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**RULE PROPOSALS**

**LAW AND PUBLIC SAFETY  
OFFICE OF THE INSURANCE FRAUD PROSECUTOR**

*41 N.J.R. 2630(a)*

**Proposed Readoption with Amendments: *N.J.A.C. 13:88***

[Click here to view Interested Persons Statement](#)

**Rules of Practice and Procedure**

Authorized By: Anne Milgram, Attorney General of New Jersey.

Authority: *N.J.S.A. 2C:21-4.7, 17:33A-1 et seq., 47:1A-1 and 52:14B-1*; Executive Reorganization Plan No. 7 (1998); and Executive Order No. 9 (Hughes).

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

Proposal Number: PRN 2009-202.

Submit comments by September 4, 2009 to:

Greta Gooden Brown  
Assistant Attorney General  
Insurance Fraud Prosecutor  
Department of Law and Public Safety  
P.O. Box 094  
Trenton, NJ 08625-0094

The agency proposal follows:

**Summary**

The Office of the Insurance Fraud Prosecutor (OIFP) proposes to readopt *N.J.A.C. 13:88*. Pursuant to *N.J.S.A. 52:14B-5.1* and Executive Order No. 66 (1978), the rules in this chapter are scheduled to expire on May 3, 2009. In

accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law (OAL) extends that expiration date 180 days to October 30, 2009.

This chapter includes rules related to the filing of contested cases in the Office of Administrative Law (Subchapter 1), the reporting of stolen vehicle and automobile accident claims information by insurance companies writing at least \$ 2,000,000 in direct premiums every calendar year (Subchapter 2) and the insurance fraud reporting reward program (Subchapter 3). The OIFP, which is established in the Division of Criminal Justice in the Department of Law and Public Safety, is under the supervision of the Attorney General.

The proposed readoption of Subchapter 1 allows the OIFP to continue to integrate the administrative process set forth in *N.J.S.A. 17:33A-5* with the procedures for imposing civil and administrative penalties provided by the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. The procedures and penalties apply to all persons subject to the jurisdiction of the OIFP.

The proposed readoption of the rules in Subchapter 2 allow the OIFP to continue to enforce the obligation imposed by the enactment of *N.J.S.A. 17:33A-22* of the Fraud Act, which authorized the OIFP to provide for the reporting of stolen vehicle and automobile accident claims information in a standard reporting form, for the purpose of identifying patterns of possible fraudulent activity. The OIFP, through agreements with the Insurance Services Office, Inc. (ISO), will analyze the data to identify patterns of fraudulent activity.

The proposed readoption of the rules in Subchapter 3 will allow the OIFP to continue to provide for the reward program authorized by *N.J.S.A. 2C:21-4.7*. The rules provide a reward for the reporting of suspected health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction. A reward of up to \$ 25,000 will be paid to persons providing information leading to the arrest, prosecution and conviction of persons who have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction.

The OIFP has reviewed the rules contained in this chapter and has determined that they remain necessary, reasonable, adequate and responsive to the purposes for which the OIFP originally promulgated this chapter. Nothing in the rules proposed for readoption affect or alter the statutory obligation found at *N.J.S.A. 17:33A-9* to report violations of the Fraud Act to the OIFP. The OIFP proposes to readopt this chapter with amendments primarily for technical reasons.

A summary of each section of the chapter proposed for readoption and a summary of the proposed amendments follows:

*N.J.A.C. 13:88-1.1* states the purpose and scope of the rules.

*N.J.A.C. 13:88-1.2* describes the rules of construction of the rules to be applied.

*N.J.A.C. 13:88-1.3* sets forth the definitions for terms used. The OIFP proposes to amend this section by correcting two typographical errors in the definition of "civil and administrative penalty" and "notice."

*N.J.A.C. 13:88-1.4* through 1.8 provide for the procedure to be used by the OIFP for the imposition of civil and administrative penalties. *N.J.A.C. 13:88-1.4* describes the required contents of the notice, in the form of the administrative complaint and provides for settlement of the matter before the complaint is filed. *N.J.A.C. 13:88-1.5* describes the manner of service of the administrative complaint. *N.J.A.C. 13:88-1.6* describes the consequences for failing to respond to the complaint. *N.J.A.C. 13:88-1.7* describes the contents of the administrative consent order. *N.J.A.C. 13:88-1.8* describes the requirements for a hearing request. If no response is received by the OIFP, or if the violator admits to the allegations in the administrative complaint or any other violation, the administrative complaint becomes final.

