

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Commercial Automobile Insurance Plan

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

Authorized By Holly C. Bakke, Commissioner, Department of Banking and Insurance

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

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

Proposal Number: PRN 2003-218

Submit comments by August 1, 2003 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance is proposing amendments to N.J.A.C. 11:3-1, Commercial Automobile Insurance Plan ("CAIP"). The proposed amendments are necessary in order to ensure that the Department's CAIP rules and the procedures are consistent with New Jersey Commercial Automobile

Insurance Plan's (NJCAIP) Plan of Operation.

The Department is amending N.J.A.C. 11:3-1.1(a)1 to include the word "other" before "private passenger vehicle" to clarify those vehicles that are not intended to qualify for coverage under CAIP. This revision renders this text consistent with the language used in the NJCAIP Plan of Operation. N.J.A.C. 11:3-1.1(a)2 and 3 have been amended to replace term "eligible" with the term "qualified," in order to be consistent with the terminology used in the Plan of Operation and to avoid confusion with the phrase "eligible person" as used in the Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule, N.J.A.C. 11:3-34.

The Department is amending the definition of CAIP found in N.J.A.C. 11:3-1.2 to include the phrase or "Plan." Additionally, the Department is amending the definition of "eligible applicant." The Department is keeping the definition but is substituting the term "qualified" for "eligible." This change is made in order to be consistent with the terminology in the Plan of Operation and to avoid confusion with the term "eligible person" as used elsewhere in the Department's rules. The definition of "participant" is being clarified to mean an insurer licensed and authorized to write motor vehicle liability "or" physical damage insurance. The "private passenger automobile" definition is being amended to change an inappropriate "and" to "or" and to clarify that it does not apply to business purposes. The definition of "private passenger type automobile" is

being amended to clarify that it applies to business purposes.

The Department is amending the definition of "Voluntary All other Automobile Direct Written Premiums" by substituting the term "qualified" for "eligible" and by adding provisions that clarify that it does not apply to:

1. Private passenger non-fleet automobile bodily injury and property damage liability, medical payments, basic and additional personal injury protection, and uninsured and underinsured motorists voluntary premium;
2. Miscellaneous non-fleet personal automobile bodily injury and property damage liability premiums for any class approved by the Department; and
3. Taxi, bodily injury, property damage liability, uninsured and underinsured motorists and physical damage premiums.

The Department is amending N.J.A.C. 11:3-1.4(a)1 by clarifying that the eight members of the governing committee shall be salaried employees of insurers that are CAIP participants. The Department is also amending N.J.A.C. 11:3-1.4(a)1 and deleting language in paragraph (a)4 to provide that no CAIP servicing carrier or any parent, subsidiary or affiliate shall serve as a member of the Governing Committee.

The Department is amending N.J.A.C. 11:3-1.6(a) to add a new provision to require the plan of operation to include standards and procedures for the number, selection, appointment, compensation, termination of and performance

standards for servicing carriers. The Department is recodifying N.J.A.C.11:3-1.6(a)3 through 15 as 4 through 16. The Department is also recodifying paragraph (a)17 as (a)16 and amending it to provide for the establishment of a specified term to a contract not to exceed five years.

N.J.A.C. 11:3-1.7 is being amended to reflect the substitution of the term “qualified” for “eligible”. The Department is also amending N.J.A.C. 11:3-1.7(d)2 to provide that to ensure the plan’s efficient operation, as provided for in N.J.S.A. 17:29D-1, the CAIP Plan of Operation shall provide that physical damage coverage shall not be offered to certain vehicles. N.J.A.C. 11:3-1.7(d)2i is being amended to render it consistent with the definition of a fleet as provided in Rule 52.A.1 of the New Jersey Commercial Automobile Insurance Plan Manual of Rules and Rates and the industry by changing the number that constitutes a fleet from 10 to five.

N.J.A.C. 11:3-1.8(b) is being amended to render it consistent with the definition of a fleet as provided in Rule 52.A.1 of the New Jersey Commercial Automobile Insurance Plan Manual of Rules and Rates and the industry by changing the number that constitutes a fleet from 10 to five. N.J.A.C. 11:3-1.8(d) is being amended to reflect the substitution of the term “qualified” for “eligible.” The Department is also changing the section heading from “Eligibility” to

N.J.A.C. 11:3-1.9(b) is being amended to include the final sentence from

subsection (c). Inasmuch as the sentence refers to rate filing, it appears that it is appropriate to be included in this subsection. N.J.A.C.11:3-1.9(c) is being amended to clarify that premiums for risks are subject to the rating plan established in the Plan of Operation. This provision is also being amended to delete the reference to 10 vehicles (that is, fleet) because that number does not represent what constitutes a fleet. The term “merit” is being deleted before “rating plan” because the NJCAIP Plan of Operation does not use the term “merit” in its rating plan. N.J.A.C. 11:3-1.9(d) is being amended to render it consistent with the definition of a fleet as provided in Rule 52.A.1 of the New Jersey Commercial Automobile Insurance Plan Manual of Rules and Rates and the industry by changing the number that constitutes a fleet from 10 to five.

