Byron Mallott
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520 465.5400 Fax
WWW.LTGOV.ALASKA.GOV

530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263
LT.GOVERNOR@ALASKA.GOV

OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA

MEMORANDUM

TO: Chip Wagoner, AAC Contact
Department of Commerce, Community and Economic Development

FROM: Scott Meriwether
Special Assistant
907.465.4081

DATE: May 7, 2015

RE: Filed Permanent Regulations: Division of Insurance

Regulations re: unfair trade practices by insurers and settlement of total-loss claims for motor vehicles and other property (3 AAC 26.030; 3 AAC 26.080; 3 AAC 26.090; 3 AAC 26.300)

Attorney General File:	JU2014200639
Regulation Filed:	May 7, 2015
Effective Date:	June 6, 2015
Print:	Register 214, July 2015

cc with enclosures: Micaela Fowler, Commerce, Community and Economic Development
Linda Miller, Department of Law
Genevieve Wojtusik, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

JU2014200639

ORDER RA 14-03a ADOPTING CHANGES TO
REGULATIONS OF THE DIVISION OF INSURANCE

The attached ten pages of regulations dealing with standards for prompt, fair, and equitable settlements of motor vehicle and property claims are hereby adopted and certified to be a correct copy of the regulation changes that the Division of Insurance adopts (3 AAC 26.030, 3 AAC 26.080, 3 AAC 26.090, and 3 AAC 26.300) under the authority of AS 21.06.090; AS 21.06.120; AS 21.06.130; AS 21.36.090; AS 21.36.125; AS 21.36.410; and AS 21.36.910, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Division of Insurance paid special attention to the cost to private persons of the regulatory action being taken.

The regulations adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor.

DATED this 4 day of May, 2015, at Juneau, Alaska.

Lori Wing-Heier

Lori Wing-Heier
Director
Division of Insurance
Department of Commerce, Community, and
Economic Development

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on May 7, 2015, at 2:50 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Byron Mallott

Lieutenant Governor

Effective June 6, 2015.

Register 214, July 2015.

Title 3. Commerce, Community, and Economic Development.

Part 2. Division of Insurance.

Chapter 26. Trade Practices.

3 AAC 26.030 is amended by adding new subsections to read:

(b) A person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim under any type of insurance shall respond to inquiries from the director related to the claim not later than 10 days from the date of the director's inquiry. The response must include all documentation within the person's possession, custody, or control, or in the possession, custody, or control of other persons or entities acting on behalf of that person in relation to the claim, that is responsive to the director's inquiry.

(c) The director may assess a penalty under AS 21.36.910 of not more than $2,500 for each violation or $25,000 for engaging in a general business practice that violates (b) of this section. (Eff. 5/6/89, Register 110; am 6 / 6 / 2015, Register 214)

Authority:	AS 21.06.090	AS 21.36.090	AS 21.36.410
	AS 21.06.120	AS 21.36.125	**AS 21.36.910**
	AS 21.06.130		

The introductory language of 3 AAC 26.080(a) is amended to read:

(a) **A** [ANY] person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party **or third-party** motor vehicle claim **shall** [MUST:]

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3 AAC 26.080(a)(1)(A) is amended to read:

(A) offer a comparable and available replacement motor vehicle, with all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership of the motor vehicle paid, at no cost to the [FIRST-PARTY] claimant other than the deductible amount, if any, as stated in the coverage; the offer of a replacement motor vehicle shall be made in writing if rejected by the [FIRST-PARTY] claimant; or

3 AAC 26.080(a)(1)(B) is repealed and readopted to read:

(B) make a cash settlement based upon the actual cost to purchase a comparable motor vehicle, including all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership, less the deductible amount, if any, as stated in the coverage; the cost shall be determined by

(i) the cost of a comparable motor vehicle in the local market area to the claimant, if that motor vehicle is available in that area or was available during the last 90 days;

(ii) the average of two or more cost quotations obtained for a comparable motor vehicle from two or more licensed dealers located within the local market area, if a comparable motor vehicle is not available in that area; if quotes from two or more licensed dealers are not available from the local market

area, the search area may be expanded to areas surrounding the local market area in 25-mile increments until two quotes are obtained;

(iii) a computerized database valuation service that produces statistically valid fair market values under (i) of this section;

