

**CHAPTER 88****OFFICE OF INSURANCE FRAUD PROSECUTOR****Authority**

N.J.S.A. 17:33A-1 et seq., Executive Reorganization Plan No. 7(1998) and N.J.S.A. 52:14B-1.

**Source and Effective Date**

R.2004 d.173, effective May 3, 2004.  
See: 35 N.J.R. 2572(a), 36 N.J.R. 146(a), 36 N.J.R. 2201(a).

**Chapter Expiration Date**

Chapter 88, Office of Insurance Fraud Prosecutor, expires on May 3, 2009.

**Chapter Historical Note**

Chapter 88, Office of Insurance Fraud Prosecutor, was adopted as R.2004 d.173, effective May 3, 2004. See: Source and Effective Date.

**CHAPTER TABLE OF CONTENTS****SUBCHAPTER 1. ADMINISTRATIVE PROCEDURES AND PENALTIES**

- 13:88-1.1 Purpose and scope
- 13:88-1.2 Construction
- 13:88-1.3 Definitions
- 13:88-1.4 Notice of the intent to impose civil and administrative penalties
- 13:88-1.5 Service of notice
- 13:88-1.6 Failure to respond to notice
- 13:88-1.7 Resolution of administrative complaint by administrative consent order
- 13:88-1.8 Request for a hearing
- 13:88-1.9 Schedule of civil and administrative penalties
- 13:88-1.10 Severability

**SUBCHAPTER 1. ADMINISTRATIVE PROCEDURES AND PENALTIES****13:88-1.1 Purpose and scope**

This subchapter sets forth the procedures that govern the conduct of administrative hearings for imposing civil and administrative penalties for violations of the New Jersey Insurance Fraud Prevention Act, as amended, N.J.S.A. 17:33A-1 et seq. These rules are intended to implement N.J.S.A. 17:33A-5 which allows for the imposition of civil and administrative penalties, costs of prosecution, including attorneys fees, and orders of restitution. These rules do not govern criminal or civil proceedings for violations of the New Jersey Insurance Fraud Prevention Act filed in the Superior Court.

**13:88-1.2 Construction**

(a) These rules shall be liberally construed to permit the Office of Insurance Fraud Prosecutor to discharge its statutory function.

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

**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.

“Administrative complaint” means a pleading that provides the notice to a person required by N.J.S.A. 17:33A-5c that a civil and administrative penalty is being imposed on the person for a violation of N.J.S.A. 17:33A-1 et seq.

“Administrative consent order” means an offer of settlement in the form of an order in which the OIFP and a person alleged to have violated N.J.S.A. 17:33A-1 et seq. mutually agree to resolve a case.

“Attorney General” means the Attorney General of the State of New Jersey or designated representatives.

“Burden of proof” means the obligation of a party to meet the requirements of a rule of law that a fact be proved.

“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 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.

“Department” means the New Jersey Department of Law and Public Safety.

“Final agency order” means any and all final orders issued or executed by the Attorney General.

“Hearing” means a proceeding held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, for the purpose of determining disputed issues of fact, law or disposition.

“Insurance company” or “Insurer” means any entity coming within the definition of insurance company set forth in N.J.S.A. 17:33A-3.

“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.

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

“Person” means a person as defined in N.J.S.A. 17:33A-3.

“Petitioner” means the State of New Jersey, Office of Insurance Fraud Prosecutor.

“Respondent” means an alleged violator named in a civil and administrative complaint.

#### **13:88-1.4 Notice of the intent to impose civil and administrative penalties**

(a) Before a civil and administrative penalty is imposed, the OIFP shall serve the respondent with a notice, in the nature of an administrative complaint, in the manner provided in N.J.A.C. 13:88-1.5. The notice shall include:

1. A reference to the statute, rule, order and/or prohibited conduct under the Insurance Fraud Prevention Act (N.J.S.A. 17:33A-1 et seq.) the respondent violated;
2. A concise statement of the facts providing the basis for the determination of a violation of N.J.S.A. 17:33A-1 et seq.;
3. A statement of the civil and administrative penalty or penalties to be imposed; and
4. A statement advising the respondent of the right to a hearing and the procedure for requesting a hearing.

(b) The administrative complaint may describe more than one violation and more than one specific penalty for each violation. A single form of notice may be used to notify several respondents, provided each person is named and properly served with a copy of the notice in accordance with N.J.A.C. 13:88-1.5.

(c) Prior to issuing an administrative complaint, the OIFP may attempt a mutual resolution of the matter by offering the alleged violator the opportunity to resolve the matter by an administrative consent order. Under these circumstances, an offer of settlement by administrative consent order shall not be deemed to constitute notice of initiation of an action and shall not be available to be presented in evidence in a formal administrative action.

#### **13:88-1.5 Service of notice**

(a) If the respondent is an individual, service of the notice of administrative complaint described in N.J.A.C. 13:88-1.4 may be made by delivering a copy of the administrative complaint to the respondent, personally or by leaving a copy thereof at the respondent’s dwelling place or usual place of abode with a competent household member of the age of 14 years or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the respondent’s behalf.

(b) In lieu of the manner of service set forth in (a) above, service on an individual may be made by mailing the administrative complaint by regular and certified mail, return receipt requested, to the respondent’s last known business or residence mailing address in or outside of this State.

