

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.
- (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.

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

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

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

33       (c) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or  
34       exceeds 75 percent of the pre-accident actual cash value as determined in accordance with Paragraph (d) of this Rule,  
35       an insurance company shall designate the motor vehicle as a “total loss” and pay the claimant the pre-accident value.  
36       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 settlement offer ~~actual cash value~~ shall be based upon ~~calculated using~~ the following ~~methods~~ values: ~~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 ninety (90)~~ 90 days of the accident to consumers in the local market ~~area; or~~ area.

~~(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.~~

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.

~~(e)~~(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.

~~(f)~~(g) The insurance company shall give consideration to evidence presented by the claimant such as receipts, ~~photographs~~ 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)~~(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, ~~must~~ shall be itemized and contain the amount of the deduction. The documentation that supports the basis for the settlement shall be ~~explained to~~ shared with the claimant. The insurance company's record shall include documentation of the total loss settlement.

~~(h)~~(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.

~~(i)~~(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.

~~(j)~~(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.

1 ~~[(4e)](l)~~ If the insurance company makes a deduction for the salvage value of a total loss motor vehicle retained by  
2 the claimant, the insurance company shall, upon request of the claimant, furnish the claimant with the name and  
3 address of a salvage dealer who will purchase the salvage for the amount deducted.

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

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

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

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

18  
19 History Note: Authority G.S. 58-2-40; ~~58-63-65; 58-63-65; 20-279.2; /20-279.21;/~~  
20 Eff. December 15, 1979;  
21 Amended Eff. April 1, 1993; April 1, 1989; ~~July 1, 1986; July 1, 1986;~~  
22 Readopted Eff. April 1, 2020.



STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

March 20, 2020

Loretta Peace-Bunch, Rulemaking Coordinator  
Department of Insurance  
**Sent via email only: [loretta.peace-bunch@ncdoi.gov](mailto:loretta.peace-bunch@ncdoi.gov)**

Re: Objection to Rule 11 NCAC 04 .0418

Dear Ms. Peace-Bunch:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned Rule in accordance with G.S. 150B-21.10.

The Commission objected this Rule for ambiguity in Subparagraph (b)(3) and Paragraph (d). Specifically, Subparagraph (b)(3) does not define or explain what qualifies as a "pricing guide." In Paragraph (d), the process for calculating a car's "actual cash value" is unclear as written.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley Snyder  
Commission Counsel

cc: John Hoomani, [john.hoomani@ncdoi.gov](mailto:john.hoomani@ncdoi.gov)

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
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Judges and  
Assistants  
919/431-3000  
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919/431-3000  
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Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

## 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.*

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

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- (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.



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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.  
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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  
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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 (n)(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.*