Subsection (e) and (f) of N.J.A.C. 11:3-1.9 are being deleted. The NJCAIP Manual of Rules and Rates provides that certain risks are eligible for experience rating. If the servicing carrier is unable to obtain appropriate information to experience rate the risk, however, the policy is rated using the additional charges, etc. rating provisions in the Manual of Rules and Rates. Therefore, in order to clarify that a fleet risk is not mandated to be experience rated, subsection (e) is being deleted. N.J.A.C. 11:3-1.9(f) is being deleted because the NJCAIP Plan does not offer a retrospective rating plan.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the

provision of N.J.A.C. 17:30-3.1 and 3.2 governing rulemaking calendars.

#### Social Impact

The proposed amendments are primarily “housekeeping” in nature and are intended to provide consistency and uniformity in the Department’s CAIP rule and the NJCAIP Plan of Operation; and thus will not have any impact on consumers. These amendments codify current policy regarding how the NJCAIP operates. These amendments will not affect an insureds ability to obtain coverage.

Additionally, these amendments change the number that constitutes a fleet from ten to five thereby conforming the Department's rules to current standards. The proposed amendments to the definition of “Voluntary All other Automobile Direct Written Premiums” clarify which risks are not part of that premium determination. The amendments also require the CAIP to include in the Plan of Operation clarification of the standards and procedures for the number, selecting, appointment, and performance standards etc. for the servicing carriers. This provision also requires that the term of the contract not to exceed five years. These amendments will impact insurers by clarifying and conforming the Departments rules to be consistent with the approved NJCAIP Plan of Operation.

#### Economic Impact

The proposed amendments will not impose any new or additional economic impact on insurers, other regulated entities, or consumers in that the proposed amendments reflect currently approved policies of the NJCAIP Plan of Operation. Additionally, the proposed amendments set forth in this proposal are primarily “housekeeping” in nature and are intended to provide consistency and uniformity between the Department’s CAIP rule and the NJCAIP Plan of Operation. These amendments will not cause insurers to employ additional personnel, or change their systems in order to comply with these amendments. Consumer rates will also not be affected by these amendments. The amendments will not impose any additional recordkeeping or compliance burden on insurers or other regulated entities. Thus these amendments will not have an economic impact on insurers or consumers.

#### Federal Standards Statement

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

#### Jobs Impact Statement

The Department does not anticipate that these proposed amendments will result in the generation or loss of jobs.

### Agriculture Industry Impact

The Department does not expect any impact on the agriculture industry from the proposed amendments.

### Regulatory Flexibility Statement

Pursuant to N.J.S.A. 52:14B-17, a “small business” is any business resident in this State which employs fewer than 100 employees; is independently owned and operated; and is not dominant in its field. The servicing carriers affected by these amendments do not fit this description.

The proposed amendments do not impose any additional compliance reporting or recordkeeping requirements on small businesses. The CAIP and Governing Committee oversee the Plan of Operation but do not write or sell coverage.

The proposed amendments apply to all servicing carriers none of which, are small businesses. The proposed amendments are primarily “house keeping” in nature and are intended to provide consistency and uniformity between the Department’s CAIP rules and the NJCAIP Plan of Operation which is administered by the Governing Committee of CAIP.

### Smart Growth Impact

The proposed amendments have no impact on the achievement of smart



growth and implementation of the State Development and Redevelopment Plan.

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

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. To provide for the apportionment of insurance coverage for [eligible] **qualified** applicants who are in good faith entitled to but are unable to procure the same, through the voluntary market; and

3. To establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey as defined within this subchapter for all risks [eligible] **qualified** for coverage under the provisions of this subchapter.

## 11:3-1.2 Definitions

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

"CAIP" **or** "**Plan**" means the Commercial Automobile Insurance Plan pursuant to this subchapter.

. . .

["Eligible applicant" means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is unable to obtain automobile insurance in New Jersey in the voluntary market and is not in good faith qualified for automobile insurance coverage in any residual market mechanism created by statute other than the CAIP. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. No applicant shall be deemed eligible if the principal operator of the vehicle to be insured does not hold a driver's license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.]

. . .

"Participant" means an insurer licensed and authorized to write motor vehicle liability **[and] or** physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical

damage insurance.

"Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through any voluntary or residual market mechanism created by statute, and is owned by an individual or husband and wife; or owned jointly by two or more relatives other than husband and wife; or owned jointly by two or more resident individuals; or owned by a corporation, partnership [and] **or** unincorporated association, governmental agency, or registered to a professional designation (that is, T/A, PA or P.C.) where such automobiles are furnished to individuals and **are** not used for business purposes.

"Private passenger type automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a and is owned by a corporation, partnership or any other entity except an individual or husband and wife **and used for business purposes**.

