

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Insurance intends to adopt the rules cited as 11 NCAC 06A .1001, .1002 and readopt with substantive changes the rules cited as 11 NCAC 04 .0418, .0419, .0421, and .0425.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdoi.gov/insurance-industry/rules-and-rules-review>

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: January 14, 2020

Time: 10:00 a.m.

Location: 1st Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The rules are being submitted to provide clarity, modifications, and guidance on existing and new regulations to industry, motor vehicle damage appraisers, consumers, and interested parties about the expectations for all parties involved in the claims process. This includes providing motor vehicle damage appraisers ethical standards they shall follow, provide industry, motor vehicle damage appraisers, consumers, and interested party's guidance on how to address motor vehicle repair estimates, handling of loss and claims payments, and managing total loss claims settlements.*

11 NCAC 04 .0418; 11 NCAC 04 .0419; 11 NCAC 04 .0421; 11 NCAC 04 .0425 are being proposed for re adoption in accordance with G.S. 150-B21.3A(d)(2).

Comments may be submitted to: Loretta Peace-Bunch, NC Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email loretta.peace-bunch@ncdoi.gov

Comment period ends: February 14, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 04 - CONSUMER SERVICES DIVISION

SECTION .0400 - PROPERTY AND LIABILITY

11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES

~~The commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of covered "total loss" motor vehicle claims when such failure is so frequent as to indicate a general business practice:~~

- ~~(1) If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle, the insurer shall base any further settlement offer not only on published regional average values of similar vehicles, but also on the value of the vehicle in the local market. Local market value shall be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified dealers within the local market area. Additionally, if the claimant represents that the vehicle actually owned by him was in better than average condition, the insurer shall give due consideration to the condition of the claimant's vehicle prior to the accident.~~
- ~~(2) Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement vehicle shall be available without delay, similar to the lost vehicle, and paid for by the insurer, subject only to the deductible and to the value of any enhancements acceptable to the insured.~~
- ~~(3) If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the claimant, the insurer, if so requested by the claimant, shall furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.~~

- (4) If a written statement is requested by the claimant, a total loss payment by an insurer shall be accompanied by a written statement listing the estimates, evaluations and deductions used in calculating the payment, if any, and the source of these values.
- (5) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the preaccident actual cash value, as such value is determined in accordance with this Rule, an insurance carrier shall "total loss" the automobile by paying the claimant the preaccident value, and in return, receiving possession of the legal title of the salvage of said automobile. At the election of the claimant, or in those circumstances where the insurance carrier will be unable to obtain an unencumbered title to the damaged vehicle then the insurance carrier shall have the right to deduct the value of the salvage of the total loss from the actual value of the vehicle and leave such salvage with the claimant subject to the insurance carrier abiding by Subparagraphs (3) and (6) of this Rule. No insurer, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) so as to artificially keep the repair cost of a damaged vehicle below 75% of its preaccident value, if in fact such original and any supplemental claim(s) exceed or would exceed 75% of the vehicle's preaccident value.
- (6) The insurer shall be responsible for all reasonable towing and storage charges until three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage charges. Notification to the owner shall include the name, address, and telephone number of the facility where the vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing or storage service without the consent of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service.

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning the settlement of covered "total loss" motor vehicle claims when the failure is so frequent as to indicate a general business practice.

(b) For the purposes of this Rule, the following terms shall mean:

- (1) "Licensed Motor Vehicle Dealer" means a person who is licensed by the North Carolina Department of Transportation Division of Motor Vehicles pursuant to Chapter 20, Article 12 of the N.C. General Statutes.
- (2) "Local Market Area" means an area within a 100-mile radius of the place where the motor vehicle is principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile radius, the insurance company may increase the radius in increments of 50 miles until a substantially similar motor vehicle can be found.
- (3) "Published Regional Average Values" means values derived from printed or electronically published pricing guides including Edmunds, Kelley Blue Book, and National Automobile Dealers Association Pricing Guide Book.
- (4) "Reasonable and Customary Towing and Storage Charges" means the amount that is generally charged in the local business market.
- (5) "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, year, options, equipment, condition, and mileage of the damaged motor vehicle. If unable to identify substantially similar motor vehicles, documentation in Paragraph (d) of this Rule shall be sufficient proof of compliance for the purposes of this Rule.

(c) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the pre-accident actual cash value as determined in accordance with Paragraph (d) of this Rule, an insurance company shall designate the motor vehicle as a "total loss" and pay the claimant the pre-accident value. In return, the insurance company shall receive possession of the legal title of the salvage of the total loss motor vehicle.

