

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 04 .0418

DEADLINE FOR RECEIPT: March 13, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout this Rule, were the changes made post-publication made in response to public comment?

In (b)(2), line 18, please delete or define "principally."

At line 18, do you mean "may" or "shall?" If you mean "may," is this decision in the discretion of the insurance company?

In (b)(3), does your regulated public understand what you mean by "pricing guides?" Are they required to use specific guides approved by the Commissioner as mentioned in G.S. 20-271.21(d1)(2)?

In (b)(4), by "year newer," I assume you only mean "one year newer" and not any newer vehicle of the same make and model, correct?

In (b)(4), please refer to "Paragraph (d) of this Rule" instead of "subsection (d)."

In (c), line 30, please define "original claim" and "supplemental claim."

At line 31 and throughout this rule, is "actual cash value" the same as "fair market retail value" as used in G.S. 20-271.21(d1)(2)?

In (c), line 33, the rule says "the insurance shall receive possession of the legal title . . ." Please compare this language to Paragraph (e) where the rule mentions the claimant retaining the salvage vehicle. Does the claimant have an option to retain the vehicle? Under what circumstances may the claimant do so? Please clarify.

Does (d) comply with the procedure set forth in G.S. 20-279.21(d1)(2) or is the procedure to determine actual cash value a different process? Please clarify.

At line 34, please delete or define "initially."

Ashley Snyder
Commission Counsel
Date submitted to agency: March 2, 2020

In (d), line 36, did you intentionally retain the language “condition, options, equipment, and mileage” when that language was removed from (b)(4)?

In (d)(1)-(3), please consider the following if it was your intent:

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) Either of the following:

~~(1)~~ (A) 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 ninety (90) days to consumers in the local market area; or

~~(2)~~ (B) 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.

In (d)(2), please delete “ninety” and use “90.” See 26 NCAC 02C .0108.

In (d)(2), what begins the clock for the 90-day count? Do you mean “within the last 90 days from the date of the accident” or “within the last 90 days from the date of the retail search?”

In (f), line 9, please add a comma after “photographs.”

In (g), under what circumstances may an insurer deviate from this rule? Any time they provide the documentation described in Paragraph (g)?

At line 14, please change “must” to “shall.”

At line 15, does the explanation have to be in writing?

At line 29, do you mean “may” instead of “will?”

In (m), line 33, please delete or define “reasonable.” Under what circumstances are towing and storage charges considered to be reasonable as opposed to unreasonable?

At line 34, please change “will” to “shall.”

In (o), whose consent is required? What do you mean by “the service involved?” Please clarify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: March 2, 2020

1 11 NCAC 04 .0418 is readopted with changes as published in NCR 34:12 1110-1112 as follows:

