

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Commercial Automobile Insurance Plan

Adopted Amendments: N.J.A.C. 11:3-1.1, 1.2, 1.4, 1.6, 1.7, 1.8 and 1.9

Proposed: June 2, 2003 at 35 N.J.R. 2391(a)

Adopted: September 26, 2003 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: September 26, 2003 as R. 2003 d. 415, **with substantial changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29D-1

Effective Date: October 20, 2003

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

The Department received four comments from the following: New Jersey Commercial Automobile Insurance Plan (NJCAIP); the Professional Insurance Agents of New Jersey (PIANJ); the Independent Insurance Agents of New Jersey (IIANJ) and the National Continental Insurance Company.

COMMENT: Three commenters expressed concern with the Department's proposed changes to N.J.A.C. 11:3-1.7(d) and 1.8(b). One commenter stated that it believes that the Department made a technical error in changing all the references to fleet risks from 10 vehicles to five vehicles. The commenter stated that it believes that the Department's intent was not to change the eligibility requirements for physical damage in N.J.A.C. 11:3-1.7, nor the declination

requirements in N.J.A.C. 11:3-1.8, but to only change the definition of what constitutes a fleet which is found in N.J.A.C. 11:3-1.9.

A second commenter stated that the Summary indicates that the Department's position is that the purpose of the proposed amendments was to make the Department's rules consistent with the CAIP Plan of Operation. The commenter notes that the changes proposed to N.J.A.C. 11:3-1.7 and 1.8 conflict with the CAIP Plan of Operation. The commenter also noted that the proposed amendments to N.J.A.C. 11:3-1.7(d) and 1.8(b) could, if adopted, cause hardship on consumers which have five to nine vehicles because those consumers would now have to seek coverage for physical damage in the excess market.

RESPONSE: The Department agrees with the commenters. The Department proposed amendments to N.J.A.C. 11:3-1, the Commercial Automobile Insurance Plan (CAIP) in order to ensure that the Department's CAIP rules were consistent with the New Jersey Commercial Automobile Insurance Plan's (NJCAIP) Plan of Operation.

In the Summary of these proposed amendments which appeared at 35 N.J.R. 2391(a), the Department erred in its statements that N.J.A.C. 11:3-1.8 and 1.9 were being amended to render them consistent with the definition of a fleet as set forth in Rule 52.A.1 of the New Jersey Commercial Automobile Insurance Plan Manual of Rules and Rates by changing the number that constitutes a "fleet" as used in those rules from 10 to five. The Department notes that the companion rules to N.J.A.C. 11:3-1.7(d)2i and 1.8(b) in the current CAIP Manual of Rules and Rates refer to "risks consisting of 10 or more", not to "five," as indicated in the Department's proposal.

The Department also notes that its proposal also amended N.J.A.C. 11:3-1.9(d) to read “any risk with five or more.” The Department recognizes that adopting the change to N.J.A.C. 11:3-1.9(d) and not adopting the proposed amendments to N.J.A.C. 11:3-1.7(d)2i and 1.8(b) appears to be inconsistent. N.J.A.C. 11:3-1.7(d)2i and 1.8(b) are, however, not being adopted because the Department only intended to revise the definition of what constitutes a “fleet risk,” which is found in N.J.A.C. 11:3-1.9. The Department erroneously made proposed changes to N.J.A.C. 11:3-1.7(d)2i, which although it uses the phrase “risks consisting of fleets of 10 or more,” sets forth the eligibility requirements for obtaining physical damage coverage. If the Department adopts this amendment as proposed, it will narrow the scope of individuals who would be eligible for coverage pursuant to this provision, resulting in a hardship on those consumers who would then have to seek coverage for physical damage in the excess market. Additionally, adopting the proposed amendment to N.J.A.C. 11:3-1.8(b) would unnecessarily require additional applicants to provide proof of declination of coverage. It was not the intention of the Department in proposing the amendments to N.J.A.C. 11:3-1.7(d)2i and 1.8(b) to do so. Furthermore, if adopted, both of these amendments would conflict with the CAIP Plan of Operation currently approved by the Commissioner. As was noted in the Summary of the Notice of Proposal, the Department’s overriding intention in proposing all of these amendments was to render the rules consistent with the provisions of the CAIP Plan of Operation. Therefore the Department has determined not to adopt the changes to N.J.A.C. 11:3-1.7(d)2i and 1.8(b).

COMMENT: One commenter objected to N.J.A.C. 11:3-1.6(a)3, which states that the Plan of Operation shall provide standards and procedures for the number, selection, appointment,

compensation, termination of and performance standards for servicing carriers, and the distribution of assignments to those servicing carriers. The commenter stated that while this provision provides the framework for the selection of NJCAIP servicing carriers, the marketplace is served by three servicing carriers which serve all of the CAIP Plans across the country. The commenter stated that since these carriers already provide servicing carrier services to the NJCAIP, these amendments are unnecessary.

RESPONSE: The Department disagrees. The fact that CAIP currently has servicing carriers does not mean that its Plan of Operation should not have standards for the selection of servicing carriers. The Department believes that these amendments provide a fair framework for standards to be used for the selection of NJCAIP servicing carriers and will provide an important addition to the CAIP Plan of Operation. The Residual Market Committee developed the standards and they were approved by the CAIP Governing Committee.

COMMENT: One commenter expressed concern with proposed N.J.A.C. 11:3-1.6(a)17, which establishes a maximum servicing carrier agreement term of five years. The commenter stated that, currently, no defined term limitation exist. The commenter believes that by imposing a five-year term, a servicing carrier's willingness to invest in long-term improvements, as measured by cost savings or return on investment, will be limited to that carrier's remaining term. The commenter contends that the benefits that inure to the NJCAIP via the servicing carrier's willingness to recoup investments over long periods will diminish creating the potential for servicing carrier turnover, which seems contrary to the Commissioner's goals.

RESPONSE: The Department disagrees with the commenter. These rules provide the Governing committee with the authority to take corrective action when the servicing carrier has not complied with the servicing standards. The specified five-year term of appointment for servicing carriers does not prevent a servicing carrier from providing services to NJCAIP for more than five years, but rather ensures an opportunity for new servicing carriers to be considered for appointment and makes it clear that a servicing carrier may be terminated at any time during the carrier's term of appointment for failure to meet the eligibility criteria, selection criteria or performance standards. Furthermore, this provision is consistent with Article 5B.4. of the New Jersey CAIP Plan of Operation.

Federal Standards Statement

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets with asterisks ***[thus]***):

11:3-1.7 Coverage

- (a) – (c) (No change from proposal.)
- (d) CAIP shall provide qualified applicants, physical damage coverage as follows:
 - 1. (No change.)

2. Notwithstanding (d)1 above, as necessary to ensure the plan's efficient operation, the CAIP Plan of Operation shall provide that physical damage coverage should not be offered to certain vehicles, including but not limited to:

i. Risk consisting of fleets of *[five]* ***10*** or more vehicles not including trailers and semi-trailers;

ii. – v. (No change.)

3. - 5. (No change.)

11:3-1.8 Qualification

(a) (No change.)

(b) For any risk consisting of *[five]* ***10*** or more vehicles, the applicant must also provide:

1. – 2. (No change.)

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