

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

New Jersey Automobile Physical Damage Claims

Excessive Salvage Deductions in Total Loss Claims

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

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-15e and 17:1-8.1

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal: PRN 2005 -102

Submit comments by May 20, 2005 to:

Douglas Wheeler, Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, New Jersey 08625-0325  
Fax: (609) 292 -0896  
Email: [Legsregs@dobi.state.nj.us](mailto:Legsregs@dobi.state.nj.us)

The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 11:3-10 dealing with claims arising under motor vehicle collision and comprehensive coverages. The proposed amendment will be applicable to first party claims made under N.J.A.C. 11:3-10 as well as third party claims made under N.J.A.C. 11:2-17.10(a). The Department proposes to amend the physical damage rules so as to address the issue of salvage value when a damaged vehicle is a total loss. The proposed amendments are intended to ensure that consumers receive fair market value for their salvage vehicles.

N.J.A.C. 11:3-10.4(j) deals with the obligations of the insured or third party claimant and the insurer in a situation where there has been a total loss of the vehicle as a result of an accident. The Department proposes to add three additional paragraphs to this subsection to address this issue. N.J.A.C. 11:3-10.4(j)(1) will require that if the insurer does not require the transfer of title to recoup salvage and deducts from the settlement an amount representing the salvage value of the vehicle, the salvage deduction shall be limited to the amount the insured or third party claimant would be able to obtain from a salvage facility located within a reasonable distance from the garage or storage site of the vehicle. New paragraph (j)2 provides that if the insurer is notified in writing by the insured or third party claimant that the salvage cannot be sold for the deducted amount, the insurer shall either pay the difference between the documented value that the insured or third party claimant can receive for the vehicle and the amount the insurer deducted or provide the insured or third party claimant with the name and contact information for a salvage facility that will purchase the vehicle for the amount of the deduction. New paragraph (j)3 provides that if an insurer deducts salvage value from the settlement, notification of the insured's or third party claimant's rights as set forth in paragraph (j)2 must be provided to the insured or third party claimant in writing at the time the settlement is made and a copy retained in the insurer's claim file.

This rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-2.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed amendments will have a positive impact on New Jersey consumers because it will alleviate concerns insureds and third party claimants have raised regarding their receipt of the true salvage value of vehicles in situations where there has been a total loss, thus enhancing the public's level of confidence in the fairness of the automobile insurance system in New Jersey. The proposed amendments are consistent with other efforts, including the recent settlement of a multi-state action involving a national insurer and insufficiently documented titles on vehicles determined to be total losses, to protect consumers whose interests are affected when such determinations are made.

### **Economic Impact**

The proposed amendments will have a positive economic impact on consumers, as they will ensure that consumers do not incur excessive deductions for the salvage value of their vehicles when there has been a total loss. The proposed amendments could potentially have a negative impact on insurers because their adoption may result in insurers bearing minimal additional costs in isolated cases where vehicles that have been totaled as a result of an accident cannot be sold for an amount that is equal to the salvage value deduction the insurer would have made but for the requirements imposed by the amendments.

### **Federal Standards Statement**

A Federal standards analysis is required when any State agency proposes to adopt, readopt, or amend State regulations that exceed any Federal standards or requirements.

The proposed amendments deal with insurance related issues, which are exclusively the subject of State law and are not subject to any Federal standards or requirements. Thus, no Federal standards analysis is required.

### **Jobs Impact**

The Department has determined that no jobs will be generated or lost as a consequence of the proposed amendment.

### **Agriculture Statement**

The Department does not anticipate any impact on agriculture from the proposed amendments.

### **Regulatory Flexibility Analysis**

The Department believes that the proposed amendments will apply to small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A.52:14B-16 et seq., because some insurers may have fewer than 100 full-time employees. The proposed amendments to N.J.A.C 11:3-10.4(j) will impose recordkeeping and compliance requirements on insurers. To the extent that these amendments will apply to such small businesses, those insurers will be required to comply with the proposed amendments as described in the Summary above. The Department does not believe that compliance with the proposed amendments will impose any substantial additional costs on insurers. Proposed new paragraph 2 in N.J.A.C. 11: 3-10.4(j) provides insurers with the option of supplying to the insured or third party claimant the name and contact information of a salvage facility that will purchase the totaled vehicle for the amount of

the salvage deduction assessed by the insurer. This option provides small insurers with an alternative to purchasing totaled vehicles themselves, which can be utilized to minimize the cost of complying with the new requirement. In addition, insurers would be required to keep records of the disclosure notification, as they would do with other documents in the normal course of their business. The proposed amendments provide no differentiation in compliance requirements based on business size. All businesses should be able to comply with the proposed amendments utilizing existing staff and resources. No outside professional services will be required.

### **Smart Growth Impact**

The proposed amendments have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:3-10.4 Adjustment of total losses

(a) – (i) (No change in text.)

(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 that the salvage cannot be sold for the amount of the deduction, 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.

ROG04-15/INOREGS