

RULES – IMPLEMENTATION

APRIL 18, 2019

COMMERCIAL LINES

LI-CL-2019-015

NEW JERSEY RULES EXCEPTIONS TO BE IMPLEMENTED

KEY MESSAGE

Filing CL-2019-OLIQ2 is being implemented

Proposed Effective Date: 08/01/2019

Applicable Lines: BP, CU, GL

BACKGROUND

In referenced circular [LI-CL-2019-008](#), we announced the submission of rules filing CL-2019-OLIQ2 in response to forms filing CL-2019-OLIQ2.

INSURANCE DEPARTMENT ACTION

The New Jersey Department of Banking and Insurance has acknowledged future implementation of this filing.

EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies **written** on or after August 1, 2019.

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Designation Number [CL-2019-OLIQ2](#), not this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

RATING SOFTWARE IMPACT

No new attributes are being introduced with this revision.

POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2018-044](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

REVISION DISTRIBUTION

We will issue a Notice to Manualholders with an edition date of 8-19 (or the earliest possible subsequent date), along with any new and/or revised manual pages.

RELATED FORMS REVISION

We are announcing in a separate circular the implementation of a corresponding forms revision. Please refer to the Reference(s) block for identification of that circular.

REFERENCE(S)

- [LI-CL-2019-014](#) (04/18/2019) New Jersey Liquor Liability Optional Multistate Endorsements To Be Implemented
- [LI-CL-2019-008](#) (03/21/2019) New Jersey Rules Exceptions Revised And Filing Provided
- [LI-CL-2018-044](#) (11/27/2018) Revised Lead Time Requirements Listing

ATTACHMENT(S)

Filing [CL-2019-OLIQ2](#)

COPYRIGHT EXPLANATION

The material distributed by Insurance Services Office, Inc. is copyrighted. All rights reserved. Possession of these pages does not confer the right to print, reprint, publish, copy, sell, file, or use same in any manner without the written permission of the copyright owner. Permission is hereby granted to members, subscribers, and service purchasers to reprint, copy, or otherwise use the enclosed material for purposes of their own business use relating to that territory or line or kind of insurance, or subdivision thereof, for which they participate, provided that:

- (A) Where ISO copyrighted material is reprinted, copied, or otherwise used **as a whole**, it must reflect the copyright notice actually shown on such material.
- (B) Where ISO copyrighted material is reprinted, copied, or otherwise used **in part**, the following credit legend must appear at the bottom of each page so used:
Includes copyrighted material of Insurance Services Office, Inc., with its permission.

CONTACT INFORMATION

If you have any questions concerning:

- The content of this circular, please contact:
Tawanda Timmons
Compliance and Product Services
201-469-2801
Tawanda.Timmons@verisk.com
liability@verisk.com
- Other issues for this circular, please contact Customer Support:
E-mail: info@verisk.com
Phone: 800-888-4476

Callers outside the United States, Canada, and the Caribbean may contact us using our global toll-free number (International Access Code + 800 48977489). For information on all ISO products, visit us at www.verisk.com/iso. To keep abreast of the latest Insurance Lines Services updates, view www.verisk.com/ils.

New Jersey Liquor Liability Rules Filing

Applicable Lines of Business

This filing applies to the following lines of business:

- ◆ Businessowners
- ◆ Commercial General Liability
- ◆ Commercial Liability Umbrella

About This Filing

This filing revises and withdraws New Jersey rules exceptions to various divisions of the Commercial Lines Manual (CLM) in response to the multistate endorsements being introduced in companion forms filing CL-2019-OLIQ1, among other changes.

Revised Rules

We are revising the following rules:

- ◆ Division Six – General Liability
 - Rule **A1**. Policies Containing Aggregate Limits
 - Rule **22**. Description Of Commercial General Liability Coverage
 - Rule **48**. Products/Completed Operations Liability Coverage
- ◆ Division Ten – Businessowners
 - Rule **A1**. Aggregate Limits
 - Rule **16**. Mandatory Forms, Coverage and Limits
 - Rule **29**. Endorsements
- ◆ Division Thirteen – Commercial Liability Umbrella
 - Rule **25**. Description Of Additional Optional Endorsements

We have used a format of ~~striking-through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes.