(iv) the average retail value of a comparable motor vehicle, if that value is obtained from two industry sources published on a regular basis, at least once every two months, that contain the average retail, wholesale, and finance values for all makes and models for at least each of the last five model years, as well as a listing for all major options; cost may be determined under this sub-subparagraph only if (i) – (iii) of this subparagraph do not identify any comparable motor vehicles, and only with the consent of the claimant; or

(v) the cost of a comparable motor vehicle using a basis that is allowable under the coverage, if supported by documentation in the claim file and fully explained to the claimant; cost may be determined under this sub-subparagraph only if (i) – (iv) of this subparagraph do not identify any comparable motor vehicles;

3 AAC 26.080(a)(2) is amended to read:

(2) provide to a [FIRST-PARTY] claimant a reasonable written explanation of the valuation of damages to the motor vehicle;

3 AAC 26.080(b)(1) is repealed:

(1) repealed 6 / 6 / 2015;

3 AAC 26.080 is amended by adding new subsections to read:

(h) An insurer may reduce the value of the motor vehicle on the basis of betterment. Any deductions must be measurable, be itemized, have specific dollar amounts, and be documented in the claim file. Betterment deductions may be made only if the deductions

(1) reflect a measurable decrease in market value attributable to the poorer condition of the vehicle or damage to the vehicle that existed before the current claim;

(2) apply to parts normally subject to repair and replacement during the useful life of the vehicle;

(3) reflect missing parts and the deductions are not more than the replacement cost of the parts.

(i) A source for determining fair market values under (a)(1)(B)(iii) of this section must meet the following criteria:

(1) the source must give primary consideration to the values of comparable motor vehicles in the local market area that are currently available or were available during the last 90 days;

(2) the source must produce values applicable in this state for at least 85 percent of all makes and models for the last 15 model years taking into account the values of all major options for these vehicles;

(3) if at least two comparable motor vehicles are not found in the local market area during the last 90 days, the search may be expanded up to the last 180 days in 30-day increments until two or more comparable motor vehicles are located;

(4) if at least two comparable motor vehicles are not found in the local market area after expanding the search period as provided under (3) of this subsection, the search area may be expanded to areas surrounding the local market area in 25-mile increments for comparable motor vehicles that are currently available or were available during the last 90 days; if at least two comparable motor vehicles are not found in the expanded search area, the search area or time period in 30-day increments may be expanded further with the agreement of the claimant.

(j) If the claimant notifies the insurer not later than 60 days after receipt of the claim payment that the claimant cannot purchase a comparable vehicle for the amount determined under (a)(1)(B) of this section, the insurer shall, if the appraisal section of the policy has not been exercised, reopen the insurer's claim file and determine a new settlement amount using one of the following procedures:

(1) the insurer may locate a comparable motor vehicle available through a licensed dealer for the value determined by the insurer at the time of settlement, along with all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership of the motor vehicle, at no cost to the claimant other than the deductible amount, if any, as stated in the coverage;

(2) if the claimant has located a comparable motor vehicle of like kind and quality, the insurer may

(A) pay the difference between the value determined by the insurer at the time of settlement and the cost of the comparable motor vehicle; or

(B) negotiate and effect the purchase of the comparable motor vehicle for the claimant;

(3) for a first-party claimant, the insurer may conclude the loss settlement using the appraisal provisions of the policy.

(k) An insurer is not required to take action under (j) of this section if

(1) the insurer provided documentation to the claimant at the time of settlement of the location of a specific comparable motor vehicle available for purchase for the agreed settlement amount and the claimant did not purchase this vehicle not later than 10 working days after the date final payment is sent to the claimant, lienholder, or both; or

(2) the appraisal section of the policy has been exercised.

(*l*) If comparable motor vehicles cannot be found under the procedures described in this section, the insurer may consider vehicles by other manufacturers that otherwise fall within the definition of "comparable motor vehicle" under 3 AAC 26.300 in the valuation processes described in this section.

(m) This section does not prohibit an insurer from issuing a stated 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. (Eff. 5/6/89, Register 110; am 6 / 6 / 2015, Register 214)

Authority: AS 21.06.090 AS 21.36.125

The introductory language of 3 AAC 26.090(a) is amended to read:

(a) **A** [ANY] person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party **or third-party** property claim shall[:]

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3 AAC 26.090(a)(1)(A) is amended to read:

(A) offer specific comparable and available replacement property with all applicable taxes, charges, and other fees incident to the transfer of ownership of the property at no cost to the claimant other than the deductible amount, if any, as stated in the coverage; the offer of replacement property **must** [SHALL] be in writing if rejected by the [FIRST-PARTY] claimant.