2
3 **11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES**

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

- 7 (1) ~~— If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle,~~
8 ~~the insurer shall base any further settlement offer not only on published regional average values of~~
9 ~~similar vehicles, but also on the value of the vehicle in the local market. Local market value shall~~
10 ~~be determined by using either the local market price of a comparable vehicle or, if no comparable~~
11 ~~vehicle can be found, quotations from at least two qualified dealers within the local market area.~~
12 ~~Additionally, if the claimant represents that the vehicle actually owned by him was in better than~~
13 ~~average condition, the insurer shall give due consideration to the condition of the claimant's vehicle~~
14 ~~prior to the accident.~~
- 15 (2) ~~— Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement~~
16 ~~vehicle shall be available without delay, similar to the lost vehicle, and paid for by the insurer,~~
17 ~~subject only to the deductible and to the value of any enhancements acceptable to the insured.~~
- 18 (3) ~~— If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the~~
19 ~~claimant, the insurer, if so requested by the claimant, shall furnish the claimant with the name and~~
20 ~~address of a salvage dealer who will purchase the salvage for the amount deducted.~~
- 21 (4) ~~— If a written statement is requested by the claimant, a total loss payment by an insurer shall be~~
22 ~~accompanied by a written statement listing the estimates, evaluations and deductions used in~~
23 ~~calculating the payment, if any, and the source of these values.~~
- 24 (5) ~~— When a motor vehicle is damaged in an amount which, inclusive of original and supplemental~~
25 ~~claims, equals or exceeds 75 percent of the preaccident actual cash value, as such value is determined~~
26 ~~in accordance with this Rule, an insurance carrier shall "total loss" the automobile by paying the~~
27 ~~claimant the preaccident value, and in return, receiving possession of the legal title of the salvage~~
28 ~~of said automobile. At the election of the claimant, or in those circumstances where the insurance~~
29 ~~carrier will be unable to obtain an unencumbered title to the damaged vehicle then the insurance~~
30 ~~carrier shall have the right to deduct the value of the salvage of the total loss from the actual value~~
31 ~~of the vehicle and leave such salvage with the claimant subject to the insurance carrier abiding by~~
32 ~~Subparagraphs (3) and (6) of this Rule. No insurer, adjuster, appraiser, agent, or any other person~~
33 ~~shall enter into any oral or written agreement(s), by and between themselves, to limit any original~~
34 ~~or supplemental claim(s) so as to artificially keep the repair cost of a damaged vehicle below 75%~~
35 ~~of its preaccident value, if in fact such original and any supplemental claim(s) exceed or would~~
36 ~~exceed 75% of the vehicle's preaccident value.~~

1 ~~(6) The insurer shall be responsible for all reasonable towing and storage charges until three days after~~
2 ~~the owner and storage facility are notified in writing that the insurer will no longer reimburse the~~
3 ~~owner or storage facility for storage charges. Notification to the owner shall include the name,~~
4 ~~address, and telephone number of the facility where the vehicle is being stored. Notification to the~~
5 ~~storage facility shall include the name, address, and, if available, telephone number of the owner.~~
6 ~~No insurer shall abandon the salvage of a motor vehicle to a towing or storage service without the~~
7 ~~consent of the service involved. In instances where the towing and storage charges are paid to the~~
8 ~~owner, the check or draft for the amount of such service shall be payable jointly to the owner and~~
9 ~~the towing or storage service.~~

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

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

14 (1) “Licensed Motor Vehicle Dealer” means a person who is licensed by the North Carolina
15 Department of Transportation Division of Motor Vehicles pursuant to Chapter 20, Article 12 of
16 the N.C. General Statutes.

17 (2) “Local Market Area” means an area within a 100-mile radius of the place where the motor vehicle
18 is principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile
19 radius, the insurance company may increase the radius in increments of 50 miles until a
20 substantially similar motor vehicle can be found.

21 (3) “Published Regional Average Values” means values derived from printed or electronically
22 published pricing [guides including Edmunds, Kelley Blue Book, and National Automobile
23 Dealers Association Pricing Guide Book.] guides.

24 ~~(4) “Reasonable and Customary Towing and Storage Charges” means the amount that is generally~~
25 ~~charged in in the local business market.]~~

26 ~~(5)~~ (4) “Substantially Similar Motor Vehicle” means a motor vehicle of the same make, model, year, or
27 year newer. [options, equipment, condition, and mileage] of the damaged motor vehicle. If unable
28 to identify substantially similar motor vehicles, documentation in subsection (d) shall be sufficient
29 proof of compliance for the purposes of this Rule.

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

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

37 (1) The published regional average values of substantially similar motor vehicles; and

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

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

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

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

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

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

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

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

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

33 (m) The insurance company shall be responsible for all reasonable [and customary] towing and storage charges until
34 three days after the motor vehicle's owner and storage facility are notified in writing that the insurance company will
35 no longer reimburse the motor vehicle's owner or storage facility for storage charges. Notification to the motor
36 vehicle's owner shall include the name, address, and telephone number of the facility where the motor vehicle is
37 being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of

1 the motor vehicle's owner. Proof of mailing, as defined in Rule .0430 of this Section, shall serve as the proof that
2 the notification required by this Rule occurred.