Withdrawn Rules

- ◆ Division Six – General Liability
 - Rule **36**. Description Of Additional Optional Endorsements
- ◆ Division Ten – Businessowners
 - Rule **44**. Photography Class-Specific Endorsements
- ◆ Division Thirteen – Commercial Liability Umbrella
 - Rule **A1**. Policies Containing Aggregate Limits

Withdrawn Classification Exceptions

We are withdrawing the exceptions to the following classifications from Division Six – General Liability:

- ◆ Restaurants – Bring Your Own Alcohol – with no sale of alcoholic beverages – with table service – Class Code 16905
- ◆ Restaurants – Bring Your Own Alcohol – with no sale of alcoholic beverages – without table service with seating –Class Code 16906

We have used a format of ~~striking through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes.

Background

As a result of a previous requests from the New Jersey Department of Insurance (DOI), the following currently applies for certain ISO lines of business:

- ◆ Optional multistate Amendment Of Liquor Liability Exclusion endorsements do not apply.
- ◆ Multistate Amendment Of Liquor Liability Exclusion – Exception For Scheduled Activities endorsements, which are optional in other jurisdictions, are mandatory in New Jersey.

Recently, the DOI generally confirmed that the above-mentioned requirements no longer apply because Liquor Liability is listed on the Exportable List under N.J.A.C. 11:1-34. We are now taking the opportunity to remove the related exceptions and are introducing multistate Amendment Of Liquor Liability Exclusion endorsements in the companion forms filing.

The DOI had also previously required that a notice in bold print must be prominently displayed on any policy which contains an aggregate limit of insurance. This requirement is currently reflected within additional rules for certain ISO lines of insurance. The DOI has recently advised that "As aggregate limits on Commercial GL policies are very prevalent and have been used by

commercial carriers for many years, there is no longer a requirement to provide a policyholder notice on a policy with an aggregate limit." We are therefore taking this opportunity to delete the related additional rules.

In filing CL-2015-OAME1, we introduced various Abuse and Molestation exclusion endorsements in New Jersey, including BP 04 39 and BP 14 11.

Related Filing(s)

- ♦ CL-2019-OLIQ1 (Forms)

Explanation of Changes

Rule A1. Aggregate Limits – Businessowners

Rule A1. Policies Containing Aggregate Limits – Commercial Liability Umbrella and General Liability

We are withdrawing or reserving these rules for future use in light of correspondence from the DOI that the notices described within these rules are no longer required.

Rule 44. Photography Class-Specific Endorsements – Businessowners

To reinforce the applicability of Abuse and Molestation exclusion endorsements BP 04 39 and BP 14 11, which were introduced under filing CL-2015-OAME1, we are withdrawing Rule 44 in its entirety.

Remainder Of Rules

In light of the DOI's change in position regarding Liquor Liability, we are revising the remainder of the rules contained in this filing to, where appropriate, remove state exceptions indicating that:

- Multistate Amendment Of Liquor Liability Exclusion – Exception For Scheduled Activities endorsements are mandatory in New Jersey. These endorsements will remain in effect as optional endorsements.
- Optional multistate Amendment Of Liquor Liability Exclusion endorsements do not apply, as these endorsements are being introduced in companion forms filing CL-2019-OLIQ1.

Copyright Explanation

The material distributed by Insurance Services Office, Inc. is copyrighted. All rights reserved. Possession of these pages does not confer the right to print, reprint, publish, copy, sell, file or use same in any manner without the written permission of the copyright owner.

Important Note

Insurance Services Office, Inc. (ISO) makes available advisory services to property/casualty insurers. ISO has no adherence requirements. ISO rules and explanatory materials are intended solely for the information and use of ISO's participating insurers and their representatives, and insurance regulators. Neither ISO's general explanations of rules intent nor opinions expressed by members of ISO's staff necessarily reflect every insurer's view or control any insurer's application of manual rules.