(c) If the respondent is a domestic or foreign corporation, partnership or other business entity, service may be made by delivering a copy of the administrative complaint to either an officer, director, trustee, partner or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, partnership or other business entity or the person at the registered office or the principal place of business of the corporation, partnership or other business entity in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon any agent, servant or employee of the corporation acting in the discharge of the duties of the corporation.

(d) In lieu of the manner of service set forth in (c) above, service may be made by mailing the administrative complaint by regular and certified mail, return receipt requested, to either an officer, director, trustee, partner or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, partnership or other business entity or the person at the registered office or the principal place of business of the corporation, partnership or other business entity in charge thereof.

(e) Service of an administrative complaint may also be made upon a respondent in a manner provided in R. 4:4-4(a) of the Rules Governing the Courts of the State of New Jersey.

#### **13:88-1.6 Failure to respond to notice**

(a) If a respondent does not deliver to OIFP a written request for a hearing in the form and manner required by N.J.A.C. 13:88-1.8, a final agency order shall be issued imposing the civil and administrative penalty or penalties described in the administrative complaint as well as costs of prosecution, including attorneys fees, and restitution, if awarded.

(b) OIFP shall mail a copy of the final order to the respondent at the address where service was made or at a respondent’s last known address.

#### **13:88-1.7 Resolution of administrative complaint by administrative consent order**

(a) In order for a matter set forth in an administrative complaint to be deemed concluded by consent of the respondent to the imposition of the civil and administrative penalty described in the notice, the OIFP may require any or all of the following in an administrative consent order:

1. The payment of a monetary penalty;

2. The restitution of moneys owed to any person;
3. Costs of prosecution, including attorneys fees; and
4. Admissions of material facts, conclusions of law, and such other terms and conditions as the OIFP may deem to be necessary and appropriate under the circumstances.

#### 13:88-1.8 Request for a hearing

(a) A respondent shall have 20 calendar days from the date of service of an administrative complaint within which to deliver a written request for a hearing to the OIFP.

(b) A request for a hearing shall include:

1. The name, address and daytime telephone number of the respondent;
2. The caption and agency number of the administrative complaint;
3. A statement requesting a hearing;
4. A specific admission, denial, or explanation of each fact alleged in the administrative complaint, or a statement that the respondent is without knowledge of the action(s) complained of. A respondent shall not generally deny all of the allegations but shall make denials as specific denials that meet the substance of the designated allegations of the complaint; and
5. A concise statement of the facts or principles of law claimed to constitute a factual or legal defense.

(c) If a request for a hearing lacks any of the elements in (b) above, the OIFP may deny the request or advise the requester in writing of the deficiencies and provide an additional 10 calendar days from the issuance of the deficiency letter to correct them. If no reply correcting the deficiencies is received by the OIFP within 10 calendar days, the OIFP may deny the request for a hearing and issue a final order without holding a hearing.

(d) Upon receipt of a properly completed request for a hearing, the Fraud Prosecutor or such other OIFP personnel as may be designated by the Attorney General, shall examine the request and may conduct or direct such further proceedings as may be appropriate, including, but not limited to, an interview with the respondent.

(e) Not later than 30 days after the receipt of a properly completed request for a hearing, the Fraud Prosecutor, or such other OIFP personnel as may be designated by the Attorney General, shall advise the respondent of the manner of disposition, which may be as follows:

1. Withdrawal of the administrative complaint with or without prejudice;
2. Resolution by administrative consent order, which may provide for a lesser or different civil and administrative penalty than that originally sought; or

3. A finding that the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In such case, the OIFP shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) Computation of time shall be in accordance with N.J.A.C. 1:1-1.4.

(g) The burden of proof in a contested case shall rest upon the petitioner and shall be met by a preponderance of the credible evidence.

#### 13:88-1.9 Schedule of civil and administrative penalties

(a) Civil and administrative penalties may be imposed of not more than \$5,000 for the first violation; \$10,000 for the second violation; and \$15,000 for each subsequent violation of any provision of N.J.S.A. 17:33A-1 et seq. and restitution may be ordered to any insurance company or other person who has suffered a loss as a result of a violation.

(b) For the purpose of applying N.J.S.A. 17:33A-5, 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 in accordance with (a) above.

(c) After a hearing, if requested, as provided in N.J.A.C. 13:88-1.8 and upon finding that a violation has occurred, the Attorney General shall issue a final agency order assessing the costs of prosecution, including attorneys fees, in addition to the penalty referred to in (a) above.

(d) In any matter in which payment of a civil and administrative penalty is ordered, payment of the civil and administrative penalty shall be made not later than 10 days following service of the final agency order. Payment of an assessed civil and administrative penalty shall be by certified check or money order made payable to the Commissioner, New Jersey Department of Banking and Insurance by forwarding same to the OIFP.

(e) In any matter in which payment of the costs of prosecution, including attorneys fees, are ordered, payment thereof shall be made not later than 10 days following service of the final agency order. Payment of the assessed costs of prosecution, including attorneys fees, shall be by certified check or money order made payable to the State of New Jersey, and forwarding same to the OIFP.

(f) In any matter in which payment of restitution is ordered, payment thereof shall be made not later than 10 days following service of the final agency order. Payment of restitution shall be by certified check or money order made payable to the person named in the final agency order by forwarding same to the OIFP.

(g) Any civil and administrative penalty imposed pursuant to N.J.A.C. 13:88-1.6, 1.7 or 1.9 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. Any civil and administrative penalty collected pursuant to this subsection shall be applied in accordance with N.J.S.A. 17:33A-5e.

**13:88-1.10 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.