3 AAC 26.090(a)(1)(B)(i) is amended to read:

(i) the cost of comparable property in the local market area to the claimant, if **comparable** [SUCH] property is available in that area **or was available during the last 90 days**; or

3 AAC 26.090(a)(1)(B)(ii) is amended to read:

(ii) the average of two or more cost quotations obtained for comparable property from two or more **licensed** [QUALIFIED] dealers, suppliers**,** or contractors located within the local market area, if comparable property is not available in that area; [OR]

3 AAC 26.090(a)(1)(B)(iii) is repealed:

(iii) repealed 6 / 6 / 2015;

3 AAC 26.090(a)(2) is amended to read:

(2) provide to a [FIRST-PARTY] claimant a reasonable written explanation of the valuation of the damages to the property;

3 AAC 26.090(b)(1) is repealed:

(1) repealed 6 / 6 / 2015;

3 AAC 26.090 is amended by adding new subsections to read:

(g) If no comparable property is found in the local market area, the search may be expanded up to the last 180 days in 30-day increments until a comparable property is located.

(h) If no comparable property is found in the local market area after expanding the search period as provided under (g) of this section, the search area may be expanded to areas surrounding the local market area that include two additional licensed dealers, suppliers, or contractors for property that is currently available or that was available during the last 90 days.

(i) If no comparable property is found in the expanded search area or time period allowed under (g) and (h) of this section, the search area may be further expanded or the time period may be expanded in 30-day increments.

(j) If the claimant notifies the insurer not later than 60 days after receipt of the claim payment that the claimant cannot purchase replacement property for the amount determined under (a)(1)(B) of this section, the insurer shall, if the appraisal section of the policy has not been exercised, reopen the insurer's claim file and determine a new settlement amount using one of the following procedures:

(1) the insurer may locate comparable property through a licensed dealer, supplier, or contractor for the value determined by the insurer at the time of settlement;

(2) if the claimant has located comparable property of like kind and quality, the insurer may

(A) pay the difference between the value determined by the insurer at the time of settlement and the cost of the comparable property; or

(B) negotiate and effect the purchase of the comparable property for the claimant;

(3) for a first-party claimant, the insurer may conclude the loss settlement using the appraisal provisions of the policy.

(k) An insurer is not required to take action under (j) of this section if

(1) the insurer provided documentation to the claimant at the time of settlement of the location of specific comparable property available for purchase for the agreed settlement amount and the claimant did not purchase this property not later than 10 working days after the date final payment is sent to the claimant, lienholder, or both; or

(2) the appraisal section of the policy has been exercised.

(*l*) Any person adjusting, negotiating, or settling a property claim on the basis of replacement cost

(1) shall include in the repair or replacement of the property or part of the property any consequential physical damage incurred in making the repair or replacement that is not otherwise excluded by the policy; the claimant is not required to pay for betterment or any other cost except for the applicable deductible;

(2) for a loss that requires replacement of property, and if the replacement property does not match in quality, color or size, shall replace the property in the area to provide for a reasonably uniform appearance; this paragraph applies to interior and exterior losses; the

claimant is not required to pay for betterment or any other cost except for the applicable deductible. (Eff. 5/6/89, Register110; am 6 / 6 / 2015, Register 214)

Authority: AS 21.06.090 AS 21.36.125

3 AAC 26.300(7) is amended to read:

(7) "local market area" means the geographical area, in the closest proximity to the claimant's residence, in which two or more **licensed** [QUALIFIED] dealers are located;

3 AAC 26.300 is amended by adding new paragraphs to read:

(13) "comparable motor vehicle" means a motor vehicle by the same manufacturer, of the same or newer model year, and with similar body style, similar options, and similar mileage as the loss vehicle, and in as good or better condition;

(14) "licensed," when used with reference to a dealer, supplier, or contractor, means in possession of a current business license under AS 43.70 and 12 AAC 12;

(15) "similar mileage" means having mileage that does not exceed the mileage of the loss vehicle on the date of loss by more than 4,000 miles or 10 percent of the mileage of the loss vehicle, whichever is greater. (Eff. 5/6/89, Register 110; am 4/20/97, Register 142; am 9/15/2004, Register 171; am 6 / 6 / 2015, Register 214)

Authority: AS 21.06.090 AS 21.36.125