3 (n) In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of
4 such service shall be payable jointly to the owner and the towing or storage service.

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

7

8 *History Note: Authority G.S. 58-2-40; ~~58-63-65~~; 58-63-65; 20-279.2; 20-279.21;*

9 *Eff. December 15, 1979;*

10 *Amended Eff. April 1, 1993; April 1, 1989; ~~July 1, 1986~~; July 1, 1986;*

11 *Readopted Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 04 .0419

DEADLINE FOR RECEIPT: March 13, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b)(1), line 26, please add a comma after "videos."

In (b)(2), under what circumstances are licensing requirements in another state "substantially similar?" What factors are considered? Who makes this determination?

In (c)(2), is this within 10 business days of the claim being filed?

In (c)(4), do you mean "may" or "shall?"

In (c)(4), please change the colon at the end of line 8 to a period.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: March 2, 2020

1 11 NCAC 04 .0419 is readopted as published in NCR 34:12 1112-1113 as follows:

2
3 **11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES**

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

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

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

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

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

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

- 36 (1) If the insurer requires the claimant to obtain more than two estimates of property damage, any cost
37 of the additional estimate(s) shall be paid by the insurer.

- 1 (2) An insurer shall perform a physical or digital inspection of the damaged vehicle within 10 business
2 days. If the insurer cannot perform the inspection in the timeframe, the insurer shall provide the
3 claimant with a verbal or written explanation of the reason the inspection has not occurred. The
4 reason for the delay shall be documented in writing within the claim file.
- 5 (3) No insurer shall refuse to perform a physical inspection of the damaged vehicle if requested by the
6 claimant.
- 7 (4) The insurer may satisfy the inspection requirements of this Rule by having a licensed motor vehicle
8 damage appraiser conduct the inspection of the damaged vehicle:
- 9 (5) An insurer shall provide a verbal or written explanation to the claimant if there is any delay in
10 responding to a request for a supplemental inspection. The reason for the delay shall be documented
11 in writing in the claim file.
- 12 (6) An insurer shall, upon request, provide copies of the original estimate and all supplemental estimates
13 to the claimant.
- 14 (7) When the insurer elects to have the damaged vehicle repaired, the insurer shall, upon request of the
15 claimant, furnish the claimant with a copy of its estimate. This estimate shall contain the name and
16 address of the insurer and, if the estimate was prepared by someone other than the insurer, the name
17 and address of the person preparing the estimate. If there is a dispute concerning pre-existing
18 damage to the vehicle that the insurer does not intend to have repaired, the extent of such damage
19 shall be stated in the estimate.

20

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 04 .0421

DEADLINE FOR RECEIPT: March 13, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

At line 24, please change "must" to "shall."

At line 32, please change "must" to "shall."

In (c), please review your citation to 11 NCAC 06A .1001.

Why is G.S. 58-3-100 listed in your history note?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: March 2, 2020

1 11 NCAC 04 .0421 is readopted with changes as published in NCR 34:12 1113-1114 as follows:

2
3 **11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS**

4
5 ~~The commissioner shall consider as prima facie violative of G.S. 58-3-100 and 58-63-15(11) failure by an insurer to~~
6 ~~adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate~~
7 ~~a general business practice:~~

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

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

13 (1) Loss and claim payments shall be mailed or ~~otherwise~~ delivered within 10 business days after the
14 claim is settled.

15 (2) Unless the insured consents, no insurer shall deduct premiums owed by the insured on a policy from
16 a loss or claim payment made under ~~one policy~~ premiums owed by the insured on another policy.

17 (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes
18 premium or other monies in an amount less than the loss or claim payment.

