

LAW AND PUBLIC SAFETY

(a)

OFFICE OF THE ATTORNEY GENERAL

Office of the Insurance Fraud Prosecutor

Insurer Reporting Requirements

Adopted New Rules: N.J.A.C.13:88-2

Proposed: April 5, 2004 at 36 N.J.R. 1731(a)

Adopted: October 13, 2004 by Peter C. Harvey, Attorney General of New Jersey.

Filed: November 8, 2004 as R.2004 d.445, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C: 1:30-6.3).

Authority: N.J.S.A. 17:33A-1 et seq., Executive Reorganization Plan No.7 (1998) and Executive Order No.9 (Hughes).

Effective Date: December 6, 2004.

Expiration Date: May 3, 2009.

Summary of Public Comments and Agency Responses:

The Department of Law and Public Safety received timely comments from three insurance companies: Clarendon Insurance Companies, New Jersey Manufacturers Insurance Company, State Farm Insurance Company; and one trade association, the Property Casualty Insurers Association of America.

COMMENT: One commenter requested clarification as to whether each insurance company operating within an insurance group will be required to report the required claims information, or if the insurance group will be required to report the claims information collectively for each insurance company.

RESPONSE: It is the intent of the proposal to require each insurance company authorized to do business in New Jersey, not insurance group, writing at least \$2,000,000 in direct automobile insurance premiums to report the required claims information.

COMMENT: One comment expressed support for the Insurance Fraud Prosecutor's efforts to collect information regarding stolen vehicles and automobile accident claims in a standard format to assist the office in identifying patterns of possible fraudulent behavior.

RESPONSE: The Office of the Insurance Fraud Prosecutor (OIFP) appreciates the support for the Insurance Fraud Prosecutor's efforts.

COMMENT: One comment requested confirmation that, at a maximum, carriers were required to report only those fields contained in the Appendix of the proposal.

RESPONSE: The comment is correct that, at a maximum, insurance companies are required to report only those fields contained in the Appendix of the proposal.

COMMENT: One commenter stated that it was their understanding that "the fields currently collected by ISO on the Universal format are more limited than those proposed." They suggested that the OIFP take this limitation into consideration in determining which fields should be requested.

RESPONSE: The commenter's understanding of the fields contained in the Universal format is incorrect. The OIFP verified with ISO that the data fields contained in the Appendix are all currently contained within the Universal Format and can be populated by the insurance companies subject to these rules.

COMMENT: One commenter requested clarification of the use of the term "closing of the claim" in N.J.A.C. 13:88-2.4(c). The commenter stated that an automobile insurance claim may be comprised of a number of parts based on the coverage, that is, property damage, personal injury protection, bodily injury, etc. The commenter noted that not all parts of the claim are resolved at the same time and in some instances portions of the claim may remain open for years after the date of loss.

RESPONSE: The use of the term "closing of the claim" is intended to mean the closing of the entire claim. The OIFP recognizes that an automobile accident claim may be comprised of various components that are not all resolved at the same time. Although the rule requires the reporting of claims information at the closing of the claim, insurance companies may submit information at any time prior to the closing of the claim.

COMMENT: One commenter does not believe the 180-day implementation time frame is a reasonable amount of time to make the necessary changes to comply with the rules and asks that the OIFP consider a 360-day implementation time frame, particularly for those companies that must switch from other reporting mechanisms to the ISO Universal format. Training needs, combined with the time required to automate the collection of the data and to make appropriate systems changes, will well exceed the 180-day implementation period. The commenter further states that although they recognize that the proposal provides for extensions of the reporting deadlines upon a showing of good cause, they do not want to be forced to seek an extension.

RESPONSE: The OIFP recognizes that not all insurance companies currently report to ISO using the Universal format. Therefore, the proposed rules provide for alternative reporting directly to the OIFP as well as the mechanism of seeking an extension for good cause. As a result, the OIFP will not change the implementation time frame.