(d) If the insurance company and the claimant are initially unable to reach an agreement as to the actual cash value of the total loss motor vehicle, the actual cash value shall be calculated using the following methods and adjusted for condition, options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident:

- (1) The published regional average values of substantially similar motor vehicles; and
- (2) The retail cost of two or more substantially similar motor vehicles in the local market area when substantially similar motor vehicles are available or were available within the last 90 days to consumers in the local market area; or
- (3) One of two or more quotations obtained by the insurance company from two or more licensed motor vehicle dealers located within the local market area.

(e) Applicable sales tax and vehicle registration fees shall be included as part of the actual cash value settlement of the total loss motor vehicle, except where the claimant retains the salvage vehicle.

(f) The insurance company shall give consideration to evidence presented by the claimant such as receipts, photographs or other documentation that the total loss motor vehicle owned by him or her was in a better condition prior to the accident than suggested by the insurer's settlement offer.

(g) When a motor vehicle's total loss is settled on a basis which deviates from this Rule, the deviation must be supported by documentation within the claim file detailing the total loss motor vehicle's condition and the reason for the deviation. Any deductions from the actual cash value of the total loss motor vehicle, including deduction for salvage or prior damage, must be itemized and contain the amount of the deduction. The basis for the settlement shall be explained to the claimant. The insurance company's record shall include documentation of the total loss settlement.

(h) If requested by the claimant, a total loss payment by an insurance company shall be accompanied by a written statement listing the estimates, evaluations, and any deductions used in calculating the payment, and the source of these values.

(i) No insurance company, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) to keep the repair cost of a damaged motor vehicle below 75 percent of its pre-accident value.

(j) At the election of the claimant, or in those circumstances where the insurance company will be unable to obtain an unencumbered title to the total loss motor vehicle, the insurance company shall have the right to deduct the value of the salvage of the total loss motor vehicle from the actual cash value calculation and leave the salvage motor vehicle with the claimant.

(k) If the insurance company makes a deduction for the salvage value of a total loss motor vehicle retained by the claimant, the insurance company shall, upon request of the claimant, furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.

(l) Where the insurance company has the right to elect to replace the total loss motor vehicle and does so, the replacement motor vehicle shall be substantially similar to the total loss motor vehicle and paid for by the insurance company, subject only to the deductible and to the value of any additional options and equipment chosen by the claimant.

(m) The insurance company shall be responsible for all reasonable and customary towing and storage charges until three days after the motor vehicle's owner and storage facility are notified in writing that the insurance company will no longer reimburse the motor vehicle's owner or storage facility for storage charges. Notification to the motor vehicle's owner shall include the name, address, and telephone number of the facility where the motor vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the motor vehicle's owner. Proof of mailing, as defined in Rule .0430 of this Section, shall serve as the proof that the notification required by this Rule occurred.

(n) No insurance company shall abandon the salvage of a total loss motor vehicle to a towing or storage service without the consent of the service involved.

*History Note: Authority G.S. 58-2-40; ~~58-63-65~~; ~~58-63-65~~; 20-279.2; 20-279.21;
Eff. December 15, 1979;
Amended Eff. April 1, 1993; April 1, 1989; ~~July 1, 1986~~; July 1, 1986;
Readopted Eff. April 1, 2020.*

11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES

~~The commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning repair estimates on covered motor vehicle damage claims submitted when such failure is so frequent as to indicate a general business practice:~~

- ~~(1) If the insurer requires the claimant to obtain more than two estimates of property damage, the cost, if any, of such additional estimates shall be borne by the insurer.~~
- ~~(2) No insurer shall refuse to inspect the damaged vehicle if a personal inspection is requested by the claimant. However, if the damaged vehicle is situated other than where it is normally used or cannot easily be moved, the insurer may satisfy the requirements of this Section by having a competent local appraiser inspect the damaged vehicle.~~
- ~~(3) When the insurer elects to have the claimant's property repaired, the insurer shall, if so requested by the claimant, furnish the claimant with a legible front and back copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by a repair service, the name and address of that service. If there is a dispute concerning pre-existing damage to the vehicle which the insurer does not intend to have repaired, the extent of such damage shall be clearly stated in the estimate.~~
- ~~(4) If requested by a claimant, an insurer shall provide to the claimant copies of the estimate and all supplements thereto that it uses to offer a settlement.~~

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning repair estimates on covered motor vehicle damage claims when the failure is so frequent as to indicate a general business practice.