**"Qualified applicant" means the owner of registrant or a motor vehicle registered in New Jersey or to be registered within 60 days who is unable to obtain automobile insurance in New Jersey in the voluntary market and is not in good faith qualified for automobile insurance coverage in any residual market mechanism created by statute other than the CIAP. For multi-state operations, the applicant shall be deemed qualified if the**

**principal operator of the vehicle to be insured does not hold a driver's license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.**

"Voluntary All Other Automobile Direct Written Premiums" means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

1. (No change.)

2. Any direct written premiums included in the figures from insureds who are [eligible] **qualified** applicants for any residual market mechanism created by statute other than the CAIP[.];

3. Any reinsurance premiums assumed from other insurers included in the figures; [and]

4. Any premiums for Death and Disability coverage included in the figures[.] ;

**5. Private passenger nonfleet automobile bodily injury and property damage liability, medical payments, basic and additional personal injury protection, and uninsured and underinsured motorists voluntary premium;**

**6. Miscellaneous nonfleet specialty personal automobile bodily injury and property damage liability voluntary premiums for any class approved by the Department as specified in the plan of operation; and**

**7. Taxi bodily injury, property damage liability, uninsured**

**and underinsured motorists and physical damage premiums.**

11:3-1.4 Governing committee

(a) CAIP shall be administered by a governing committee of 14 members.

1. Eight members shall be salaried employees of [an insurer which is a participant of] **insurers that are participants in** CAIP. **Except as provided in (a)4 below, no CAIP servicing carrier or any parent, subsidiary or affiliate thereof, shall serve as a member of the Governing Committee.**

2. - 3. (No change.)

4. One member shall be a salaried employee of a servicing carrier for the CAIP[, provided that neither the servicing carrier nor any affiliate of the servicing carrier otherwise serves as a member of the governing committee].

5. (No change.)

(b) - (h) (No change.)

11:3-1.6 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient provision of automobile insurance to [eligible] **qualified** applicants. The plan of operation shall provide for, among any other matters:

1. (No change.)

2. Standards and procedures for the appointment, compensation, and termination of and performance standards for [servicing carriers,] the CAIP manager, other employees, professionals and contractors required to administer CAIP along with a producers certification program;

**3. 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.**

Recodify existing 3. - 15. As **4. - 16.** (No change in text.)

[16.] **17.** Development of a basic servicing carrier contract, [and] procedures for making modifications to that contract **and the establishment of a specified term to that contract, which term shall not exceed five years.**

(b) - (d) (No change.)

11:3-1.7 Coverage

(a) CAIP shall provide to [eligible] **qualified** applicants, bodily injury liability and property damage liability coverages as follows:

1. (No change.)

(b) CAIP shall offer to [eligible] **qualified** applicants, additional uninsured or underinsured motorist coverage as follows:

1. - 3. (No change.)

(c) CAIP shall provide to [eligible] **qualified** applicants, standard and additional personal injury protection coverage as follows:

1. (No change)

(d) CAIP shall provide to [eligible] **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 [not offer] provide that physical damage coverage shall not be offered to certain vehicles, including but not limited** to:

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

ii. -v. (No change.)

3. - 5. (No change.)

11:3-1.8 **[Eligibility] Qualification**

(a) (No change.)

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

1. - 2. (No change.)

(c) (No change.)

(d) [An eligible] **A qualified** applicant shall not be afforded coverage until it:

1. - 4. (No change.)

11:3-1.9 Rates and policy forms

(a) (No change.)

(b) The governing committee shall file all rates, rules, surcharges, minimum premiums, classifications and policy forms to be used by CAIP for the prior approval of the Commissioner. Proceedings to review these filings shall be conducted pursuant to [N.J.S.A. 17:29A-1](#) et seq. All rates shall consider the experience of risks insured by the plan and shall not be excessive, inadequate or unfairly discriminatory. **Every rate filing shall include an analysis of the adequacy of the rating plans.**

(c) [For any risk with less than 10 vehicles, the premium] **Premiums for risks** shall be subject to [a merit] **the** rating plan established in the plan of operation. [Every rate filing shall include an analysis of the adequacy of the merit rating plan.]

(d) Any risk with [10] **five** or more vehicles not including trailers and semi-trailers shall be considered as a fleet. CAIP shall file base rates for fleets with the Commissioner for his or her prior approval which are different than the



rates for non-fleet risks if CAIP determines that the loss expectancy of fleet risks insured by CAIP is different than the loss expectancy of non-fleet risks insured by CAIP.

[(e) Fleet risks shall be subject to an experience rating plan established in the plan of operation, which shall set forth the criteria for eligibility of the experience rating plan. If any fleet risk is determined to be ineligible for the experience rating plan, the risk shall be subject to a merit rating plan established in the plan of operation.

(f) Any risk with basic limits premium of \$100,000 or greater shall also be subject to a retrospective rating plan established in the plan of operation. In the event CAIP finds that the premium from all retrospectively rated risks combined is inadequate, or excessive, CAIP shall file with the Commissioner for his or her prior approval a change in the retrospective rating formulas, including a percentage surcharge on all retrospectively rated risks if necessary, so that the total premium from retrospectively rated risks is adequate based on the combined experience of retrospectively rated risks insured by the plan.]

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