

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

New Jersey Commercial Automobile Insurance Plan
New Jersey Personal Automobile Insurance Plan
Definitions; Governing Committees

Reproposed Amendments: N.J.A.C. 11:3-1.2, 1.4, 2.2 and 2.5

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

Authority: N.J.S.A. 17:29D-1

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

Proposal Number: PRN 2006-211

Submit Comments by September 1, 2006 to:

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The agency proposal follows:

Summary

Certain amendments to N.J.A.C. 11:3-1.2, 1.4, 2.2 and 2.5 were proposed by the Department of Banking and Insurance (Department) on March 21, 2005 at 37 N.J.R. 864(a). As a result of recommendations from the Governing Committees of the New Jersey Personal Automobile Insurance Plan (PAIP) and the New Jersey Commercial Automobile Insurance Plan (CAIP) and of comments received from the public upon the original proposal, the Department is reproposing amendments to the rules.

The Department proposes to amend N.J.A.C. 11:3-1, dealing with the New Jersey Commercial Automobile Insurance Plan (CAIP) and N.J.A.C. 11:3-2, dealing with the New

Jersey Personal Automobile Insurance Plan (PAIP). These rules provide that the CAIP and PAIP shall, respectively, be administered by Governing Committees consisting of 14 members, of which three members shall be licensed producers.

This reproposal by the Department adds to N.J.A.C. 11:3-1.2 and 2.2 a definition of “actively writing” that specifies those insurers and participant organizations who may qualify for CAIP and PAIP Governing Committee membership. The amendments proposed to N.J.A.C. 11:3-1.4(b) and 2.5(b) replace The Alliance of American Insurers with the Property Casualty Insurers Association of America (PCI) as an appointing board member organization and delete as a participant the National Association of Independent Insurers. The provisions adding two at-large members to the respective Governing Committees at new N.J.A.C. 11:3-1.4(e) and new 11:3-2.5(e), to be nominated in accordance with procedures set forth in the respective Plans of Operation, serve to replace the two members lost as a result of the reduction from three to two nominating insurer organizations in N.J.A.C. 11:3-1.4(b) and 2.5(b) as proposed for amendment. Current N.J.A.C. 11:3-1.4(e) through (i) and current N.J.A.C. 11:3-2.5(e) through (i) are proposed to be recodified as (f) through (j), respectively.

The Department received four written comments upon the original proposal. The comments were received from New Jersey Manufacturers Group, Insurance Council of New Jersey, Allstate Insurance Company and the New Jersey Commercial Automobile Insurance Plan (CAIP) and Personal Automobile Insurance Plan (PAIP).

Summary of Public Comments and Agency Responses upon the original proposal:

COMMENT: The commenter agrees with the Department’s public policy statement that the amendment will ensure a diverse and balanced membership on the Governing Committees. However, the commenter suggests that the Commissioner select two domestic insurance companies for the two new at-large representative slots, rather than direct the Governing

Committees to nominate the two new at-large representatives pursuant to the plan of operation. The commenter argues that some of the domestic insurers have demonstrated their long-term commitment to New Jersey over the years, and with their experience are better suited to provide leadership on the Governing Committee.

RESPONSE: The Department appreciates the commenter's support for the previously proposed amendment and acknowledges the commenter's suggestion that the two at-large seats be representative of domestic insurers; however, the Department has determined that it is more appropriate to provide that the two at-large members shall be nominated in accordance with the methods set forth in the respective Plans of Operation and that two of the 14 members be representatives of one or more insurer participants in the organizations referenced in N.J.A.C. 11:3-1.4(b) and (c) and N.J.A.C. 11:3-2.5(b) and (c).

COMMENT: Two commenters are concerned that the proposed definition of insurers that provides that they must be actively writing private passenger automobile liability or physical damage in New Jersey would seem to absolve an insurer of all PAIP requirements if the insurer is not actively writing private passenger automobile insurance. They argue that there could be circumstances where an insurer could stop writing private passenger automobile insurance, but still have PAIP obligations. The commenter therefore suggests that the Department review the proposed language to make sure it is consistent with its other regulatory provisions.

RESPONSE: The Department agrees with the commenter's concern that the initially proposed amendment could have been interpreted as absolving insurers of their PAIP obligations. The Department has deleted any change to the definition of "participant" in this notice and has proposed a definition of "actively writing" and amendments to N.J.A.C. 11:3-1.4(a) and 11:3-2.5(a) to ensure that participating insurers do not avoid their PAIP obligations.

COMMENT: The commenter noted that the amendments provide a method of equitable representation and further restrict membership to those companies “actively writing” commercial or private passenger business. The commenter supports the proposed amendments but expresses concern that the impact of the language may improperly relieve companies from certain obligations to the Plan, such as Plan assessments, CAIP settlements, and quota fulfillment.

The commenter noted that a company that reports all other premiums for a particular calendar year will participate in the CAIP for the CAIP policy year two years hence. The CAIP policy is active for 11 years and the company will participate in that policy year until it is closed out. The commenter noted that the [originally] proposed amendment to N.J.A.C. 11:3-1.2 redefines participant as “an insurer...which is actively writing commercial automobile liability or physical damage insurance in the State.” The inclusion of “actively writing” could be interpreted by a company to mean that if it is not actively writing commercial automobile insurance, then it no longer has to participate in the Plan for years in which its participation has already been determined.

The commenter suggests that to eliminate any potential confusion, a definition of “actively writing” should be introduced in N.J.A.C. 11:3-1.2 and deleted from the definition of “participant.” In that way, the definitions may be used without disturbing the meaning of existing language.

The commenter also recommended that, consistent with the above change, N.J.A.C. 11:3.3-1.4 be modified to include a new subsection (e), which would restrict governing committee membership to an employee of a voluntary market insurer who is actively writing in the State.

