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

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.
- 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.
- 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.

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 Commis	sioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company
11	to adhere to the pr	rocedures 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 purp	oses of this Rule, the following terms shall mean:
14	<u>(1)</u>	"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	<u>(2)</u>	"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	<u>(3)</u>	"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.
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)] <u>(4</u>) "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, [year,]
27		year (or newer year) [options, equipment, condition, and mileage] of the damaged motor vehicle.
28		If unable to identify substantially similar motor vehicles, documentation in [subsection (d)]
29		Paragraph (d) of this rule shall be sufficient proof of compliance for the purposes of this Rule.
30	(c) When a mor	tor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or
31	exceeds 75 perce	ent of the pre-accident actual cash value as determined in accordance with Paragraph (d) of this Rule,
32	an insurance con	npany shall designate the motor vehicle as a "total loss" and pay the claimant the pre-accident value.
33	In return, the insu	rance company shall receive possession of the legal title of the salvage of the total loss motor vehicle.
34	At the election of	of the claimant, or in those circumstances where the insurance carrier will be unable to obtain an
35	unencumbered ti	itle to the damaged vehicle, then the insurance carrier shall have the right to deduct the value of the
36	salvage of the to	tal loss from the actual value of the vehicle and leave such salvage with the claimant.

1	(d) If the insurance company and the claimant are [initially] unable to reach an agreement as to the actual cash value
2	of the total loss motor vehicle, the actual cash value shall be calculated using the following methods and adjusted for
3	condition, options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident:
4	(1) The published regional average values of substantially similar motor vehicles; and
5	(2) Either of the following:
6	[(2)](A) The retail cost of two or more substantially similar motor vehicles in the local market
7	area when substantially similar motor vehicles are available or were available within
8	[the last ninety (90)] 90 days of the accident to consumers in the local market area; or
9	[(3)](B) One of two or more quotations obtained by the insurance company from two or more
10	licensed motor vehicle dealers located within the local market area.
11	(e) Applicable sales tax and vehicle registration fees shall be included as part of the actual cash value settlement of
12	the total loss motor vehicle, except where the claimant retains the salvage vehicle.
13	(f) The insurance company shall give consideration to evidence presented by the claimant such as receipts,
14	[photographs] photographs, or other documentation that the total loss motor vehicle owned by him or her was in a
15	better condition prior to the accident than suggested by the insurer's settlement offer.
16	(g) When a motor vehicle's total loss is settled on a basis which deviates from this Rule, the deviation must be
17	supported by documentation within the claim file detailing the total loss motor vehicle's condition and the reason
18	for the deviation. Any deductions from the actual cash value of the total loss motor vehicle, including deduction for
19	salvage or prior damage, [must] shall be itemized and contain the amount of the deduction. The documentation that
20	supports the basis for the settlement shall be [explained to] shared with the claimant. The insurance company's record
21	shall include documentation of the total loss settlement.
22	(h) If requested by the claimant, a total loss payment by an insurance company shall be accompanied by a written
23	statement listing the estimates, evaluations, and any deductions used in calculating the payment, and the source of
24	these values.
25	(i) No insurance company, adjuster, appraiser, agent, or any other person shall enter into any oral or written
26	agreement(s), by and between themselves, to limit any original or supplemental claim(s) to keep the repair cost of a
27	damaged motor vehicle below 75 percent of its pre-accident value.
28	(j) At the election of the claimant, or in those circumstances where the insurance company will be unable to obtain
29	an unencumbered title to the total loss motor vehicle, the insurance company shall have the right to deduct the value
30	of the salvage of the total loss motor vehicle from the actual cash value calculation and leave the salvage motor vehicle
31	with the claimant.
32	(k) If the insurance company makes a deduction for the salvage value of a total loss motor vehicle retained by the
33	claimant, the insurance company shall, upon request of the claimant, furnish the claimant with the name and address
34	of a salvage dealer who will purchase the salvage for the amount deducted.
35	(1) Where the insurance company has the right to elect to replace the total loss motor vehicle and does so, the
36	$\underline{replacement\ motor\ vehicle\ shall\ be\ substantially\ similar\ to\ the\ total\ loss\ motor\ vehicle\ and\ paid\ for\ by\ the\ insurance\ company,}$
37	subject only to the deductible and to the value of any additional options and equipment chosen by the claimant.