COMMENT: One commenter requested an amendment to the definition of "insurer" to clarify that the rules only apply to insurance companies writing at least \$2,000,000 in automobile insurance premiums in any given calendar year.

RESPONSE: It is the intent of the proposal to require only those insurers writing at least \$2,000,000 in automobile insurance premiums in any given calendar year to report the required claims information. Therefore, upon adoption, the term "automobile" will be added to the definition of insurer.

COMMENT: One commenter stated that the rules were not clear as to whether insurance companies reporting to ISO under the rules can use either the Legacy or the Universal format. The commenter stated that if an insurance company can not report to ISO using the Legacy format, then they will have

to report directly to the OIFP and the OIFP will have to process multiple formats. If, however, insurance companies could report to ISO using either the Legacy or Universal format then ISO could process the data, the OIFP would receive the desired data, and fewer insurance companies would need to seek extensions.

RESPONSE: The OIFP respectfully disagrees with this comment. The proposed rules are clear that if insurers choose to report the claims information through ISO they must use the Universal format. The Legacy format does not allow insurers to report all of the data fields listed in the Appendix. If an insurer is not able to report to ISO using the Universal format, they may report directly to the OIFP. The OIFP is willing to accept, and capable of accepting, data in multiple formats.

COMMENT: One commenter seeks clarification on whether the proposed rules require the reporting of automobile partial theft claims, claims in which items are stolen from a vehicle (electronics, airbags, etc.), or only the reporting of the theft of an entire vehicle. The commenter reports that a database on stolen automobile components would be helpful in combating these partial automobile thefts by organized theft rings.

RESPONSE: The OIFP acknowledges that such a database may be useful, but it is outside the scope of the proposed database and rules at this time. The proposed rules only require the reporting of stolen vehicles, not the theft of particular vehicle components and no change will be made. Future amendments may be proposed as the need arises. However, insurance companies are encouraged to continue to report partial theft claims as required by N.J.S.A. 17:33A-9.

COMMENT: One commenter suggested the exemption of small dollar amount claims (<\$2,000) not involving bodily injury or personal injury protection elements and glass only claims from the automobile accident claims reporting requirement. The commenter notes that many insurance companies give their agents draft authority for such claims and the reporting of such small claims would have little value to OIFP and the database.

RESPONSE: The OIFP agrees with the comment and upon adoption will change N.J.A.C. 13:88-2.4(a)2 to include the qualifier that insurers must report information collected during the normal course of business on automobile accidents, but automobile accident information need not include glass only claims or accident claims for amounts less than \$2,000 if there are neither bodily injury or personal injury protection components of the accident claim.

COMMENT: One commenter believes the OIFP has taken the time to better understand the insurance industry's views about the reporting requirement. They thank the OIFP for the OIFP's efforts to develop a more workable and practical process and agree that the proposed rules are much better because of the OIFP's leadership in hosting many discussions and meetings.

RESPONSE: The OIFP agrees with the commenter and thanks them for their support of the proposal and the OIFP's efforts.

COMMENT: One commenter suggested the OIFP seek to further simplify the reporting requirements and streamline the program to the benefit of all parties where possible..

RESPONSE: The OIFP believes the proposed reporting requirements are as streamlined as possible at this time. The rules were proposed after extensive discussions with the insurance industry and ISO and it is believed that the program will benefit all parties.

COMMENT: One commenter requests clarification of the phrase "collected in the normal course of business." They understand this provision to take precedence over the Appendix.

RESPONSE: The purpose of the phrase "collected in the normal course of business" was to differentiate between those data fields listed in the Appendix which an insurer normally collects in the claims process and those data fields an insurer does not normally collect in the claims process. For example, if an insurer normally requests the names and addresses of all insureds and claimants related to a claim, then those fields should be submitted under these rules. However, for example, the insurer normally does not collect the name and address of a salvage buyer, then the insurer is not expected to provide that information under these rules.

COMMENT: One commenter supports the provision for requesting an extension of time to comply with the proposed rules, but still requests an amendment to the compliance period from 180 days to 360 days.

