

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DIVISION OF INSURANCE

BRIEF DESCRIPTION

The current regulations relating to standards for the prompt, fair and equitable settlement of motor vehicle claims are outdated and difficult for insurers to comply with when trying to obtain sufficient information to determine the value of a vehicle that is a total loss. The revisions will address the use of electronic databases and other methods in addition to dealer quotes, while maintaining consumer protections. Additionally, similar changes will be made to the property settlement claims regulation to update the regulations to reflect the advancement of claims adjusting.

The Division of Insurance proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code dealing with standards for prompt, fair, and equitable settlements of motor vehicle and property claims including the following:

3 AAC 26.030 relating to file and record documentation is proposed to be amended by adding a new subsection establishing a time period by which persons must respond to inquiries from the director relating to a claim and establishing a penalty for engaging in a general business practice that violates the requirement to respond to such inquiries.

3 AAC 26.080 is proposed to be amended to:

- Clarify the section applies to both first-party and third-party motor vehicle claims.
- Allow insurers making cash settlements based on the actual cost to purchase a comparable vehicle to determine the cost based on 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 in the last 90 days, or the average of two or more cost quotations obtained from a licensed dealer in the local market area, or by a source for determining statistically valid fair market values, or where none of the other approved methods identify any comparable vehicles and with consent of the claimant, determine the average retail value of a comparable motor vehicle to be obtained from two industry sources published on a regular basis at least once every two months.
- Replace the term "qualified" dealers with "licensed" dealers.
- Repeal subsection (b)(1) that required a third-party claimant to be provided a reasonable written explanation of the valuation of damages to a motor vehicle which is the basis of any settlement offer.
- Allow insurers to reduce the value of a motor vehicle on the basis of betterment provided the deductions are measurable, itemized, have a specific dollar amount, and are documented in the claim file, but only if the deductions reflect a measurable decrease in value attributable to the poorer condition or damage to the vehicle prior to the current claim; wear and tear or rust limited to \$1,000; or missing parts and the deduction is not more than the replacement cost of the part or parts.
- Establish criteria a source must meet for determining fair market values.
- Establish procedures for determining a new settlement amount when a claimant notifies the insurer that the claimant cannot purchase a comparable vehicle for the amount determined

under (a)(1)(B) of the proposed regulation. The insurer is not required to follow such procedures if the insurer provided documentation to the claimant at the time of settlement of the location of a specific comparable vehicle available for purchase for the agreed settlement amount and the claimant did not purchase the vehicle within five business days after the date the final payment is sent to the claimant or the appraisal section of the policy has been exercised.

- Allow the insurer to consider vehicles by other manufacturers that otherwise meet the definition of a comparable vehicle in the valuation processes of the regulation when comparable vehicles cannot be found under the procedures described in the regulation.
- Clarify that the regulation 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.

3 AAC 26.090 is proposed to be amended to:

- Clarify the section applies to both first-party and third-party property claims.
- In making cash settlements based on the actual cost to purchase comparable property to allow the cost to be determined by the cost of comparable property in the local market area to the claimant if such property is available in that area or was available in the last 90 days.
- Replace the term "qualified" dealers with "licensed" dealers.
- Repeal subsection (b)(1) that required a third-party claimant to be provided a reasonable written explanation of the valuation of damages to property which is the basis of any settlement offer.
- Establish procedures for locating comparable property when no comparable property is found in the local market area.
- Establish procedures for determining a new settlement amount when a claimant notifies the insurer that the claimant cannot purchase replacement property for the amount determined under (a)(1)(B) of the proposed regulation. The insurer is not required to follow such procedures if 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 within five business days after the date the final payment is sent to the claimant or the appraisal section of the policy has been exercised.
- Require persons adjusting, negotiating or settling a property claim on the basis of replacement cost to include in the repair or replacement of the property or part of the property any consequential physical damages incurred in making the repair or replacement that is not otherwise excluded by the policy; the claimant shall not have to pay for betterment or any other cost except for the applicable deductible. Replacement property that does not match the loss property in quality, color or size must be reasonably uniform in appearance; again, the claimant shall not have to pay for betterment or any other cost except for the applicable deductible.

3 AAC 26.300 is proposed to be amended to replace the term "qualified" dealers with "licensed" dealers in the definition of "local market area" and by adding definitions for the terms "comparable motor vehicle" and "similar mileage."