(b) For the purposes of this Rule, the following terms shall mean:

- (1) "Digital Inspection" means an inspection of a damaged motor vehicle conducted by using digital photographs, videos or other digital evidence through an electronic processing system authorized by an insurer.
- (2) "Licensed Motor Vehicle Damage Appraiser" means an individual who is licensed as a motor vehicle damage appraiser pursuant to Article 33 of Chapter 58 of the N.C. General Statutes or is licensed in another state whose licensing requirements are substantially similar to or exceed those established under that Article.
- (3) "Physical Inspection" means an inspection of a damaged motor vehicle conducted in person by an insurer's representative.

(c) When a motor vehicle is damaged, and the claim is either covered by an insurer for a first-party claim or liability is established for a third-party claim, the insurer shall adhere to the following procedures concerning repair estimates:

- (1) If the insurer requires the claimant to obtain more than two estimates of property damage, any cost of the additional estimate(s) shall be paid by the insurer.
- (2) An insurer shall perform a physical or digital inspection of the damaged vehicle within 10 business days. If the insurer cannot perform the inspection in the timeframe, the insurer shall provide the claimant with a verbal or written explanation of the reason the inspection has not occurred. The reason for the delay shall be documented in writing within the claim file.
- (3) No insurer shall refuse to perform a physical inspection of the damaged vehicle if requested by the claimant.
- (4) The insurer may satisfy the inspection requirements of this Rule by having a licensed motor vehicle damage appraiser conduct the inspection of the damaged vehicle.
- (5) An insurer shall provide a verbal or written explanation to the claimant if there is any delay in responding to a request for a supplemental inspection. The reason for the delay shall be documented in writing in the claim file.
- (6) An insurer shall, upon request, provide copies of the original estimate and all supplemental estimates to the claimant.

- (7) When the insurer elects to have the damaged vehicle repaired, the insurer shall, upon request of the claimant, furnish the claimant with a copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by someone other than the insurer, the name and address of the person preparing the estimate. If there is a dispute concerning pre-existing damage to the vehicle that the insurer does not intend to have repaired, the extent of such damage shall be stated in the estimate.

*History Note: Authority G.S. 58-2-40; 58-63-65;
Eff. December 15, 1979;
Amended Eff. April 1, 1993; April 1, 1989; April 1, 1989;
Readopted Eff. April 1, 2020.*

11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS

~~The commissioner shall consider as prima facie violative of G.S. 58-3-100 and 58-63-15(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:~~

(a) ~~The Commissioner shall consider the failure by an insurer to adhere to the procedures in this Rule concerning loss and claim payments as prima facie evidence violation of G.S. 58-63-15(11) when such failure is so frequent as to indicate a general business practice.~~

(b) When a motor vehicle is damaged and the claim is covered by an insurer, the insurer shall adhere to the following procedures concerning loss and claim payments.

- (1) Loss and claim payments shall be mailed or ~~otherwise~~ delivered within 10 business days after the claim is settled.
- (2) Unless the insured consents, no insurer shall deduct ~~premiums owed by the insured on a policy~~ from a loss or claim payment made under ~~one policy premiums owed by the insured on another policy.~~
- (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
- (4) If a release or full payment of claim is executed by a ~~claimant, claimant~~ involving a repair to a motor vehicle, it shall not bar the right of the claimant to ~~promptly~~ assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the ~~motor vehicle vehicle, which if the~~ damages were ~~directly~~ caused by the accident and ~~which damages~~ could not be determined or known until after the repair or attempted repair of the motor vehicle. ~~Claims asserted within 30 days after repair shall be considered promptly asserted. vehicle. This claim must be asserted within the statute of limitations set forth in G.S. 1-52(16).~~
- (5) If a release or full payment of claim is executed by a ~~third party third-party claimant, claimant~~ involving a repair to a motor vehicle, it shall not bar the right of the ~~third party third-party~~ claimant to ~~promptly~~ assert a claim for ~~diminished value, which diminished value~~ diminution in fair market value pursuant to G.S. 20-279.21(d1) ~~was directly~~ caused by the accident and ~~which diminished value~~ could not be determined or known until after the repair or attempted repair of the motor vehicle. ~~Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted. vehicle. This claim must be asserted within the statute of limitations set forth in G.S. 1-52(16).~~

(c) For purposes of this Rule, "diminution in fair market value" shall be as defined in 11 NCAC 06A .1001.

(d) If a claim for diminution in fair market value is asserted pursuant to this Rule and G.S. 20-279.21(d1), the written appraisal reports prepared by each appraiser shall be exchanged with the other party.

