

N.J.A.C. 11:3-10.4

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TITLE 11. INSURANCE
CHAPTER 3. AUTOMOBILE INSURANCE
SUBCHAPTER 10. AUTO PHYSICAL DAMAGE CLAIMS

N.J.A.C. 11:3-10.4 (2016)

§ 11:3-10.4 Adjustment of total losses

(a) If the insurer elects to make a cash settlement, it must bear in mind at all times that the insured's position is that of a retail consumer and the settlement value arrived at must be reasonable and fair for a person in that position. Written, itemized valuations showing all options and deductions shall be included in the insurer's claim file and presented to the insured no later than the date of payment. If the insurer elects to make a cash settlement, its offer, subject to applicable additions or deductions, must be one of the following plus applicable sales tax:

1. The average of the retail values for substantially similar motor vehicles as listed in the editions current for the date of loss of two valuation manuals approved by the Commissioner.

i. The average figure arrived at may be reduced or increased by considering all factors, including, but not limited to, mileage tables and the presence or absence of extras.

ii. If the destroyed vehicle included an option which is listed in one manual but not in the other, the value of the option shall not be averaged. The insured shall receive full value for the option by carrying over the amount listed to the other manual. The option carryover shall apply only in those instances where the option has not been considered by the used vehicle guide either as a separate item or included in the vehicle's base value.

iii. If a manual is submitted for approval by the Commissioner its accuracy must meet objective criteria for the values of substantially similar vehicles of at least 85 percent of all makes and models for the last 15 years and shall include all major options. A sufficient number of vehicles shall be used for each year, make and model to represent a cross-section sufficient to determine fair market values. At the time of request for approval, the source of the manual's data must be revealed to the Commissioner in a manner that can be verified by the Department. Manuals approved for use on or after January 1, 1976 are "Automobile Red Book" and "Older Car/Truck Red Book" published by Maclean Hunter Market Reports, Inc. and the "N.A.D.A. Official Used Car Guide" and "N.A.D.A. Official Older Car Guide" published by the National Automobile Dealers Used Car Guide Company.

2. A quotation obtained by the insurer for a substantially similar motor vehicle from a dealer located within a reasonable distance from the principal place of garagement of the insured vehicle. Unless otherwise agreed by the insured, a reasonable distance shall not exceed 25

miles from the principal place of garagement. The vehicle must be available for purchase by the insured and the insured must be able to purchase it for the insurer's cash offer plus applicable deductions. The insurer shall maintain in its claim file proof of the vehicle's availability and the name and location of the dealer, stock number, vehicle identification number and description of the substantially similar vehicle.

3. The fair market value of the insured vehicle, determined by using a source including a computerized database approved by the Commissioner that meets all of the following minimum criteria:

i. The source must give primary consideration to the values of vehicles in the local market area, but if necessary to obtain a reasonable cross-section of the market, may consider vehicles in the next closest area.

ii. The source shall produce fair market values of substantially similar vehicles for at least 85 percent of all makes and models for the last 15 years and shall include all major options. A sufficient number of vehicles must be used for each year, make, and model to represent a cross-section of the market sufficient to determine fair market value.

iii. If the database uses several price ranges for the same model vehicle depending on the condition of the vehicle, it must clearly indicate what condition the vehicle is being valued at and define in detail the difference between such rating categories. Documentation of the condition of the insured vehicle must be made a part of the written valuation.

iv. At the time of request for approval the source of the database shall be revealed to the Commissioner in a manner that can be verified by the Department.

4. If it is not possible to value the insured vehicle by using the method set forth in (a)1, 2 and 3, the insurer shall determine the retail value of the vehicle by using the best available method and shall fully explain in writing to the insured how its offer was calculated.