19 (4) If a release or full payment of claim is executed by a ~~claimant, claimant~~ involving a repair to a motor
20 vehicle, it shall not bar the right of the claimant to ~~promptly~~ assert a claim for property damages
21 unknown to either the claimant or to the insurance carrier prior to the repair of the motor vehicle
22 vehicle, which if the damages were directly caused by the accident and which damages could not be
23 determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted
24 within 30 days after repair shall be considered promptly asserted. vehicle. This claim must be
25 asserted within the statute of limitations set forth in G.S. 1-52(16).

26 (5) If a release or full payment of claim is executed by a ~~third party third-party claimant, claimant~~
27 involving a repair to a motor vehicle, it shall not bar the right of the ~~third party third-party~~ claimant
28 to ~~promptly~~ assert a claim for diminished value, which diminished value diminution in fair market
29 value pursuant to G.S. 20-279.21(d1) was directly caused by the accident and which diminished
30 value could not be determined or known until after the repair or attempted repair of the motor
31 vehicle. Claims asserted within 30 days after repair for diminished value shall be considered
32 promptly asserted. vehicle. This claim must be asserted within the statute of limitations set forth in
33 G.S. 1-52(16).

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

35 (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
36 appraisal reports prepared by each appraiser shall be exchanged with the other party.

1 *History Note: Authority G.S. 58-2-40; 58-3-100; ~~58-63-65~~; 58-63-65; 20-279.2;*
2 *Eff. December 15, 1979;*
3 *Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; ~~July 1, 1986~~; July 1, 1986.*
4 *Readopted Eff. April 1, 2020.*
5

1 11 NCAC 04 .0425 is readopted as published in NCR 34:12 1114 as follows:

2

3 **11 NCAC 04 .0425 DEFINITIONS**

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

5 (1) "After market part" means a part made by a nonoriginal manufacturer.

6 (2) "Claimant" means a first-party or third-party claimant.

7 (3) "Diminution in Fair Market Value," as that term is used in G.S. 20-279.21, means the difference in
8 the fair market value of the vehicle immediately before the accident and after any repairs made to
9 the vehicle as a result of the accident have been completed.

10 (4) "Disinterested appraiser," as that term is used in G.S. 20-279.21, means a motor vehicle damage
11 appraiser who:

12 (a) Is not employed by either the claimant or the insurer;

13 (b) Has no financial interest in the outcome of the appraisal; and

14 (c) Did not participate in the original appraisal.

15 (5) "First-Party Claimant" means a person that is making a claim on an insurance policy in which they
16 are the insured party.

17 ~~(2)(6)~~ "Insurer" means as defined in G.S. 58-1-5(3), and includes any person authorized by the insurer to
18 represent the insurer with respect to a claim and who is acting within the scope of the person's
19 authority.

20 ~~(3)(7)~~ "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.

21 ~~(4)(8)~~ "Part" means a sheet metal or plastic part that generally is a component of the exterior of a motor
22 vehicle, including an inner or outer panel.

23 (9) "Third-Party Claimant" means a person that is making a claim on an insurance policy in which they
24 are not the insured party.

25

26 *History Note: Authority G.S. 58-2-40; 20-279.2; 20-279.21;*

27 *Eff. ~~April 1, 1989.~~ April 1, 1989;*

28 *Readopted Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 06A .1001

DEADLINE FOR RECEIPT: March 13, 2020

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (1), please review your citation to 11 NCAC 04 .0425.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: March 2, 2020

1 11 NCAC 06A .1001 is adopted as published in NCR 34:12 1114 as follows:

2

3

SECTION .1000 – MOTOR VEHICLE DAMAGE APPRAISERS

4

11 NCAC 06A .1001 DEFINITIONS

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

7

(1) “Claimant” means as defined in 11 NCAC 04 .0425.

8

(2) “Motor vehicle damage appraiser” means as defined in G.S. 58-33-10(14).