If the alleged violator disputes the allegations in the administrative complaint a response denying the allegations and requesting a hearing must be delivered to the OIFP. The OIFP may choose to transmit the matter to the OAL as a contested case. A hearing will be conducted by an Administrative Law Judge of the OAL. The burden of proof is borne by the OIFP, which must prove the allegations by a preponderance of the evidence.

*N.J.A.C. 13:88-1.9* sets forth the maximum civil and administrative penalties permitted in accordance with the Fraud Act. It also provides for recovery of attorney fees, costs and restitution in accordance with *N.J.S.A. 17:33A-5*. The OIFP proposes to amend the heading of the section from "Service of notice" to "Penalties, restitution and costs" to more accurately reflect its content.

*N.J.A.C. 13:88-1.10* provides for the severability of any provision of the rules adjudged to be invalid.

*N.J.A.C. 13:88-2.1* sets forth the scope of the subchapter, which is the implementation of those rules necessary to require insurers writing at least \$ 2,000,000 in direct insurance premium in any calendar year to report stolen vehicle claim information and automobile accident claim information to the OIFP.

*N.J.A.C. 13:88-2.2* contains the definitions, which are necessary for the implementation of the subchapter. In particular, the rule defines "insurer" for purposes of the subchapter only, as an insurance company that writes at least \$ 2,000,000 in direct insurance premiums in any calendar year.

*N.J.A.C. 13:88-2.3* provides for the liberal construction of these rules to permit the OIFP to discharge its statutory mandate. Upon notice to all parties, the rules may be relaxed in a particular situation to effectuate the purposes of the New Jersey Insurance Fraud Prevention Act. Statutory time limits shall not be relaxed.

*N.J.A.C. 13:88-2.4* provides for the procedure to be used by insurers to report stolen vehicle claim information and automobile accident claim information. The OIFP proposes an amendment to delete the June 4, 2005 deadline for reporting claims information in *N.J.A.C. 13:88-2.4(a)* and [page=2631] change the address to which the written notice required in *N.J.A.C. 13:88-2.4* should be sent. The OIFP also proposes to amend the section by eliminating the February 4, 2005 deadline for notification to the OIFP of the chosen reporting format in *N.J.A.C. 13:88-2.4(b)* and replace it with a 30 day timeframe for insurers that newly become subject to the reporting requirement.

*N.J.A.C. 13:88-2.5* and *2.6* require insurers and ISO to cooperate with each other in complying with the reporting requirements of the subchapter.

*N.J.A.C. 13:88-2.7* establishes a seven-year record retention requirement for ISO.

*N.J.A.C. 13:88-2.8* provides for imposition of penalties if the requirements of the subchapter are not met.

*N.J.A.C. 13:88-2.9* provides for the severability of any provision of these rules adjudged to be invalid.

*N.J.A.C. 13:88-2.10* provides that all information and materials received by, created by, accessed by or maintained by the OIFP pursuant to these rules concerning the existence or occurrence of insurance are confidential and not subject to public access pursuant to the Open Public Records Act, *N.J.S.A. 47:1A-1* et seq.

The Appendix to Subchapter 2 contains a list of the data required to be submitted for stolen vehicle claim information and automobile accident claim information.

*N.J.A.C. 13:88-3.1* sets forth the scope and purpose of the chapter, which is the implementation of those rules necessary to establish the Insurance Fraud Detection Reward program.

*N.J.A.C. 13:88-3.2* contains the definitions, which are necessary for the implementation of the subchapter. The OIFP proposes to amend this section by deleting reference to "the crime of" insurance fraud in the definition of "value of the fraud" because it is unnecessary.

*N.J.A.C. 13:88-3.3* provides for the liberal construction of these rules to permit the OIFP to discharge its statutory mandate.

*N.J.A.C. 13:88-3.4* provides the various procedures individuals may use to report, to the OIFP, suspected cases of health care claims fraud, insurance fraud or any other criminal offense relating to an insurance transaction, such as the toll-free hotline telephone number, the OIFP website and electronic mail.

*N.J.A.C. 13:88-3.5* provides for a reward application form and puts applicants on notice that they may be required to give verbal statements under oath or sign written memorializations of their verbal statements.

*N.J.A.C. 13:88-3.6* provides that the reward application form must be submitted within 30 days of the individual's initial report to the OIFP of suspected health care claims fraud, insurance fraud or any other criminal offense relating to an insurance transaction.