DIVISION TEN – BUSINESSOWNERS

A1. AGGREGATE LIMITS~~RESERVED FOR FUTURE USE~~

~~The following must be prominently displayed in bold print on any policy issued in New Jersey which contains an aggregate limit of insurance:~~

~~**THIS POLICY CONTAINS AGGREGATE LIMITS;
REFER TO SECTION D – LIABILITY AND
MEDICAL EXPENSES LIMITS OF INSURANCE FOR
DETAILS.**~~

16. MANDATORY FORMS, COVERAGE AND LIMITS

The following are added to Paragraph B.:

B. Forms

9. New Jersey Changes Endorsement BP 01 89

Attach New Jersey Changes Endorsement **BP 01 89** to all policies.

~~10. Amendment – Liquor Liability Exclusion – Exception For Scheduled Premises Or Activities Endorsement BP 04 19~~

~~a. Description~~

~~This endorsement amends the liquor liability exclusion in Section II – Liability of the Businessowners Coverage Form by specifying that the exclusion applies:~~

~~(1) Whenever a charge is made for serving or furnishing alcoholic beverages;~~

~~(2) When alcohol is served or furnished without charge, if a license is required for the activity. Exempted functions are to be specifically scheduled in the endorsement; and~~

~~(3) When alcoholic beverages are permitted to be brought on the named insured's premises, for consumption in the named insured's premises.~~

~~b. Endorsement~~

~~Attach Endorsement **BP 04 19** to all policies, unless Liquor Liability Endorsement **BP 04 88** is attached.~~

~~c. Rating~~

~~Refer to company.~~

29. ENDORSEMENTS

Paragraph B.11.b. is replaced by the following:

B. Liability Endorsements

11. Hired Auto And Non-owned Auto Liability

b. Endorsement

Use New Jersey Hired Auto And Non-owned Auto Liability Endorsement **BP 04 28**.

Paragraph ~~B.13.a.(3)~~ is replaced by the following:

13. Liquor Liability Coverage

a. Endorsements

- ~~(3) Amendment – Liquor Liability Exclusion – Exception For Scheduled Premises Or Activities Endorsement BP 04 19 amends the liquor liability exclusion in Section II – Liability of the Businessowners Coverage Form by specifying that the exclusion applies (1) whenever a charge is made for serving or furnishing alcoholic beverages, (2) when alcohol is served or furnished without charge, if a license is required for the activity, and (3) when alcoholic beverages are permitted to be brought on the named insured's premises, for consumption in the named insured's premises. However, this endorsement permits exemption of premises or functions scheduled in the endorsement.~~

~~If Liquor Liability Endorsement BP 04 88 is not attached to the policy, Endorsement BP 04 19 is mandatory in New Jersey. Refer to Rule 16.B.10. for additional information.~~

Paragraph **B.13.b.(4)** is replaced by the following:

b. Liquor Liability Grades

- (4)** The Liquor Liability Numerical Grade is 4.

Citation of Statute: N.J. REV. STAT. Section 2A:22A-5

Comments:

The statute provides that a person who sustains personal injury or property damage as a result of the negligent service of alcoholic beverages by a licensed alcoholic beverage server may recover damages from the server only if:

- The server is deemed negligent pursuant to this section; and
- The injury or damage was proximately caused by the negligent service of alcoholic beverages; and
- The injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages.

A licensed alcoholic beverage server shall be deemed negligent only when the server served a visibly intoxicated person, or served a minor, under circumstances where the server knew, or reasonably should have known, that the person served was a minor.

The New Jersey Supreme Court ruled in *Lee v. Kiku Restaurant*, 127 N.J. 170, 603 A.2d 503 (1992) ". . . that in dram shop litigation a jury should apportion fault between the patron and (a) tavern based on the extent to which each party's negligence contributed to the plaintiff's injuries", thus acknowledging principles of comparative negligence.