(b) If the insurer is notified in writing within 30 calendar days of the receipt of the claim draft that the insured cannot purchase a comparable vehicle at the market value established by the insurer, the insurer shall reopen its claim file and the following procedures will apply:

1. The insurer may locate a substantially similar vehicle by the same manufacturer of the same year, make and model, with similar options, mileage, and condition as the destroyed vehicle from a licensed dealer. Such vehicle must be within a reasonable distance not to exceed 25 miles from the insured's principal place of garaging;

2. The insurer shall either pay the difference between the market value before applicable deductions and the cost or the market value as determined by (a)2 above of a substantially similar vehicle located by the insured or negotiate and effect purchase of this vehicle for the insured;

3. The insurer may elect to offer a replacement vehicle in accordance with the provisions as in (e) below; or

4. The insurer or insured may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or under law.

(c) The insurer shall advise the insured in writing of the rights of recourse at the time the settlement draft is issued and retain a copy of the notice in its claim file.

(d) An insurer shall use the same source of settlement for all claims unless it is documented that the primary settlement source is not available in the case of a particular vehicle. At the request of the Commissioner, the insurer shall provide the Department with its primary source of valuation for vehicles.

(e) If the insurer elects to replace the vehicle, the replacement vehicle must be an immediately available, substantially similar vehicle that is both furnished and paid for by the insurer, subject to the deductible, if any, and including applicable sales tax.

(f) If the insured vehicle is a private passenger automobile of the current model year, meaning that the vehicle has not been superseded in the market place by an officially introduced succeeding model, the insurer shall utilize one of the following methods in the settlement of the loss, unless the utilization of (a) or (b) above is more favorable to the consumer.

1. Either the insurer shall pay the insured an amount equal to the reasonable purchase price on the date of the loss of a new identical vehicle, less any applicable deductible and an allowance for depreciation in accordance with the schedule below; or

2. The insurer shall provide the insured with a new identical replacement vehicle charging the insured for any applicable deductible and for depreciation in accordance with the schedule below:

Depreciation Schedule

| Purchase Price | Depreciation per mile |
|---------------------|-----------------------|
| Up to \$ 6,500 | \$ 0.10 |
| \$ 6,501-\$ 8,000 | 0.12 |
| 8,001- 10,000 | 0.15 |
| 10,001- 12,000 | 0.18 |
| 12,001- 15,000 | 0.21 |
| 15,001- 20,000 | 0.25 |
| More than \$ 20,000 | 0.29 |

(g) In the event of a total loss, any parts of the insured vehicle included in its valuation which are removed by the insured or the designated representative shall have their value deducted from the final settlement figure. This section shall not be construed to grant a right of removal.

(h) The following provisions of N.J.A.C. 11:3-10.3 also shall apply to the adjustment of total losses, except that the insurer shall have a total of 14 working days to comply with the requirements of subsections (a), (b), (c), (h), (i), (j) and (k) of N.J.A.C. 11:3-10.3.

(i) This section does not prohibit an insurer from issuing a stated value policy insuring against physical damage where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

(j) If the vehicle is a total loss, the insurer may require that the insured transfer ownership of the vehicle to recoup salvage as a condition of settlement.

1. If the insurer does not require transfer of title to recoup salvage and deducts the salvage value from the settlement, the salvage value deduction must be limited to the amount the insured would be able to obtain from a salvage facility within a reasonable distance to the insured's principal place of garaging or the location where the vehicle is stored when totaled.

2. If the insurer is notified in writing by the insured within 30 calendar days of the loss settlement that the salvage cannot be sold for the amount of the deduction, and the salvage has not significantly deteriorated or been altered between the time of the loss settlement and the time of the notice to the insurer by the insured, the insurer shall either pay the difference between the greatest amount the insured has documented he can readily receive for the vehicle and the amount the insurer deducted or provide the insured with the name and contact information for a salvage facility that will purchase the vehicle for the amount of the salvage deduction.

3. If the insurer is deducting salvage from the settlement, notification of the insured's rights as set forth in (j)2 above must be provided to the insured in writing at the time the offer of settlement is made and a copy retained by the insurer in the claim file.