



**To: All licensed insurance companies, motor vehicle damage appraisers and interested parties**

**From: Consumer Services Division**

**Date: May 06, 2020**

**Re: New Rules with an Effective Date of April 1, 2020, and October 1, 2020.**

During the Rules Review Commission's meetings on March 19, 2020, and April 16, 2020, the following new rules were approved. The rules below are not currently available on the North Carolina Office of Administrative Hearings website. However, The North Carolina Department of Insurance (NCDOI) Consumer Services Division wanted to share these rules with all licensed insurance companies, motor vehicle damage appraisers and interested parties.

They are:

- 11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES- *(Effective date: October 1, 2020)*
- 11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES – *(Effective date: October 1, 2020)*
- 11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS – *(Effective date: October 1, 2020)*
- 11 NCAC 04 .0425 DEFINITIONS – *(Effective date: October 1, 2020)*
- 11 NCAC 10 .0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGE – *(Effective date: April 1, 2020)*

As a result of extensive collaboration with a number of motor vehicles damage appraisers, industry, and other interested parties, these rules were developed to assist applicable parties with managing their responsibilities.

The rules referenced above are:

**11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES**

(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 motor vehicle pricing guides recognized in the motor vehicle industry, including National Automobile Dealers Association Pricing Guide Book or Kelley Blue Book that analyze current and historical motor vehicle sales data taking into consideration the year, make, model and condition of the motor vehicle, motor vehicle market conditions, and geographic area to reach an average retail value of the motor vehicle.

(4) "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, and year of the damaged motor vehicle.

(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 unable to reach an agreement as to the actual cash value of the total loss motor vehicle, the settlement offer shall be based upon the following values:

- (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 90 days of the accident to consumers in the local market area.

If no substantially similar motor vehicle is able to be located in the local market area, the settlement offer may be based upon quotations obtained from two or more licensed motor vehicle dealers located within the local market area.

(e) The settlement offer may be adjusted for condition, options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident.

(f) 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.

(g) 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.

(h) 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, shall be itemized and contain the amount of the deduction. The documentation that supports the basis for the settlement shall be shared with the claimant. The insurance company's record shall include documentation of the total loss settlement.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) The insurance company shall be responsible for all reasonable towing and storage charges until three days after the motor vehicle's owner and storage facility are notified in writing that the insurance company shall 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.

(o) 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.

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

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

#### **11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES**

(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 of receipt of the claim. 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;  
Readopted Eff. October 1, 2020.

**11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS**

(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 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 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 involving a repair to a motor vehicle, it shall not bar the right of the claimant to assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the motor vehicle if the damages were caused by the accident and could not be determined or known until after the repair or attempted repair of the motor vehicle. This claim shall 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 claimant involving a repair to a motor vehicle, it shall not bar the right of the third-party claimant to assert a claim for diminution in fair market value pursuant to G.S. 20-279.21(d1) caused by the accident and could not be determined or known until after the repair or attempted repair of the motor vehicle. This claim shall 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 04 .0425.

(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. 20-279.2; 58-2-40; 58-63-65;  
Eff. December 15, 1979;  
Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; July 1, 1986;  
Readopted Eff. October 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.
- (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.
- (7) "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.
- (8) "Part" means a component of a motor 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. 20-279.2; 20-279.21; 58-2-40;  
Eff. April 1, 1989;  
Readopted Eff. October 1, 2020.*

#### **11 NCAC 10 .0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGES**

(a) This Rule applies to automobile physical damage, excess motor vehicle liability coverage and residential property with not more than four housing units. Insurers may charge a premium in excess of that promulgated by the North Carolina Rate Bureau by instituting a consent to rate procedure that meets the requirements of G.S. 58-36-30(b), (b1) and this Rule.

(b) Residential Property With Not More than Four Housing Units:

- (1) The premium to be charged against loss to residential property with not more than four housing units shall be presumed reasonable if it does not exceed 250 percent of the premium based upon the approved rates in North Carolina.
- (2) Any proposed premium in excess of 250 percent of the premium based upon the approved rates in North Carolina shall be filed with the Commissioner for his or her review and approval in accordance with the procedures set forth in G.S. 58-36-30(a).

(c) Workers' Compensation and Employers' Liability Insurance. An initial (first time) application to effect consent to rate, pursuant to G.S. 58-36-30(c), for workers' compensation or employers' liability insurance in excess of the rate promulgated by the North Carolina Rate Bureau, shall contain the following:

- (1) a description of the insurance proposed, including primary and excess limits, the amount of coverage, the deductible, and any other factor used for rating, where applicable;
- (2) the rate and premium that would be charged without application of consent to rate;
- (3) the proposed rate and premium;
- (4) the percent increase. The rate to be charged shall be presumed reasonable if it does not exceed 250 percent of the rate that would be charged without application of consent to rate. Any proposed rate in excess of 250 percent shall be explained and shall be subject to review and approval of the Commissioner;
- (5) the names and addresses of the insurer, the writing agent, and the insured;
- (6) the effective date of the proposed rate;
- (7) the policy period;
- (8) the policy number; and
- (9) a letter signed by the insured acknowledging and consenting to the proposed rate. If coverage for the specific risk written on consent to rate is available through a residual market, North Carolina Workers Compensation Insurance Plan, a statement signed by the insured acknowledging that fact shall also be executed. This letter shall be retained in the insurer's office and be made available to the Commissioner upon request.

The insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy if the policy renewal or endorsement states that the rates are greater than those rates that are applicable in the State of North Carolina.

(d) All records generated under G.S. 58-36-30(b), (b1), (c), and this Rule shall be maintained in accordance with the requirements of 11 NCAC 19 .0100.

*History Note: Authority G.S. 58-2-40(1); 58-36-30(b);  
Eff. February 1, 1976;  
Readopted Eff. July 11, 1978;  
Amended Eff. August 3, 1992; February 1, 1990; January 1, 1989;  
Temporary Amendment Eff. November 8, 1996;  
Amended Eff. July 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest January 3, 2017;*

*Amended Eff. April 1, 2020; December 1, 2018.*

If you have any questions, please feel free to contact CSD.

Please email your questions or concerns to: [CSD@ncdoi.gov](mailto:CSD@ncdoi.gov)