Paragraph **B.20.f.** is replaced by the following:

20. Year 2000 Computer-related Endorsements – Businessowners Liability Coverage

f. Option Six – No Liability Endorsement

If options **a.**, **b.**, **c.**, **d.**, or **e.** are not chosen, attach no endorsement, and

- (1)** Use the appropriate applicable rules and rates;
- (2)** For any risk that presents a unique or unusual year 2000 exposure, refer to company for rating that portion of the premium applicable to the year 2000 exposure.

Note

Companies should maintain a complete file, including all details of the factors used in determining the premium applicable to the year 2000 exposure. Each company is responsible for complying with regulatory requirements.

Paragraph **D.3.e.(2)** does not apply.

Paragraph **E.1.a.(1)(d)** is replaced by the following:

E. Other Endorsements

1. Information Security Protection Endorsement

a. Description Of Coverage

(1) Insuring Agreements

(d) Insuring Agreement d. Security Breach Liability

This insuring agreement provides coverage for both loss that the insured becomes legally obligated to pay and defense expenses as a result of a claim first made against the insured during the policy period or Extended Reporting Period for a wrongful act or series of interrelated wrongful acts taking place on or after the Retroactive Date. Wrongful act, as it pertains to this insuring agreement, is defined to mean any actual or alleged neglect, breach of duty or omission by an insured that results in a security breach, as that term is defined in the endorsement, or transmission of a computer virus to another person or organization.

Loss, as it pertains to this insuring agreement, does not include civil or criminal fines or penalties imposed by law, or punitive or exemplary damages.

Coverage may also be provided for defense expenses in connection with a regulatory proceeding as a result of a wrongful act covered under the insuring agreement.

Paragraphs **E.1.g.(1)**, **E.1.g.(2)** and **E.1.g.(3)** are replaced by the following:

g. Premium Determination

- (1)** For Tier 1 coverages, based on the limit of insurance and deductible selected, refer to state rates Table **29.E.1.g.(1)(LC)** to determine the additional premium.
- (2)** For Tier 1 and Tier 2 coverages, based on the limit of insurance and deductible selected, refer to state rates Table **29.E.1.g.(2)(LC)** to determine the additional premium.
- (3)** For Tier 1, Tier 2 and Tier 3 coverages, based on the limit of insurance and deductible selected, refer to state rates Table **29.E.1.g.(3)(LC)** to determine the additional premium.

Paragraph **E.1.i.** is replaced by the following:

i. Payment Card Industry Coverage

(1) Description Of Coverage

This endorsement provides coverage for defense expenses as a result of a claim in the form of an action taken by a card company for noncompliance with Payment Card Industry Data Security Standards first made against the insured during the policy period or during the Extended Reporting Period in response to a wrongful act or series of interrelated wrongful acts covered under Insuring Agreement **d. Security Breach Liability**.

(2) Endorsement

Use Payment Card Industry (PCI) – Provide Coverage For Defense Expenses Endorsement **BP 15 09**.

(3) Premium Determination

Develop the additional premium by multiplying the premium determined in Paragraphs **g.(2)** through **g.(6)** by the factor shown in state Table **29.E.1.i.(3)(RF)**.

44. PHOTOGRAPHY CLASS-SPECIFIC ENDORSEMENTS

Paragraph **A.** is replaced by the following:—

— **A. Description Of Coverage**

The endorsements described in Paragraph **B.** modify the coverage available for Photographers insureds on the Businessowners Coverage Form. All of the endorsements are optional; however, Photography Endorsement **BP 07 83** must be attached if any of the other endorsements are to be attached.

Paragraph **B.5.** does not apply.