*N.J.A.C. 13:88-3.7* provides that an informant may request anonymity, but that in certain circumstances, by statute, court rule or judicial decision, the informant's identity may have to be disclosed. The rule also provides that all information and materials received by or maintained by the OIFP pursuant to these rules are confidential and not subject to public access pursuant to the Open Public Records Act, *N.J.S.A. 47:1A-1* et seq.

*N.J.A.C. 13:88-3.8* provides the criteria for evaluating reward program applications. The information provided must directly lead to the arrest, prosecution and conviction of a specific individual(s) or entity(ies) for health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction. This OIFP proposes an amendment to replace the erroneous reference to the Department of Consumer Affairs with a reference to the Division of Consumer Affairs in *N.J.A.C. 13:88-3.8(c)*.

*N.J.A.C. 13:88-3.9* provides that within 90 days of the conviction of the individual or entity identified by the applicant, the OIFP must notify the applicant in writing of their eligibility for the reward.

*N.J.A.C. 13:88-3.10* lists those persons excluded from eligibility for a reward, including individuals, and their immediate family members, employed by the OIFP and insurance companies.

*N.J.A.C. 13:88-3.11* provides the process for claiming the reward amount and provides that if more than one individual or entity is entitled to a reward in a particular case, the total reward amount is to be apportioned among the eligible claimants and will not exceed either five percent of the value of the fraud or \$ 25,000, whichever is less.

*N.J.A.C. 13:88-3.12* provides the guidelines for determining who is eligible to receive a reward when there is more than one applicant in a single case.

*N.J.A.C. 13:88-3.13* provides that if criminal charges are subsequently dismissed against a defendant the applicant will not be eligible for the reward, unless the result would be manifestly unjust.

*N.J.A.C. 13:88-3.14* provides that the only appeal from the Insurance Fraud Prosecutor's reward determination is to the Attorney General, not through the Superior Court.

*N.J.A.C. 13:88-3.15* provides for the severability of any provision of these rules adjudged to be invalid.

The Appendix to Subchapter 3 contains the reward application form. The OIFP proposes an amendment to the appendix to include notice on the reward application that there is a 30-day deadline to submit the reward application.

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 notice is not subject to the provisions of *N.J.A.C. 1:30-3.1* and *3.2* governing rulemaking calendars.

## **Social Impact**

The rules proposed for readoption with amendments will assist the OIFP in identifying insurance fraud and may reduce the incidence of insurance fraud. The proposed readoption of Subchapter 1 articulates the hearing and penalty procedures involving an administrative prosecution under the New Jersey Insurance Fraud Prevention Act, *N.J.S.A. 17:33A-1 et seq.*, (Fraud Act). The rules proposed for readoption will fully apprise persons whose conduct is alleged to constitute a violation of the Fraud Act of their rights and duties when the OIFP initiates an administrative proceeding.

The proposed readoption of Subchapter 2 articulates the statutory reporting requirements established in *N.J.S.A. 17:33A-22* for stolen vehicle claims information and automobile claims information for insurers writing at least \$ 2,000,000 in direct premiums in any given year. The collection of this information should assist the OIFP and the insurance industry in identifying and combating insurance fraud.

The proposed readoption of Subchapter 3 articulates the statutory requirements established in *N.J.S.A. 2C:21-4.4* through 4.6 for the payment of rewards for providing information, which results in the arrest, prosecution and conviction of an individual or entity for health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction. The proposed amendments will assist the OIFP in fighting insurance fraud in the State of New Jersey. The reward program will be an incentive for individuals and entities to report instances of insurance fraud that they would not have otherwise reported to the OIFP.

### **Economic Impact**

The rules proposed for readoption with amendments will impose costs on those persons who violate the law and may have an economic impact on some insurers. The proposed readoption of Subchapter 1 will impose costs on those who violate the law. Civil and administrative penalties may be imposed of not more than \$ 5,000 for the first violation; \$ 10,000 for the second violation and up to \$ 15,000 for each subsequent violation of the Fraud Act. Restitution also may be awarded to any insurance company or other person who has suffered a loss as a result of a violation of the Fraud Act. The costs of the OIFP's prosecution, including attorney's fees, can be recovered upon successful prosecution of the case as provided in *N.J.S.A. 17:33A-5*. A surcharge may be imposed upon the violator by the Department of Banking and Insurance as provided by *N.J.S.A. 17:33A-5.1*. Each violation of a provision of *N.J.S.A. 17:33A-4* in the course of a single claim or application for insurance constitutes a separate violation of the Fraud Act for which a separate civil and administrative penalty may be imposed. Any civil and administrative penalty imposed may be collected with costs, including attorneys fees, in a summary proceeding pursuant to the Penalty Enforcement Law, *N.J.S.A. 2A:58-10 et seq.*