9

10 History Note: Authority G.S. 58-2-40;

11 Adopted Eff. April 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 6A .1002

DEADLINE FOR RECEIPT: March 13, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Where is your statutory authority for (b)(1)?

Are (b)(2), (b)(3), and (b)(5) necessary? They appear to repeat G.S. 58-33-76. If you would like to keep these, please consider referring to the relevant statutes instead of repeating the statutes.

In your history note, please indent the second line so that "Adopted" lines up with "Authority."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: March 2, 2020

1 11 NCAC 06A .1002 is adopted as published in NCR 34:12 1114-1115 as follows:

2
3 **11 NCAC 06A .1002 ETHICAL STANDARDS**

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

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

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

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

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

36
37 History Note: Authority G.S. 58-2-40;

1 Adopted Eff. April 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 10 .0602

DEADLINE FOR RECEIPT: March 13, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), please consider re-writing the first two lines to say "This Rule applies to automobile physical damage, excess motor vehicle liability coverage, . . ."

At line 12, please change "his" to "his or her."

At line 14, please remove the parentheses and incorporate the language into the text of the rule.

In (c)(1), under what circumstances is another factor applicable? Who makes this determination?

At line 23, please change "must" to "shall."

At line 23, delete or define "fully."

At lines 30-31, please remove the parentheses and incorporate the language into the text of the rule.

At line 32, please change "must" to "shall."

In (d), please add a comma after "(c)."

Were changes made to this rule using track changes? If so, please remove track changes and show changes with strikethroughs and underlines.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: March 2, 2020

1 11 NCAC 10 .0602 is amended as published in NCR 34:12 1115-1116 as follows::

2
3 **11 NCAC 10 .0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGES**

4 (a) Automobile Physical Damage, Excess Motor Vehicle Liability Coverage and Residential Property With Not More
5 than Four Housing Units. Insurers may charge a premium in excess of that promulgated by the North Carolina Rate
6 Bureau by instituting a consent to rate procedure that meets the requirements of G.S. 58-36-30(b), (b1) and this Rule.

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

8 (1) The premium to be charged against loss to residential property with not more than four housing
9 units shall be presumed reasonable if it does not exceed 250 percent of the premium based upon the
10 approved rates in North Carolina.

11 (2) Any proposed premium in excess of 250 percent of the premium based upon the approved rates in
12 North Carolina shall be filed with the Commissioner for his review and approval in accordance with
13 the procedures set forth in G.S. 58-36-30(a).

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

17 (1) a description of the insurance proposed, including primary and excess limits, the amount of
18 coverage, the deductible, and any other factor used for rating, where applicable;

19 (2) the rate and premium that would be charged without application of consent to rate;

20 (3) the proposed rate and premium;

21 (4) the percent increase. The rate to be charged shall be presumed reasonable if it does not exceed 250
22 percent of the rate that would be charged without application of consent to rate. Any proposed rate
23 in excess of 250 percent must be explained fully and shall be subject to review and approval of the
24 Commissioner;

25 (5) the names and addresses of the insurer, the writing agent, and the insured;

26 (6) the effective date of the proposed rate;

27 (7) the policy period;

28 (8) the policy number; and

29 (9) a letter signed by the insured acknowledging and consenting to the proposed rate. If coverage for
30 the specific risk written on consent to rate is available through a residual market (North Carolina
31 Workers Compensation Insurance Plan), a statement signed by the insured acknowledging that fact
32 must also be executed. This letter shall be retained in the insurer's office and be made available to
33 the Commissioner upon request.

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

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

3

4 *History Note: Authority G.S. 58-2-40(1); 58-36-30(b);*

5 *Eff. February 1, 1976;*

6 *Readopted Eff. July 11, 1978;*

7 *Amended Eff. August 3, 1992; February 1, 1990; January 1, 1989;*

8 *Temporary Amendment Eff. November 8, 1996;*

9 *Amended Eff. July 1, 1998;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest January 3, 2017;*

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

12