1	(m) The insura	ance company shall be responsible for all reasonable [and customary] towing and storage charges until
2	three days after	the motor vehicle's owner and storage facility are notified in writing that the insurance company
3	[will] <u>shall</u> no l	onger reimburse the motor vehicle's owner or storage facility for storage charges. Notification to the
4	motor vehicle's	owner shall include the name, address, and telephone number of the facility where the motor vehicle
5	is being stored.	Notification to the storage facility shall include the name, address, and, if available, telephone number
6	of the motor vel	nicle's owner. Proof of mailing, as defined in Rule .0430 of this Section, shall serve as the proof that
7	the notification	required by this Rule occurred.
8	(n) In instance	s where the towing and storage charges are paid to the owner, the check or draft for the amount of
9	such service sha	all be payable jointly to the owner and the towing or storage service.
10	(n) (o) No insu	rance company shall abandon the salvage of a total loss motor vehicle to a towing or storage service without
11	the consent of the	ne towing or storage service involved.
12		
13	History Note:	Authority G.S. 58-2-40; 58-63-65, <u>58-63-65; 20-279.2;</u> [<mark>20-279.21;]</mark>
14		Eff. December 15, 1979;
15		Amended Eff. April 1, 1993; April 1, 1989; July 1, 1986. <u>July 1, 1986;</u>
16		Readopted Eff. April 1, 2020.

1	11 NCAC 04 .04	19 is readopted as published in NCR 34:12 1112-1113 as follows:
2		
3	11 NCAC 04 .04	MOTOR VEHICLE REPAIR ESTIMATES
4	The commission	er shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to
5	the following pro	ocedures concerning repair estimates on covered motor vehicle damage claims submitted when such
6	failure is so frequ	uent 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		elaimant. 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 Commis	sioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company
22	to adhere to the p	procedures in this Rule concerning repair estimates on covered motor vehicle damage claims when
23	the failure is so f	requent as to indicate a general business practice.
24	(b) For the purpo	oses of this Rule, the following terms shall mean:
25	<u>(1)</u>	"Digital Inspection" means an inspection of a damaged motor vehicle conducted by using digital
26		photographs, [videos] videos, or other digital evidence through an electronic processing system
27		authorized by an insurer.
28	<u>(2)</u>	"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	<u>(3)</u>	"Physical Inspection" means an inspection of a damaged motor vehicle conducted in person by an
33		insurer's representative.
34	(c) When a moto	or 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	<u>(1)</u>	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.

I	<u>(2)</u>	An insurer shall perform a physical or digital inspection of the damaged vehicle within 10 business
2		[days.] days of receipt of the claim. If the insurer cannot perform the inspection in the timeframe,
3		the insurer shall provide the claimant with a verbal or written explanation of the reason the
4		inspection has not occurred. The reason for the delay shall be documented in writing within the
5		claim file.
6	<u>(3)</u>	No insurer shall refuse to perform a physical inspection of the damaged vehicle if requested by the
7		claimant.
8	<u>(4)</u>	The insurer may satisfy the inspection requirements of this Rule by having a licensed motor vehicle
9		damage appraiser conduct the inspection of the damaged [vehicle.]
10	<u>(5)</u>	An insurer shall provide a verbal or written explanation to the claimant if there is any delay in
11		responding to a request for a supplemental inspection. The reason for the delay shall be documented
12		in writing in the claim file.
13	<u>(6)</u>	An insurer shall, upon request, provide copies of the original estimate and all supplemental estimates
14		to the claimant.
15	<u>(7)</u>	When the insurer elects to have the damaged vehicle repaired, the insurer shall, upon request of the
16		claimant, furnish the claimant with a copy of its estimate. This estimate shall contain the name and
17		address of the insurer and, if the estimate was prepared by someone other than the insurer, the name
18		and address of the person preparing the estimate. If there is a dispute concerning pre-existing
19		damage to the vehicle that the insurer does not intend to have repaired, the extent of such damage
20		shall be stated in the estimate.
21		
22	History Note:	Authority G.S. 58-2-40; 58-63-65;
23		Eff. December 15, 1979;
24		Amended Eff. April 1, 1993; April 1, 1989. <u>April 1, 1989;</u>
25		Readopted Eff. April 1, 2020;

1	11 NCAC 04 .04	21 is readopted with changes as published in NCR 34:12 1113-1114 as follows:
2		
3	11 NCAC 04 .04	21 HANDLING OF LOSS AND CLAIM PAYMENTS
4		
5	The commission	er 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 follo	owing procedures concerning loss and claim payments when such failure is so frequent as to indicate
7	a general busines	s practice:
8	(a) The Commiss	sioner shall consider the failure by an insurer to adhere to the procedures in this Rule concerning loss
9	and claim payme	ents as prima facie evidence violation of G.S. 58-63-15(11) when such failure is so frequent as to
10	indicate a genera	l business practice.
11	(b) When a moto	r vehicle is damaged and the claim is covered by an insurer, the insurer shall adhere to the following
12	procedures conce	erning 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 <u>premiums owed by the insured on a policy</u> 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 <u>claimant</u> 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] shall
25		be 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] shall be asserted within the statute of limitations set
33		forth in G.S. 1-52(16).
34	(c) For purposes	s of this Rule, "diminution in fair market value" shall be as defined in [11 NCAC 06A .1001.] 11
35	NCAC 04 .0425.	
36	(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
37	appraisal reports	prepared by each appraiser shall be exchanged with the other party.

