

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

New Jersey Automobile Physical Damage Claims
Excessive Salvage Deductions in Total Loss Claims

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

Proposed: March 21, 2005 at 37 N.J.R. 866(a)

Adopted: January 20, 2006 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Filed: January 26, 2006 as R. 2006 d.86, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

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

Effective Date: February 21, 2006

Expiration Date: July 3, 2006

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received written comments from the following: Allstate New Jersey Insurance Company, Alliance of Automotive Service Providers, Insurance Council of New Jersey, Liberty Mutual Insurance Company, New Jersey Association of Mutual Insurance Companies, Property Casualty Insurers Association of America, Professional Insurance Agents New Jersey, Preserver Group and State Farm Indemnity Company.

COMMENT: Several commenters supported the proposed amendments.

RESPONSE: The Department appreciates the expression of support for the proposed amendment.

COMMENT: Several commenters stated that the terms “salvage facility” and “reasonable distance” should be defined, while other commenters opined that these definitions are unnecessary.

RESPONSE: The Department concurs with the commenters who maintained that the terms do not warrant definition. The State of New Jersey does not license salvage facilities. The absence of a definition allows both the consumer and the insurer great latitude in obtaining a reliable salvage bid for a total loss claim. This latitude benefits both the insured and the insurer.

The concept of “reasonable distance” is subject to agreement between the parties. Again, the absence of a definition creates maximum opportunity for the insured to effectuate disposition.

COMMENT: One commenter noted that the Department should consider reasserting the consumer’s primary right to be reimbursed for a total loss rather than create a new obligation on the insured regarding salvage recovery.

RESPONSE: The commenter has misconstrued the provision. The Department notes that N.J.A.C. 11:3-10.4 regarding “adjustment of total losses” requires insurers to treat insureds as retail consumers and that the settlement values arrived at by the insurers must be reasonable and fair for an insured person in that position. The proposed language applies to total losses where the insurer may require that the insured transfer title to the insurer to allow recoupment of salvage as a condition of settlement.

COMMENT: Several commenters expressed concern that in instances of comparative negligence, the rules should specify that comparative negligence values will decrease the salvage value.

RESPONSE: The Department is aware that the salvage value of a total loss may be decreased by a comparative negligence determination. The clarifying language regarding fair salvage deductions does not change the provisions of the Comparative Negligence law or the Unfair Claims Settlement Practices rules (N.J.A.C. 11:2-17)

COMMENT: One commenter urged that additional language be included in the rule to compel the insured to be bound by a salvage value estimate.

RESPONSE: The Department disagrees with the commenter. Since the insurer has the initial opportunity to retain salvage based on its total loss estimate, the insured must be given an opportunity to determine salvage value independently. This opportunity underscores the purpose of the proposal, which is to ensure that consumers receive fair market value for their salvage vehicles.

COMMENT: Several commenters noted that the value of salvage rapidly declines over time due to deterioration or stripping of parts or other modification and requested the inclusion of additional text to address this concern. The commenters also sought language limiting the timeframe for notification of the value to 30 to 60 days after loss settlement.

RESPONSE: The Department agrees with the commenters and has added clarifying language upon adoption that explicitly incorporates the 30 calendar days timeframe found elsewhere in N.J.A.C. 11:3-10.4 at subsection (b), as well as in N.J.A.C. 11:3-10.5(a) and (b). This change makes explicit the implication in the proposal that the same timeframe would apply in this subsection of the rule. The 30-day window likewise reflects the practice of most insurers in which one or two large salvage companies or auction houses provide estimates within this

timeframe. Also, in response to the comments, the Department has added clarifying language to N.J.A.C. 11:3-10.4(j)2 regarding any significant reduction in the value of salvage due to deterioration or alteration in its condition between the time of the loss settlement and the time of the notice to the insurer by the insured that the salvage cannot be sold for the amount of the salvage deduction previously specified by the insurer.

COMMENT: Several commenters maintained that the rule does not provide whether the insurer or insured should pay for storage costs that accrue on a salvage after an agreement is reached, in the event that the insured changes his/her mind regarding retention.

RESPONSE: The Department does not agree that additional wording is required. N.J.A.C. 11:2-17.10(a)9 provides specific guidance regarding proper notification for the termination of payment of storage charges.

Federal Standards Statement

The adopted amendment deals 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.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks

thus):

11:3-10.4 Adjustment of total losses

(a) – (i) (No change.)

(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. (No change from proposal.)

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. (No change from proposal.)