RESPONSE: The OIFP appreciates the support for the provision seeking an extension of time but believes the extension provision in conjunction with the 180-day compliance period is sufficient.

COMMENT: One commenter suggests that the OIFP restrict the medical provider field to default to "medical" only and not require the specific selection of the different licensing status of each medical provider, that is, M.D., D.C., D.D.S., etc. The commenter states that the process of selecting a specific licensing status is a manual and expensive process. The commenter believes the suggested change would simplify the requirements while meeting the OIFP's intent.

RESPONSE: The OIFP respectfully disagrees with this comment. The intent of the proposal is to collect sufficient data to identify patterns of insurance fraud, in particular by health care providers. The more information readily available in the database, such as health care provider's license type, the better able the OIFP will be to identify the patterns of fraudulent insurance claims.

COMMENT: One commenter suggests deleting the data field for those cases where the vehicle owner retains the salvage vehicle. The commenter states that most insurers do not allow owners to retain salvage vehicles and, overall, vehicle owner retained salvage accounts for a very small percentage of salvage vehicles.

RESPONSE: The OIFP disagrees with this suggestion. If insurers do not capture the information in the normal of business, then they do not have to provide the information. In any event, if the owner retains salvage in

so few cases, the OIFP does not believe the requirement of insurers to provide this information to the OIFP is onerous. Therefore, these data fields will remain in the rules.

COMMENT: One commenter states that the proposal lists a number of data elements that cannot be electronically collected and would have to be manually collected. In some cases, programming resources for this process are non-existent. Examples of data elements that may not be available electronically are: location of loss; claimant VIN; date of recovery; recovering agency; condition of recovered vehicle; owner retained salvage; date of salvage; salvage buyer's name; and treating health care provider's name and address. The commenter asks that the OIFP recognize the inability of some insurers to collect certain data elements and provide an exemption from the data elements as listed above. In the alternative, the OIFP should provide insurers with sufficient increased time requirements to make adjustments to their reporting mechanisms.

RESPONSE: The OIFP respectfully declines to provide an exemption from the data elements in Appendix A for those insurers that collect the information in the normal course of their business, albeit not in an electronic form. However, insurers may apply for an extension of time to meet the reporting requirements.

COMMENT: One Comment states that, for some insurers, the reporting of data may not coincide with the final decision to pay or deny a claim. They ask for clarification on how to handle the reporting requirement if changes in decisions are made after the information has been filed.

RESPONSE: Both the OIFP and ISO will always accept updated information from insurers.

COMMENT: One commenter asks for clarification as to whether out-of-State accidents are included in the reporting requirements of this proposal.

RESPONSE: If the claim is against a New Jersey policy issued by an insurer subject to these rules, and the information is collected in the normal course of business, then the out-of-State accident should be reported.

Federal Standards Statement

A Federal standards analysis is not required as the rules set forth in this chapter regulate the fraud prevention and detection activities of insurers in this State. These rules relate to Insurance carriers reporting information which is the subject of State law and is 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 proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 88

OFFICE OF INSURANCE FRAUD PROSECUTOR

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. INSURER REPORTING REQUIREMENTS

13:88-2.1 Scope

This subchapter applies to all insurers in the State of New Jersey.

13:88-2.2 Definitions

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

"Insurer" means any Insurance company as defined in N.J.S.A. 17:33A-3, which writes at least \$2,000,000 in direct ***automobile*** insurance premiums in any given calendar year.

"ISO" means the Insurance Services Office, Incorporated.

"OIFP" means the Office of the Insurance Fraud Prosecutor in the Division of Criminal Justice in the Department of Law and Public Safety.

"OIFP database" means that claims information database maintained by the OIFP pursuant to N.J.S.A. 17:33A-22.

"Universal Format" means that particular ISO database format by which insurers electronically transmit automobile insurance claims information to ISO.

13:88-2.3 Construction

(a) These rules shall be liberally construed to permit the OIFP to discharge its statutory function.

