

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Collision and Comprehensive Coverage Deductibles and Options

Adopted Amendment: N.J.A.C. 11:3-13.3

Proposed: July 21, 2003 at 35 N.J.R. 3083(a)

Adopted November 5, 2003 by Holly C. Bakke, Commissioner,
Department of Banking and Insurance

Filed November 5, 2003 as R. 2003 d.467, **with out change.**

Authority: N.J.S.A 17:1-8.1, 7:1-15e and 17:29A-39, and section 65 of P.L. 2003, c.89

Effective Date: December 1, 2003

Operative Date: January 1, 2004

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

The Department received six written comments on the proposal. The comments were received from NJM Insurance Group, Independent Insurance Agents of New Jersey, Alliance of American Insurers, State Farm Indemnity Company, Allstate New Jersey Insurance Company and one comment jointly submitted by Insurance Council of New Jersey, American Insurance Association, National Association of Independent Insurers.

COMMENT: One commenter sought clarification that the proposal applies only to private passenger automobile policies and not to business automobile policies that also insure private passenger autos. The commenter also urged the Department to specify in the rule that any order or notice adjusting the maximum \$2,000 deductible provide for at least 120 days to make the

system changes that insurers will be required to make to implement such an adjustment. Finally, the commenter urged that any order issued by the Commissioner on any adjustments should be preceded by a notice of proposed order in the New Jersey Register to allow insurance companies an opportunity for review and comment prior to the signing of the order.

RESPONSE: As amended, N.J.S.A. 17:29A-39 applies to “every private passenger auto insurance policy providing collision and comprehensive coverages...” Thus, the requirement to offer the \$750.00 default deductible applies to all auto insurance policies that are written under a personal lines insurance policy form and rating system. Commercial risk policies are excluded from the \$750.00 default deductible option. With regard to the issue of notice, the Department will provide adequate notice to enable insurers to make system changes required to implement an adjustment in the maximum deductible, consistent with prior practice. As amended, N.J.S.A. 17:29A-39b explicitly empowers the Commissioner to adjust the \$2,000 maximum “by order.” There is no requirement to provide notice of, and an opportunity to comment on, such an adjustment.

COMMENT: One commenter supported the proposed amendment to N.J.A.C. 11:3-13.3, indicating that consumers will benefit by having more deductible choices from which to choose. The commenter observed that raising the default deductible amount from \$500.00 to 750.00 should help stabilize, or perhaps even slightly reduce, automobile insurance rates. The commenter sought clarification on when the proposal will be implemented and what effect the proposed new rule will have on renewal policies.

RESPONSE: The Department appreciates the support for the proposal. The implementation date for the proposal is January 1, 2004 for new policies. For renewal policies, the prior

deductible on the expiring policy would remain in effect if no specific selection of a different collision and comprehensive deductible was made upon application to renew.

COMMENT: One commenter sought confirmation that the proposed amendments do not apply to private passenger vehicles written under a commercial automobile insurance policy. The commenter also requested that the Department clarify questions regarding the default deductible in proposed N.J.A.C. 11:3-13.3(d) for replacement vehicles or newly acquired additional vehicles. Specifically, the commenter asked about: a situation where the policyholder fails to select a deductible on a replacement vehicle; and whether insurers should continue to provide a default deductible of \$500.00 upon renewal of policies written prior to the effective date of this amendment unless a policyholder requests a higher deductible. The commenter noted that there may be other occasions where insurers need to deviate from the default deductible, and requested the Department to provide some flexibility in such cases. The commenter also suggested that language should be included in the rule that holds the insurer harmless for the insured's failure to make a deductible selection. Finally, the commenter stated that the proposal, as it is currently written, indicates that the deductible must be selected in writing. The commenter suggested that the Department consider other procedures that still provide assurance that the policyholder made a deductible selection other than in writing.

RESPONSE: The rule does not require commercial insurers to offer the \$750.00 deductible mentioned in N.J.A.C. 11:3-13.3(d). However, if insurers wish to file this deductible as an option, the Department will review the filing in accordance with current procedure. With regard to replacement vehicles, the \$500.00 default deductible will remain in effect, unless the insured selects a different deductible in writing. The \$750.00 default deductible is only required for new

business written on or after January 1, 2004. The question concerning renewal policies is addressed in the response to a previous comment. N.J.S.A. 17:28-1.9 addresses generally the commenter's concern with regard to insurers being held harmless for an insured's failure to make a deductible selection.