The commenter noted that the [originally] proposed amendment to N.J.A.C. 11:3-2.2 redefines “insurer” as “an entity writing private passenger automobile liability or physical

damage insurance in the State...” However, the unintended result of this language would be to relieve the insurer of certain financial and quota obligations.

The commenter pointed out that currently Article 6 of the NJPAIP Plan of Operation requires that an “insurer” shall pay a minimum annual assessment if it is licensed but has written no automobile liability or physical damage insurance. Thus, if a company is licensed in New Jersey, but elects not to write business, a \$100.00 basic fee will be assessed. The commenter argues that a change in the definition of “insurer” as an entity “actively writing” would appear to restrict the Plan’s ability to charge the minimum fee under Article 6, thus allowing licensed insurers to avoid their obligation to support the Plan and potentially harm its financial integrity.

In addition, the commenter pointed out that the proposed change in the definition of “insurer” would affect quota obligations pursuant to Article 5 of the Plan. This provides that application distribution is based on a company’s voluntary private passenger written car years for the second prior year. Thus, a company that discontinues writing must continue to fulfill its quota obligations until the quota is exhausted. The commenter argued that the amended language [as originally proposed] defining an insurer as a company “actively writing” could be construed to nullify the quota obligations.

Alternatively, the commenter suggests that a definition of “actively writing” be introduced in N.J.A.C. 11:3-2.2 and deleted from the definition of “insurer.” Thus, the definitions may be used without disturbing the meaning of existing language. Also, the commenter recommended that N.J.A.C. 11:3-2.5(a) (6) should be modified to add the words “who is not actively writing” following “insurer.”

RESPONSE: The Department appreciates the commenter’s support for the proposed amendments. In addition, the Department agrees with the commenter’s concern that the originally proposed amendment could be misinterpreted to relieve insurers of their obligations.

As was noted in the previous response, in this notice of proposal the Department has revised the previously proposed amendments to N.J.A.C. 11:3-1.2, 1.4, 2.2, and 2.5 accordingly.

Social Impact

The proposed amendments should have a positive impact upon New Jersey licensed producers and consumers by producing a more balanced membership of actively writing insurers participating in the marketplace and thereby ensuring that the interests and concerns of producers and the public are given due consideration by the Governing Committees. The exclusion from Committee membership of insurer participants who are withdrawing their automobile programs from the State will have a beneficial impact upon the effectiveness of PAIP and CAIP as residual market mechanisms since actively writing producers and insurers have a vested interest in the placement of their insureds within the voluntary market.

Economic Impact

The proposed amendments would have a neutral economic impact on insurers, policyholders and the Department. The amendments simply revise the criteria established to determine representation on the Governing Committees which administer the Plans' operations.

Federal Standards Statement

A Federal standards analysis is required when any State agency proposes to adopt, readopt, or amend State regulations that exceed any Federal standards or requirements. The proposed amendments deal with insurance related issues which are exclusively the subject of State law and are not subject to any Federal standards or requirements. Thus, no Federal standards analysis is required.

Jobs Impact

The Department has determined that no jobs will be generated or lost as a consequence of the proposed amendment.

Agriculture Statement

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

Regulatory Flexibility Statement

A Regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendments provide for better representation on the Governing Committees of the CAIP and PAIP Plans, for participation by only actively writing commercial and personal automobile insurers who are not classified as small businesses and which have more than 100 employees.

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**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN

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:

“Actively writing” means an insurer writing commercial automobile liability or physical damage insurance in this State in the voluntary or involuntary market. This includes new business and/or renewals.

...

11: 3-1.4 Governing committee

(a) CAIP shall be administered by a governing committee of 14 members. **No employee of a voluntary market auto insurer that is not actively writing commercial automobile insurance or that has filed and received approval of an application to withdraw from writing commercial automobile insurance in New Jersey shall be eligible to serve as a member of the governing committee.**

1.-5. (No change.)

(b) The following organizations shall each nominate two members to represent participants of CAIP:

1. [The Alliance of American Insurers;] **Property Casualty Insurers Association of America (PCI) and**
2. The American Insurance Association [; and
3. The National Association of Independent Insurers].

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

(e) Two of the 14 members shall be representatives of one or more insurer participants in the organizations referenced in (b) above or of a non-member insurer participant as referenced in (c) above, to serve as at-large representatives. The two at-large members shall be nominated in accordance with the method set forth in the plan of operation.

Recodify existing (e) - (h) as **(f) - (i)**. (No change in text.)

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

11:3-2.2 Definitions

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

“Actively writing” means an insurer writing private passenger automobile liability or physical damage insurance in this State in the voluntary or involuntary market. This includes new business and/or renewals.

...

11:3-2.5 Governing committee

(a) The PAIP shall be administered by a governing committee of 14 members. **No employee of a voluntary market auto insurer that is not actively writing private passenger automobile insurance or that has filed and received approval of an application to withdraw from writing private passenger automobile insurance in New Jersey shall be eligible to serve as a member of the governing committee.**

1.– 5. (No change.)

(b) The following organizations shall each nominate two members to represent insurer participants of PAIP:

1. [The Alliance of American Insurers;] **Property Casualty Insurers Association of America (PCI); and**
2. The American Insurance Association [;and
3. The National Association of Independent Insurers].

(c) – (d) (No change.)

(e) Two of the 14 members shall be representatives of one or more insurer participants in the organizations referenced in (b) above or of a non-member insurer participant as referenced in (c) above, to serve as at-large representatives. The two at-large members shall be nominated in accordance with the method set forth in the plan of operation.

Recodify existing (e) - (g) as (f) - (h). (No change in text.)

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