1		
2	History Note:	Authority G.S. 58-2-40; [58-3-100;] 58-63-65. <u>58-63-65; 20-279.2;</u>
3		Eff. December 15, 1979;
4		Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; July 1, 1986. July 1, 1986.
5		Readopted Eff. April 1, 2020.
6		

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11	NCAC 06A.	.1002 is adopted with changes as published in NCR 34:12 1114-1115 as follows:
	NCAC 06A	
<u>(a)</u>	Every licens	sed motor vehicle damage appraiser, when conducting business, shall:
	<u>(1)</u>	identify himself or herself and his or her job title;
	<u>(2)</u>	when requested, provide his or her National Producer Number, and the Department's website
		address and phone number for verification of license status;
	<u>(3)</u>	prepare an independent appraisal of damages; and
	<u>(4)</u>	comply with all local, State, and federal laws, in the motor vehicle damage appraiser's business
		affairs.
<u>(b)</u>	Every licens	sed motor vehicle damage appraiser shall refrain from:
	<u>(1)</u>	disparaging the professional reputation of a motor vehicle damage appraiser or other persons
		associated with the claim;
	<u>(2)</u>	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;] in violation of G.S. 58-33-76(a).
	<u>(3)</u>	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;
	<u>(4)</u>	impeding the appraisal process or the settlement of a property damage claim;
	<u>(5)</u>	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; in violation of G.S. 58-33-76(b).
	<u>(6)</u>	advising or recommending a claimant to obtain or not obtain legal advice or counsel from a
		particular legal counsel;
	<u>(7)</u>	giving legal advice on property damage claims in violation of G.S. 84-4;
	<u>(8)</u>	solicit a power of attorney from a consumer that authorizes the motor vehicle damage appraiser to
		sign insurance-related forms;
	<u>(9)</u>	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;
	<u>(10)</u>	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
	<u>(11)</u>	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.
<u>(c</u>)	Pursuant to	G.S. 58-2-70 and G.S. 58-33-46, the Commissioner may consider the failure of a licensed motor
` ′		appraiser to comply with this Rule as a basis for administrative action.

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

Adopted Eff, April 1, 2020.

10

1	11 NCAC 10 .0	0602 is amended as published in NCR 34:12 1115-1116 as follows::
2		
3	11 NCAC 10 .0	0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGES
4	(a) This Rule	applies to automobile [Automobile] physical damage, excess motor vehicle liability coverage and
5	residential pro	perty with not more than four housing units. [Physical Damage, Excess Motor Vehicle Liability
6	Coverage and	Residential Property With Not More than Four Housing Units.] Insurers may charge a premium in
7	excess of that 1	promulgated by the North Carolina Rate Bureau by instituting a consent to rate procedure that meets
8	the requiremen	ts of G.S. 58-36-30(b), (b1) and this Rule.
9	(b) Residential	Property With Not More than Four Housing Units:
10	(1)	The premium to be charged against loss to residential property with not more than four housing
11		units shall be presumed reasonable if it does not exceed 250 percent of the premium based upon the
12		approved rates in North Carolina.
13	(2)	Any proposed premium in excess of 250 percent of the premium based upon the approved rates in
14		North Carolina shall be filed with the Commissioner for his or her review and approval in
15		accordance with the procedures set forth in G.S. 58-36-30(a).
16	(c) Workers' C	Compensation and Employers' Liability Insurance. An initial (first time) application to effect consent
17	to rate, pursuan	at to G.S. 58-36-30(c), for workers' compensation or employers' liability insurance in excess of the rate
18	promulgated by	y the North Carolina Rate Bureau, shall contain the following:
19	<u>(1)</u>	a description of the insurance proposed, including primary and excess limits, the amount of
20		coverage, the deductible, and any other factor used for rating, where applicable;
21	<u>(2)</u>	the rate and premium that would be charged without application of consent to rate;
22	<u>(3)</u>	the proposed rate and premium;
23	<u>(4)</u>	the percent increase. The rate to be charged shall be presumed reasonable if it does not exceed 250
24		percent of the rate that would be charged without application of consent to rate. Any proposed rate
25		in excess of 250 percent [must]shall be explained [fully] and shall be subject to review and approval
26		of the Commissioner;
27	<u>(5)</u>	the names and addresses of the insurer, the writing agent, and the insured;
28	<u>(6)</u>	the effective date of the proposed rate;
29	<u>(7)</u>	the policy period;
30	<u>(8)</u>	the policy number; and
31	<u>(9)</u>	a letter signed by the insured acknowledging and consenting to the proposed rate. If coverage for
32		the specific risk written on consent to rate is available through a residual market [(North) market,
33		North Carolina Workers Compensation Insurance [Plan,] Plan, a statement signed by the insured
34		acknowledging that fact [must] shall also be executed. This letter shall be retained in the insurer's
35		office and be made available to the Commissioner upon request.

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

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

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

8 *Eff. February 1, 1976;*

9 *Readopted Eff. July 11, 1978;*

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

11 Temporary Amendment Eff. November 8, 1996;

12 Amended Eff. July 1, 1998;

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

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

12