(b) Upon notice to all parties, these rules may be relaxed by the OIFP for good cause in a particular situation in order to effectuate the purposes of the New Jersey Insurance Fraud Prevention Act. Statutory time limits shall not be relaxed.

13:88-2.4 Claims reporting

(a) ***[Within 180 days of the effective date of these rules]* *By June 4, 2005***, 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. Information collected during the normal course of business on stolen vehicles including, but not limited to, the owner's name and address, the insured's name and address, policy number, claim number, coverage type, year and make of vehicle, vehicle identification number, date of loss, and location of loss; and

2. Information collected during the normal course of business on automobile accidents including, but not limited to, insured's name and address, policy number, coverage type, claimants' names and addresses, year and make of involved vehicles, the date and location of the accident, persons involved in the accident, alleged injuries, and treating health care providers. *** Automobile accident information need not include glass only claims or accident claims for amounts less than \$2,000 if there are neither bodily injury or personal injury protection components**

of the accident claim.*

(b) *[Within 60 days of the effective date of these rules]* ***By February 4, 2005***, each insurer shall notify the OIFP of its intention to comply with the rules 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 on stolen vehicle and automobile accident claims. Notice shall be in writing and directed to: Raymond Shaffer, IT Services Manager, Department of Law and Public Safety, Division of Criminal Justice, PO Box 085, Trenton, NJ 08625-0085.

(c) Once reporting under (a) above has begun, insurers shall submit the data referenced in (a) above within 30 days of the closing of the claim.

(d) Insurers unable to meet the reporting deadlines established in these rules may apply in writing to the OIFP for an extension of the reporting deadlines. The OIFP shall grant reasonable extensions of time for good cause.

13:88-2.5 Insurer cooperation with ISO

Insurers shall cooperate with ISO and shall release information in their possession to ISO upon ISO's reasonable request.

13:88-2.6 ISO cooperation with insurers

ISO shall cooperate with insurers in the resolution of errors in reporting motor vehicle loss information required under this subchapter.

13:88-2.7 ISO record retention

ISO shall retain all information required to be reported to it under this subchapter for a period of at least seven years from the date of entry into the ISO database.

13:88-2.8 Penalties

Failure of an insurer to abide by the requirements of this subchapter may lead to the imposition of sanctions or penalties as provided by law.

13:88-2.9 Severability

If any rule, sentence, paragraph or section of these rules, or the application thereof to any persons or circumstances, shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

13:88-2.10 Confidentiality

All information and materials accessed by, received by, created by, or maintained by the OIFP pursuant to these rules concerning the possibility

of the existence or occurrence of insurance fraud or related to criminal activities are confidential and shall not be subject to public access pursuant to the Open Public Records Act, N.J.S.A. 47: 1A-1 et seq.

APPENDIX

ISO UNIVERSAL FORMAT

ISO Universal Format Field Name

Insurance Company (ISO assigned code)

Policy Number

Policy Type

Claim Number

Date of Loss

Location of Loss Address (incl. State)

First Name (Choose either Role, IN, CT)

Last Name (Choose either Role IN, CT)

Business Name (Choose either Role IN, CT)- required if a Business

Address Information

City

State

First Name (Role CL)

Last Name (Role CL)

Address Information

City

State

First Name (Choose Role from ISO Appendix C)

Last Name (Choose Role from ISO Appendix C)

Business Name (Choose Role from ISO Appendix C)

Address Information

City

State

Coverage Type

Loss Type

Alleged Injuries/Property Damage

Vehicle Year

Vehicle Make (Abbrev.)

VIN

Date of Recovery (Theft)

Vehicle Make

Recovery Agency

Condition of Recovered Vehicle (Theft)

VIN

Owner Retaining Salvage Indicator

Date of Salvage

Buyers Business Name OR

Last and First Name (if owner did not retain salvage)

Role in Claim

Role in the Claim; if Service Providers reported with claim, their names, address required

Individual/Business indicator

Business Name (if a Business)

Last Name

First Name

City

State