DIVISION THIRTEEN – COMMERCIAL LIABILITY UMBRELLA

A1. POLICIES CONTAINING AGGREGATE LIMITS

The following must be prominently displayed in **bold** print on any coverage part issued in New Jersey which contains an aggregate limit:

- ~~— A. For Commercial Liability Umbrella risks: THIS POLICY CONTAINS AGGREGATE LIMITS; REFER TO SECTION III— LIMITS OF INSURANCE FOR DETAILS.~~
- ~~— B. For Commercial Excess Liability risks: THIS POLICY CONTAINS AGGREGATE LIMITS; REFER TO SECTION II— LIMITS OF INSURANCE FOR DETAILS.~~

25. DESCRIPTION OF ADDITIONAL OPTIONAL ENDORSEMENTS

Paragraph ~~C.10.~~ is replaced by the following:

~~— C. Exclusion Endorsements~~

- ~~— 10. The Liquor Liability Exclusion under Coverage A — Bodily Injury and Property Damage Liability of the Commercial Liability Umbrella Coverage Part may be replaced by attaching Amendment Of Liquor Liability Exclusion — Exception For Scheduled Premises Or Activities Endorsement **CU 21 14.**~~

Paragraph **D.13.** does not apply.

DIVISION SIX – GENERAL LIABILITY

~~A1. POLICIES CONTAINING AGGREGATE LIMITS~~RESERVED FOR FUTURE USE

The following must be prominently displayed in ~~bold~~ print on any coverage part issued in New Jersey which contains an aggregate limit:

~~THIS POLICY CONTAINS AGGREGATE LIMITS; REFER TO SECTION III – LIMITS OF INSURANCE FOR DETAILS.~~

22. DESCRIPTION OF COMMERCIAL GENERAL LIABILITY COVERAGE

Paragraph **C.3.** is replaced by the following:

3. Refer to Mandatory State Endorsements

~~a.~~ Amendment Of Liquor Liability Exclusion – Exception For Scheduled Activities Endorsement **CG 21 51.**

ba. New Jersey Changes – Loss Information Endorsement **CG 26 20.**

eb. New Jersey Changes – Civil Union Endorsement **IL 01 41.**

ec. New Jersey Changes – Cancellation And Nonrenewal Endorsement **IL 02 08.**

~~36. DESCRIPTION OF ADDITIONAL OPTIONAL ENDORSEMENTS~~

Paragraph **C.15.** does not apply.

48. PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE (Subline Code 336)

Paragraph **A.3.c.** is replaced by the following:

3. For details of coverage:

c. Refer to Mandatory State Endorsements

~~(1)~~ Amendment Of Liquor Liability Exclusion – Exception For Scheduled Activities Endorsement **CG 29 53.**

(21) New Jersey Changes – Loss Information Endorsement **CG 29 87.**

(32) New Jersey Changes – Civil Union Endorsement **IL 01 41.**

(43) New Jersey Changes – Cancellation And Nonrenewal Endorsement **IL 02 08.**

~~R. CLASSIFICATIONS~~

The following descriptions are replaced:

~~16905 Restaurants – Bring Your Own Alcohol – with no sale of alcoholic beverages – with table service~~

~~Class Code: 16905~~

~~Premium Base: Gross Sales~~

Note:

~~This classification applies only to a restaurant which permits a person to bring and consume their own alcoholic beverages on the restaurant's premises.~~

~~Coverage applies to bodily injury or property damage arising out of the products hazard whether such bodily injury or property damage occurs on the insured's premises or elsewhere. Use Products/Completed Operations Hazard Redefined Endorsement **CG 24 07.**~~

~~Nightclubs, cabarets or discotheques or other similar establishments shall be separately classified and rated.~~

~~Children's play area shall be separately rated and classified.~~

Table service includes limited restaurant service such as buffets.

~~16906 Restaurants — Bring Your Own Alcohol — with no sale of alcoholic beverages — without table service with seating~~

~~Class Code: 16906~~

~~Premium Base: Gross Sales~~

Note:

~~This classification applies only to a restaurant which permits a person to bring and consume their own alcoholic beverages on the restaurant's premises.~~

~~Coverage applies to bodily injury or property damage arising out of the products hazard whether such bodily injury or property damage occurs on the insured's premises or elsewhere. Use Products/Completed Operations Hazard Redefined Endorsement **CG 24 07**.~~

~~Nightclubs, cabarets or discotheques or other similar establishments shall be separately classified and rated.~~

~~Children's play area shall be separately rated and classified.~~