The proposed readoption of Subchapter 2 may have an economic impact on those insurers who do not already subscribe to ISO and report information using either the ISO Legacy or Universal Format; they may choose to subscribe as a result of these rules. However, those insurers are not required to subscribe to ISO in order to report the necessary claims [page=2632] information. Those insurers may simply submit the claims information, without paying a fee, to the OIFP. These same insurers, however, may incur some additional expense in collecting the information from within their own companies, if the information is not currently collected and stored in a readily available format. In addition, those carriers who subscribe to ISO but use the Legacy format will have to change to the ISO Universal format and may incur additional expenses in making the transition from the ISO Legacy format to the ISO Universal format.

The proposed readoption of Subchapter 3 should not have any economic impact on any insurance companies or persons found to have violated the Fraud Act. The rewards will be paid from surcharges imposed on violators pursuant to *N.J.S.A. 17:33A-5.1* and supplemented as necessary by amounts budgeted for the operation of the OIFP.

### **Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for readoption with amendments are the subject of State law and are not subject to any Federal requirements or standards.

### **Job Impact**

The OIFP does not anticipate that any jobs will be gained or lost as a result of the rules proposed for readoption with amendments.

### **Agriculture Industry Impact**

The OIFP does not anticipate that the rules proposed for readoption with amendments will have any impact on the agriculture industry in this State.

### **Regulatory Flexibility Analysis**

The proposed readoption of Subchapters 2 and 3 may impose compliance requirements on "small businesses" as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The proposed readoption of Subchapter 2 may impose compliance requirements on small businesses because some insurers writing at least \$ 2,000,000 in direct insurance premiums each calendar year may have fewer than 100 full-time employees and are not dominant in the field. Some small businesses may incur some minimal additional expense in collecting the information from within their own company if the information is not currently collected and stored in a readily available format. These small businesses may, however, submit the collected claims information to the OIFP without a fee. The OIFP does not believe the hiring of additional staff or professional services will be required to comply with these rules.

The OIFP does not believe that the rules will impose an undue burden on small businesses. The proposed readoption of Subchapter 2 implements section 22 of the Act, requiring insurers writing at least \$ 2,000,000 in direct premium each calendar year to report stolen vehicle and automobile accident claims in order to identify patterns of fraudulent claims. The OIFP does not believe that further variation of compliance requirements based on size, beyond the \$ 2,000,000 in direct written premium in a calendar year required by section 22, will be consistent with the goal of the Legislature in section 22.

The proposed readoption of Subchapter 3 does impose compliance requirements on small businesses that may be alleged violators of the civil and criminal insurance fraud laws. The rules are procedural and administrative in nature, as described in the Summary, and their costs are discussed in the Economic Impact above. To the extent that a small business is an alleged violator of the criminal or civil insurance fraud statutes over which OIFP has jurisdiction, it will be subject to the procedures established by the rules proposed for readoption. If a small business is involved in a contested case, it will have the opportunity to request a hearing and would be subject to the procedural requirements therefor, or may consent to a civil and administrative penalty prior to the initiation of administrative proceedings. Some time and minimal administrative costs may be incurred in filing the requisite requests and responses to pleadings and/or notices. An alleged violator may choose to be represented by counsel and would thus incur attorney's fees. Most of the rules are merely procedure standards for the conduct of contested cases (for example, service of notice and request for a hearing). Small businesses will not incur any costs in complying with these standards. However, an administrative agency's procedures must, as a matter of fundamental fairness, be consistently applied to all similarly situated parties without exemptions or concessions based upon size. Such uniformity of procedures is also essential to administrative efficiency. The public interest would not be served by exempting small businesses from the standards and procedures set forth in this chapter or by establishing different compliance requirements for such businesses. Small businesses, if determined to be in violation of the criminal and civil insurance fraud statutes, will incur penalties provided under these rules. Lesser requirements or exceptions are not provided based upon business size to ensure a fair, efficient and effective penalty scheme.

