such materials are no longer proprietary or trade secret. In the event there is a dispute with respect to the confidentiality of a document, the Commissioner shall make the final determination of whether any part or the whole of a disputed document shall be given confidential treatment.

6 DE Reg. 1706 (6/1/03)

~~40-0~~ 11.0 Severability

If any provision of this Regulation or the application of any such provision to and person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

6 DE Reg. 1706 (6/1/03)

~~44-0~~ 12.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 Del.C. §2304(15)(c). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 Del.C. §2304(15)(c).

6 DE Reg. 1706 (6/1/03)

~~42-0~~ 13.0 Effective Date

This regulation shall become effective on September 1, 2003. These regulations shall be effective on January 1, 2008, with the exception of subsections 6.1.2 and 6.1.3, which shall take effect on April 1, 2008.

6 DE Reg. 1706 (06/01/03)

11 DE Reg. 1253 (03/01/08) (Final)