*History Note: Authority G.S. 58-2-40; 58-3-100; ~~58-63-65~~; 58-63-65; 20-279.2;
Eff. December 15, 1979;
Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; July 1, 1986; July 1, 1986.
Readopted Eff. April 1, 2020.*

11 NCAC 04 .0425 DEFINITIONS

As used in this Section the following terms shall be construed as follows:

- (1) "After market part" means a part made by a nonoriginal manufacturer.
- (2) "Claimant" means a first-party or third-party claimant.
- (3) "Diminution in Fair Market Value," as that term is used in G.S. 20-279.21, means the difference in the fair market value of the vehicle immediately before the accident and after any repairs made to the vehicle as a result of the accident have been completed.
- (4) "Disinterested appraiser," as that term is used in G.S. 20-279.21, means a motor vehicle damage appraiser who:
 - (a) Is not employed by either the claimant or the insurer;
 - (b) Has no financial interest in the outcome of the appraisal; and
 - (c) Did not participate in the original appraisal.
- (5) "First-Party Claimant" means a person that is making a claim on an insurance policy in which they are the insured party.
- ~~(2)(6)~~ "Insurer" means as defined in G.S. 58-1-5(3), and includes any person authorized by the insurer to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.
- ~~(3)(7)~~ "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.
- ~~(4)(8)~~ "Part" means a ~~sheet metal or plastic part that generally is a component of the exterior of a motor vehicle, including an inner or outer panel. vehicle.~~
- (9) "Third-Party Claimant" means a person that is making a claim on an insurance policy in which they are not the insured party.

History Note: Authority G.S. 58-2-40; 20-279.2; 20-279.21;
Eff. April 1, 1989. April 1, 1989;
Readopted Eff. April 1, 2020.

CHAPTER 06 - AGENT SERVICES DIVISION

SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .1000 - MOTOR VEHICLE DAMAGE APPRAISERS

11 NCAC 06A .1001 DEFINITIONS

As used in this Section, the following terms shall mean:

- (1) "Claimant" means as defined in 11 NCAC 04 .0425.
- (2) "Motor vehicle damage appraiser" means as defined in G.S. 58-33-10(14).

History Note: Authority G.S. 58-2-40;
Adopted Eff. April 1, 2020.

11 NCAC 06A .1002 ETHICAL STANDARDS

(a) Every licensed motor vehicle damage appraiser, when conducting business, shall:

- (1) identify himself or herself and his or her job title;
- (2) when requested, provide his or her National Producer Number, and the Department's website address and phone number for verification of license status;
- (3) prepare an independent appraisal of damages; and
- (4) comply with all local, State, and federal laws, in the motor vehicle damage appraiser's business affairs.

(b) Every licensed motor vehicle damage appraiser shall refrain from:

- (1) disparaging the professional reputation of a motor vehicle damage appraiser or other persons associated with the claim;
- (2) recommending the utilization of a particular motor vehicle repair service without informing the claimant that he or she is under no obligation to use the recommended repair service and that he or she may use the service of his choice;
- (3) recommending a claimant needing repairs or other services in connection with a loss to any person with whom the motor vehicle damage appraiser has a financial interest or who provides the motor vehicle damage appraiser any compensation for the referral or any resulting business;
- (4) impeding the appraisal process or the settlement of a property damage claim;
- (5) receiving any gratuity or other consideration in connection with his or her appraisal services except from his or her employer or, if self-employed, his or her customer;
- (6) advising or recommending a claimant to obtain or not obtain legal advice or counsel from a particular legal counsel;
- (7) giving legal advice on property damage claims in violation of G.S. 84-4;
- (8) solicit a power of attorney from a consumer that authorizes the motor vehicle damage appraiser to sign insurance-related forms;
- (9) attempting to influence a magistrate in the selection of an umpire pursuant to G.S. 20-279.21(d1), including using influence through a client or claimant;
- (10) engaging in the salvage of automobiles if the salvage is obtained as a result of appraisal services rendered by the motor vehicle damage appraiser; and
- (11) act in any manner outside the scope of a motor vehicle damage appraiser, as set forth in Chapter 58, Article 33 of the General Statutes.

(c) Pursuant to G.S. 58-2-70 and G.S. 58-33-46, the Commissioner may consider the failure of a licensed motor vehicle damage appraiser to comply with this Rule as a basis for administrative action.

History Note: Authority G.S. 58-2-40;
Adopted Eff. April 1, 2020.