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES that was issued on July 31, 2014, concerning these proposed regulations revisions contained in the Department of Law file number JU2014200639. This SUPPLEMENTAL NOTICE is being issued to hold an additional hearing, to enable persons to testify who may not have received prior notice due to an error in the State Based Systems electronic mail messaging system utilized by the division, and to extend the public comment period.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed action, by submitting written comments to the Division of Insurance; Attention: Sarah McNair-Grove; P.O. Box 110805; Juneau, AK 99811-0805 or by e-mail to sarah.mcnair@alaska.gov; or by fax to (907) 465-3422. Comments may also be submitted through the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices>. All comments must be received **no later than 5:00 p.m., Alaska Daylight Time, November 7, 2014.**

Oral or written comments also may be submitted at a hearing to be held on **Tuesday, October 28, 2014** in conference room B which is on the ninth floor of the State Office Building located at 333 Willoughby Ave., Juneau, Alaska. The hearing will be held from **9:30 a.m. to 10:00 a.m., ADT**, and may be extended to accommodate those present before **10:00 a.m.** who may not have had the opportunity to comment. If you are unable to attend the meeting in person and would like to participate by teleconference, please call 1-800-315-6338 and enter the access code 42070 followed by # (pound sign).

If you are a person with a disability who needs a special accommodation in order to participate in the process, please contact Tonya Essary at (907) 465-2597 or TDD (907) 465-5437 no later than **October 23, 2014** to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, please contact the Division of Insurance by telephoning (907) 269-7900 in Anchorage or (907) 465-2515 in Juneau, or via the Internet at <http://commerce.alaska.gov/dnn/ins/HearingsMeetingsandNotices.aspx>.

After the public comment period ends, the Division of Insurance will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.** Written comments received are public records and are subject to public inspection.

Statutory Authority: 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.

Statutes Being Implemented, Interpreted, or Made Specific: 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.

Fiscal Information: This action is not expected to require an increased appropriation.

DATE: September 23, 2014

A handwritten signature in blue ink, appearing to read "Lori Wing-Heier", is written over a horizontal line.

Lori Wing-Heier
Director of Insurance

**FORM FOR ADDITIONAL REGULATIONS
NOTICE INFORMATION
(AS 44.62.190(d))**

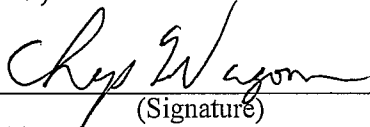
1. **Adopting agency:** Dept. of Commerce, Community, and Economic Development, Division of Insurance
2. **General subject of regulation:** Claims adjusting and determining the value of a vehicle or property that is a total loss.
3. **Citation of regulation (may be grouped):** 3 AAC 26.030, 3 AAC 26.080, 3 AAC 26.090, 3 AAC 26.300.
4. **Reason for the proposed action:**
☐ compliance with federal law
☐ compliance with new or changed state statute
☐ compliance with court order
☐ development of program standards
☒ other: (Clarification of Statute)
5. **RDU/component affected:** Public Protection/Insurance
6. **Cost of implementation to the Division of Insurance and available funding (in thousands of dollars):**

| | Initial Year FY 15 | Subsequent Years |
|--------------------------------|-----------------------|---------------------|
| Operating Cost | \$ -0- | \$ -0- |
| Capital Cost | \$ -0- | \$ -0- |
| Federal receipts | \$ -0- | \$ -0- |
| General fund match | \$ -0- | \$ -0- |
| General fund | \$ -0- | \$ -0- |
| General fund/ program receipts | \$ -0- | \$ -0- |
| General fund/mental health | \$ -0- | \$ -0- |
| Other funds (specify) | \$ -0- | \$ -0- |

7. **Contact person for the regulations:**
Sarah McNair-Grove
Actuary
Division of Insurance
P.O. Box 110805
Juneau, AK 99811-0805
Telephone: 907/465-4613
Fax: 907/465-3422

8. **The origin of the proposed action:**
☒ staff of the state agency
☐ federal government
☐ general public
☐ petition for regulation change
☐ other (please list)

9. **Prepared by:**


(Signature)

Name (typed): Chip Wagoner
Title (typed): Regulations Specialist II
Telephone: 907/465-8486
Date: July 30, 2014