### **Smart Growth Impact**

The rules proposed for readoption with amendments will not have an impact on growth or development in the State or on implementation of the State Development and Redevelopment Plan.

### **Housing Affordability Impact**

The rules proposed for readoption with amendments will have no impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules concern the application for the insurance fraud reporting reward program; the filing by insurance companies of claims information on stolen vehicles and automobile accidents and the filing of contested cases in the OAL.

### **Smart Growth Development Impact**

The rules proposed for readoption with amendments will have no impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules concern the application for the insurance fraud reporting reward program; the filing by insurance companies of claims information on stolen vehicles and automobile accidents and the filing of contested cases in the OAL.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 13:88*.

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

## SUBCHAPTER 1. ADMINISTRATIVE PROCEDURES AND PENALTIES

### 13:88-1.3 Definitions

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

...

"Civil and administrative penalty" means a sanction authorized by any statute or administrative rule to be imposed on a person for any act or [mission] **omission** in violation of *N.J.S.A. 17:33A-1* et seq., including any monetary penalty and any order to make restitution and to pay the reasonable costs of prosecution, including attorneys fees, of any matter.

...

"Notice" means a written communication from the OIFP to an alleged violator of the assessment of a civil and administrative penalty containing those elements set forth in N.J.A.C. 13:88-[4]**1.4**.

...

### 13:88-1.9 [Service of notice] **Penalties, restitution and costs**

(a)-(g) (No change.)

## SUBCHAPTER 2. INSURER REPORTING REQUIREMENTS

### 13:88-2.4 Claims reporting

(a) [By June 4, 2005, insurers] **Insurers** shall report to the OIFP or, in the alternative, to ISO using the ISO Universal Format (incorporated herein by reference in the subchapter Appendix), all motor vehicle losses closed with payment and all motor vehicle losses closed without payment as follows:

1.-2. (No change.)

(b) [By February 4, 2005, each] **Each** insurer shall notify the OIFP of its intention to comply with [the rules] **this chapter** by reporting directly to the OIFP or providing the information through ISO and the ISO Universal Format. Insurers shall also indicate which of the data elements listed in the Appendix they collect during the normal course of business [page=2633] on stolen vehicle and automobile accident claims. **Notice need only be made once, unless a carrier changes its method of compliance, in which case it shall submit an updated notice. Any carrier, which newly becomes subject to this reporting requirement, shall submit its notice within 30 days of becoming subject to this chapter.** Notice shall be in writing and directed to: [Raymond Shaffer, IT Services Manager, Department of Law and Public Safety, Division of Criminal Justice,] **All Claims Database Unit, OIFP, PO Box [085] 094, Trenton, NJ 08625-[0085]0094.**

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

SUBCHAPTER 3. INSURANCE FRAUD DETECTION REWARD PROGRAM

13:88-3.2 Definitions

For the purposes of this subchapter, the following terms have the following meanings, unless the context clearly indicates otherwise:

...

"Value of the fraud" means the direct or indirect gain or advantage realized by the person or entities convicted [of the crime] of insurance fraud, or the direct or indirect gain or advantage that would have been realized by the person or entities convicted [of the crime] of insurance fraud if the fraud had not been detected. The term does not include amounts imposed or collected as interest, penalties and/or fines.

13:88-3.8 Criteria for evaluating a reward application

(a)-(b) (No change.)

(c) The OIFP shall not grant a reward for information relating to an individual or entity that, at the time the information is provided, is already the subject of a referral to the OIFP; is already the subject of an investigation by the OIFP, either civilly or criminally; or is already the subject of an investigation by the New Jersey Department of Human Services; the New Jersey Department of Health and Senior Services; the Health Care Financing Agency and the Office of the Inspector General; the New Jersey Department of Banking and Insurance; the New Jersey [Department] **Division** of Consumer Affairs [and] **or** its licensing boards; or any other Federal, State, county or municipal agency.

APPENDIX

STATE OF NEW JERSEY

OFFICE OF THE INSURANCE FRAUD PROSECUTOR

INSURANCE FRAUD REPORTING REWARD APPLICATION

APPLICANT INFORMATION





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Suspect(s): Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Witness(es): Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

I hereby certify that the information provided above is true and accurate. I am aware that if any of the foregoing information is willfully false I am subject to punishment.

\_\_\_\_\_

Date \_\_\_\_\_ Signature of Applicant (sign only in the presence of a Notary Public)

\_\_\_\_\_

Notary Public \_\_\_\_\_ Date

Notary Seal: