NEW JERSEY ADMINISTRATIVE CODE
TITLE 11. DEPARTMENT OF BANKING AND INSURANCE DIVISION OF INSURANCE
CHAPTER 3. AUTOMOBILE INSURANCE
SUBCHAPTER 10. AUTO PHYSICAL DAMAGE CLAIMS

11:3-10.1 Scope
This subchapter applies to claims arising under motor vehicle collision and comprehensive coverages.

11:3-10.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"**Actual cash value**", unless otherwise specifically defined by law or policy, means the lesser of the amounts for which the insured or the designated representative can reasonably be expected to:

1. Repair the motor vehicle to its condition immediately prior to the loss; or

2. Replace the motor vehicle with a substantially similar vehicle. The amount shall include all moneys paid or payable as sales taxes on the motor vehicle repaired or replaced. This paragraph shall not be construed to prevent an insurer from issuing a policy where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

"**Agreed price**" or "figure" means the amount agreed to by the insurer and the insured, or their representatives, as the reasonable cost to replace the motor vehicle or to repair damages to the motor vehicle resulting from the loss, without considering any deductible or deductions.

"**Designated representative**" means a person designated by the insured to represent the insured in negotiations with the insurer in an attempt to settle the claim. The designated representative may be any person authorized by the insured who may act legally in his or her behalf.

"**Motor vehicle**" shall have the meaning ascribed in N.J.S.A. 39:1-1.

"**Substantially similar vehicle**" means a vehicle of the same make, model, year and condition, including all major options of the insured vehicle. Mileage must not exceed that of the insured vehicle by more than 4,000 miles. Mileage differences of more than 4,000 miles may, at the option of the insured, be exchanged for the presence or absence of options or a cash adjustment.

11:3-10.3 Adjustment of partial losses
(a) If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, the insurer shall have seven working days following receipt of notice of loss to inspect the insured's damaged vehicle, which is available for inspection, at a place and time reasonably convenient to the insured; commence negotiations; and make a good faith offer of settlement.

(b) Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price. Early in negotiations, the insurer must inform and confirm in writing to the insured or the insured's designated representative all deductions that will be made from the agreed price, including the amount of applicable deductible.

(c) If the insurer inspects the damaged vehicle or causes it to be inspected, the insurer shall promptly upon completing the

inspection furnish the insured or the designated representative of the insured with a detailed written estimate of the cost of repairing the damage resulting from the loss, specifying all appropriate deductions.

(d) No insurer shall negotiate the settlement of any physical damage claim involving an automobile as defined at N.J.S.A. 39:13-1b with an unlicensed auto body repair facility or in any manner utilize an unlicensed facility in the adjustment, negotiation or settlement of such a claim. It shall be the responsibility of the insurer to make a reasonable and diligent effort to determine whether the facility is properly licensed.

(e) Subject to the requirements of (d) above, the insured may use any repair facility of his or her own choice. With respect to automobile damage claims, the insurer shall notify in writing any insured who elects to use his or her own repair facility that, pursuant to law, any entity engaged in the business of auto body repairs must be duly licensed. The notice shall further advise the insured that the insurer is prohibited by law from negotiating, adjusting or settling an automobile damage claim with an unlicensed facility. The written notice shall be furnished at the time of acknowledgment of the claim as provided at N.J.A.C. 11:2-17.6 or upon the furnishing of its written estimate, as specified at (c) above, whichever is sooner. The insurer must make all reasonable efforts to obtain an agreed price with the facility selected by the insured. The insurer may recommend, and if the insured requests, must recommend a qualified repair facility at a location reasonably convenient to the insured motor vehicle who will repair the damaged motor vehicle at the insurer's estimated cost of repairs, but in either event the provisions of (g) below apply.

(f) All estimates, including revisions and adjustments, prepared by any repair facility, estimator or appraiser must be included in each claim file.

(g) If the insured's vehicle is repaired at a repair facility whose name is furnished by the insurer under (e) above for a sum estimated by the insurer as the reasonable cost to repair the vehicle, the insurer:

1. Shall select a repair facility that issues written guarantees that any work performed in repairing damaged vehicles meets generally accepted standards for safe and proper repairs;

2. Shall cause the damaged vehicle to be restored to the condition it was in prior to the loss, at no additional cost to the insured and within a reasonable time, if the repair facility does not repair the damaged vehicle in accordance with generally accepted standards for a safe and proper repair.

(h) Whenever an insurer elects to repair its insured's vehicle, that is, physically take the vehicle and have it repaired, the election must be in writing addressed to the insured and contain a reasonable estimate of the time period within which the vehicle will be repaired. The insurer shall guarantee, in writing, that the work performed meets generally accepted standards for safe and proper repairs.

(i) Deductions for betterment and depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount by which the resale value of the vehicle is increased by the repair or replacement. Calculations for betterment, depreciation and normal useful life must be included in the insurer's claim file.

(j) Deductions for previous damage or prior condition of the vehicle must be measurable, discernible, itemized and specific as to the dollar amount, and those deductions must be included in the insurer's claim file. The deductions shall be limited to the amount by which the resale value of the motor vehicle is increased by the estimation of the previous damage or the correction of the prior condition.

(k) The insurer must mail or hand deliver to the insured or the designated representative its proof of loss or payment within five working days after the insured has accepted the insurer's offer.

(l) The insured shall have the right to receive the proceeds of any settlement. The insurer may not insist on making settlement proceeds jointly payable to the insured and the repair facility, or payable to the repair facility only.

(m) The insured may elect to have the insurer pay the repair facility directly in order to expedite recovery of the motor vehicle. The insured must make this election in writing.

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- 10,000 015
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.

11:3-10.5 Unreasonable delay
(a) Unless a clear justification exists, physical damage claims will have a maximum payment period of 30 calendar days. A payment period is the period between the date of the receipt of the notice of loss by the insurer, and:

1. The date the settlement check is mailed; or

2. The date on which the damaged vehicle is returned to use when the insurer elects to repair or have repaired the insured vehicle; or

3. The date on which the damaged vehicle is replaced by the insurer.

(b) If any element of a physical damage claim remains unresolved more than 30 calendar days from the date of receipt of notice of loss by the insurer, the insurer shall provide the insured with a written explanation of the specific reasons for delay in the claim settlement. An updated letter of explanation shall be sent again every 30 calendar days thereafter until all elements of claim are either honored or rejected.

(c) Any letter of explanation, rejection or acceptance of any element of a claim shall contain in the upper right hand corner

the date of receipt of notice of loss by the insurer and be identified as such. The letter shall also contain the identity and claim processing address of the insurer, and the insured's policy number and claim number.

11:3-10.6 Loss of use
In the event of the theft of the entire vehicle the insurer at the time of notification shall advise the insured of his or her right under the policy to be reimbursed for transportation expenses. The notification must be confirmed in writing immediately after receipt of notice of theft. All conditions and benefits related to this coverage as stated in the policy must be contained in the notification to the insured.

11:3-10.7 Subrogation agreements
(a) If an insured has received payment under his or her physical damage coverage that is subject to a deductible, the insured shall share, pro rata, with the insurer any net recovery received by the insurer from third parties.

(b) Net recovery shall be the total recovery less the insurer's allocated loss adjustment expenses attributable to such recovery.

The formula for computing net recovery and the insured's share of recovery of the deductible may be stated as follows:

1. Total recovery – Allocated loss adjustment expenses = Net recovery
(Deductible ÷ Total Loss) × Net recovery = Insured’s share of recovery.

2. Application of formula: Assume a loss of $500.00 subject to a $100.00 deductible with a $50.00 in allocated loss adjustment expense:

i. If there is full recovery of $500.00; computation of net recovery: $500.00 - $50.00 = $450.00
Computation of insured’s share of recovery: ($100.00 ÷ $500.00) × $450.00 = $90.00
ii. If there is a partial recovery of $300.00: computation of new recovery: $300.00 - $50.00 = $90.00
Computation of insured’s share of recovery: ($100.00 ÷ $500.00) × $250.00 = $50.00

(c) Unless the insurer returns its insured's full deductible the insured shall attempt to effect full recovery in clear liability cases and shall not enter into any inter-company agreements that provide for the acceptance of lesser amounts on a formula basis.

(d) If an insurer has paid a physical damage claim that is subject to a deductible and it elects not to pursue its subrogation claim where the probability of recovery exists, the insurer shall so notify its insured in writing within 60 calendar days after it has paid the claim, except that the notification shall be given at least 30 days prior to the running of any applicable statute of limitations or period required for notice of claim. If an insurer does not notify its insured within the time periods prescribed above and the statute of limitations or period required for notice or claim has expired, the insurer shall forthwith remit to its insured the full amount of the insured's deductible.

11:3-10.8 Repair estimates
If the insurer requires that its insured obtain more than one estimate of motor vehicle damage, the reasonable cost of such additional estimates, if any, shall be borne by the insurer unless the estimator does the work.

11:3-10.9 Referral of insured to the at-fault party
There shall be no attempt to discourage an insured from filing a physical damage claim, nor shall an insurer encourage its insured to assert a claim against a third party in lieu of filing a physical damage claim under the insured's policy.

11:3-10.10 Examinations by the New Jersey Department of Banking and Insurance

To ensure compliance with this rule, the Department of Banking and Insurance personnel will investigate the market performance of insurers. To enable Department personnel to reconstruct an insurer's activities pursuant to the provisions of this rule, each insurer must maintain a complete file on each claim settled pursuant to this rule. The claim file shall contain all communications, transactions, notes and work papers relating to the claim. With respect to automobile damage claims, the file also shall include the name, address, telephone number and license number of any auto body repair facility that has been utilized by the insurer in the adjustment of the loss or repair of the automobile. All papers in the file must be accurately dated by the insurer.