With regard to the commenter's final point, in reference to the new \$750.00 amount N.J.S.A. 17:29A-39 provides: "The minimum deductible established by this subsection shall apply to all policies providing collision and comprehensive coverages unless the named insured provides otherwise in writing on a form approved by the Commissioner." N.J.A.C. 11:3-15.7 requires that, for all new policies, an insurer or producer shall receive a coverage selection form signed by the named insured and indicating the prospective insured's coverage choices. Thus, the commenter's suggestion that the Department consider other procedures that would assure that the policyholder had made a deductible selection "other than in writing" is inconsistent with N.J.S.A. 17:29A-39 and the requirement imposed by N.J.A.C.11:3-15.7 that all applicants for a new auto policy submit a signed coverage selection form. New subsection (d) in N.J.A.C. 11:3-13.3 requires that the \$750.00 deductible amount be assigned where an applicant fails to specify a collision and comprehensive deductible amount on a signed coverage selection form.

COMMENT: One commenter stated that proposed N.J.A.C. 11:3-13.3(a)3 does not state the effective date for any change in the \$2,000 maximum deductible. The commenter urged that the effective date should be delayed for 60 days after publication of the notice of adoption in the New Jersey Register, to allow time for insurers to implement the change. The commenter stated that insurers will need to print new Buyer's Guides and Coverage Selection Forms after the same have been approved by the Department, subsequent to any change in the maximum deductible.

The commenter urged that insurers be given at least 120 days to file the new Buyers Guide and Coverage Selection Forms required as a result of a revision to the maximum deductible amount. Finally, the commenter urged that insurers should be allowed to comment on the amount of the proposed change in the deductible before any order changing the maximum deductible amount is issued. The commenter also noted that proposed N.J.A.C. 11:3-13.3(d) does not indicate an effective date for the new \$750.00 default deductible. The commenter suggested that the proposed rule state when and for what policies the new default deductible will be effective. The Commenter urged that the effective date of any amendment to the default deductible rule also be delayed for 60 days to allow insurers time to implement that change.

RESPONSE: The Department will provide at least 60 days notice on any change in the maximum deductible and take into account the various changes needed in the rating system, Buyers Guide and Coverage Selection Form. The \$750.00 default deductible will be effective for new policies on January 1, 2004.

COMMENT: Two commenters requested that the Department clarify proposed N.J.A.C. 11:3-13.3(a)3 as it relates to the “components” of the Consumer Price Index for the Northeast Region, to which the proposed amendment indicates the Commissioner will refer when adjusting the monetary threshold. Further, the commenter questioned how the adjustments in “\$100 or \$250 increments” will be implemented to ensure that they issue not more frequently than every 36 months. The commenters recommended that the adjustments only be made in increments of \$250.00. The commenters challenged the fairness of providing insurers a mere notice of administrative change when the threshold is adjusted. Noting that the statute gives the Commissioner the authority to adjust the upper range of the \$2,000 deductible no more

frequently than every 36 months as the Commissioner deems appropriate, the commenters averred that the Commissioner's discretion is statutorily limited to the frequency of the adjustment, with no grant of authority to adjust the maximum deductible by mere notice of administrative change. The commenters proposed that, if the adjustments are to be made by order, the order have an effective date of 120 days after the revision. The commenters recommended that insurers be provided with an opportunity to provide public comment before an Order making such a revision be issued. Alternatively, the commenters recommended that the effective date of a revised deductible occur more than 120 days after a deductible has been revised. The commenters further requested that the Department clarify the meaning of the phrase "initial policy of auto insurance" as used in the proposed N.J.A.C. 11:3-13.3(d). The commenters questioned whether the addition of a new automobile on an existing policy with a \$500.00 default threshold would also require the imposition of the automatic default. The commenters also asked for clarification on whether these requirements apply to renewals.

RESPONSE: The \$750.00 deductible is intended for new business written after January 1, 2004. The addition of a new automobile or the replacement of an auto on an existing policy will not require companies to offer the \$750.00 default deductible. The Department disagrees with the commenter's suggestion that the Commissioner adjust the monetary threshold only in \$250.00 increments. As amended, N.J.S.A.17:29A-39 now provides that the Commissioner may adjust the monetary threshold in \$100.00 or \$250.00 increments. On the issue of notice, N.J.S.A. 17:29A-39b authorizes the Commissioner to periodically adjust the maximum deductible by order no more frequently than every 36 months as the Commissioner deems appropriate. The Department will, nonetheless, provide adequate notice of any such order, consistent with prior

practice. With respect to the statements regarding prior notice and an opportunity to comment on revisions to the maximum deductible, see the Response to the first Comment.

Federal Standards Statement

A Federal standards analysis is required when any State agency to adopts, readopts, or amends States rules that exceed any Federal standards or requirements, and must include in the rulemaking document a comparison with Federal law.

The Department notes that the subject of these amendments deals with private passenger automobile insurance coverage in New Jersey, which is exclusively subject to the laws of this State and is not subject to any Federal standards or requirements. Thus, no Federal standards analysis is required.

Full text of the adoption follows:

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