

# Regulatory Analysis Form

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REGULATORY DIVISION

IRRC Number: 2001

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-149

(3) Short Title

Motor Vehicle Physical Damage Appraisers

(4) PA Code Cite

31 Pa. Code, Chapter 62, §§62.1-62.4

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,  
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429  
Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of this rulemaking is to amend Chapter 62 of Title 31 to make it consistent with existing statutory language, to repeal those provisions of the regulation which are duplicative of the Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§851 - 863) ("Act"), and to add additional language which enhances the Act and which provides additional protections for Pennsylvania consumers.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendment to Title 31 are done under the authority of sections 206, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§66, 186, 411 and 412); section 320 of the Insurance Department Act of 1921 (40 P.S. §443); and sections 1 through 14 of the Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§851 - 863) ("Act").

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Insurance Department amends Chapter 62, §§62.1-62.4 so that it is consistent with the authorizing statute. Moreover, it is in the public interest to delete redundant provisions and clarify confusing regulatory requirements. Disclosure requirements are now included, the purpose of which is to remove any uncertainty for Pennsylvania consumers and fully apprise them of their rights and responsibilities under the Act.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environment or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The general public will benefit from the regulation to the extent that it will be consistent with the statute.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the amendment of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all physical damage appraisers licensed to do business in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A Notice of Proposed Rulemaking for this Regulation was published at 29 Pa.B. 655 (February 6, 1999) with a 30-day comment period ending March 8, 1999. During the 30-day comment period, comments were received from Automotive Service Association (ASA), Automotive Service Professionals of Pennsylvania (ASP), Michael K. Burke, Crawford's Auto Center, Inc. (Crawford's), Richard R. Diehl, Engle's Frame & Body Service (Engle's), Hedlund Glass Company (Hedlund), The Insurance Federation of Pennsylvania, Inc. (IFP), Pennsylvania Automotive Recycling Trade Society (PARTS), the Pennsylvania Collision Trade Guild (PCTG), Progressive Insurance Company (Progressive), D.J. Rudolph, State Farm Insurance Company (State Farm) and Sterling Autobody (Sterling). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. This separate comment and response document has been prepared to address these comments and is available to the public upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation may impose some additional costs on physical damage appraisers and insurers associated with revising existing appraisal forms and procedures to incorporate the disclosure requirements.

## **Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings associated to state government associated with this rulemaking.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

N/A.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.  
N/A.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Amending Chapter 62, §§62.1-62.4 is the most efficient method to achieve consistency with the authorizing statute. No other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The amendment of the regulation is the most efficient method of updating the regulatory requirements.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states. It merely provides for consistency with the statute.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

## **Regulatory Analysis Form**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendment of the regulation imposes no additional paperwork requirements on the Department. The regulation may impose some additional paperwork requirements on physical damage appraisers and insurers associated with by revising existing appraisal forms and procedures to incorporate the disclosure requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will take effect upon approval of the final form regulation by the legislative standing committees, the Independent Regulatory Review Commission and the Office of the Attorney General and upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.



<p>CDL-1</p> <p style="text-align: center;"><b>FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</b></p> <p style="text-align: center;">(Pursuant to Commonwealth Documents Law)</p> <p style="text-align: right;">#2001</p>	<p style="text-align: right;">MARCH 26 PM 3:40</p> <p style="text-align: right;">LEGISLATIVE REFERENCE BUREAU</p> <p style="text-align: center;">DO NOT WRITE IN THIS SPACE</p>	
<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By _____ (Deputy Attorney General)</p> <p>_____</p> <p style="text-align: center;">Date of Approval</p> <p>→ Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;"><b>Insurance Department</b></p> <p style="text-align: center;">_____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>11-149</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>M. Diane Koken</u> <b>M. Diane Koken</b> <b>Insurance Commissioner</b></p> <p>TITLE: _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: _____</p> <p style="text-align: center;"><u>3-18-99</u> DATE OF APPROVAL</p> <p style="text-align: center;">(DEPUTY GENERAL COUNSEL) (CHIEF COUNSEL, INDEPENDENT AGENCY) (STRIKE INAPPLICABLE TITLE)</p> <p>→ Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>

**Insurance Department**

**Notice of Final Form Rulemaking**

31 Pa. Code, Chapter 62  
§§62.1-62.4

**Motor Vehicle Physical Damage Appraisers**

## **PREAMBLE**

The Insurance Department (Department) hereby amends Chapter 62, §§62.1-62.4 of Title 31 of the Pennsylvania Code, Motor Vehicle Physical Damage Appraisers, as set forth in Annex A. The Department is publishing the amendment of the regulation as a final form rulemaking.

### **Statutory Authority**

The final form regulation is adopted under the authority of sections 206, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§66, 186, 411 and 412); section 320 of the Insurance Department Act of 1921 (40 P.S. §443); and sections 1 through 14 of the Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§851 - 863) ("Act").

### **Comments and Response**

A Notice of Proposed Rulemaking for this Regulation was published at 29 Pa.B. 655 (February 6, 1999) with a 30-day comment period ending March 8, 1999. During the 30-day comment period, comments were received from Automotive Service Association (ASA), Automotive Service Professionals of Pennsylvania (ASP), Michael K. Burke, Crawford's Auto Center, Inc. (Crawford's), Richard R. Diehl, Engle's Frame & Body Service (Engle's), Hedlund Glass Company (Hedlund), The Insurance Federation of Pennsylvania, Inc. (IFP), Pennsylvania Automotive Recycling Trade Society (PARTS), the Pennsylvania Collision Trade Guild (PCTG), Progressive Insurance Company (Progressive), D.J. Rudolph, State Farm Insurance Company (State Farm) and Sterling Autobody (Sterling). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. A separate comment and response document has been prepared to address these comments and is available upon request.

### **Affected Parties**

The rulemaking applies to appraisers licensed to do the business of appraising motor vehicles in this Commonwealth.

### **Fiscal Impact**

#### *State Government*

There will be no increase in cost to the Department due to the adoption of Chapter 62.

#### *General Public*

There will be no fiscal impact to the public.

*Political Subdivisions*

The rulemaking will not impose additional costs on political subdivisions.

*Private Sector*

The rulemaking will not impose additional costs on appraisers doing the business of appraising motor vehicles in the Commonwealth.

*Paperwork*

The adoption of the rulemaking will not impose additional paperwork on the Department; however, new disclosure requirements will be required of the appraisal industry.

**Effectiveness/Sunset Date**

This rulemaking becomes effective upon publication in the Pennsylvania Bulletin. No sunset date has been assigned.

**Contact person**

Any questions regarding this regulation should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, phone (717) 787-4429.

In addition, questions or comments may be e-mailed to [psalvato@ins.state.pa.us](mailto:psalvato@ins.state.pa.us) or faxed to (717) 705-3873.

**Regulatory review**

Under section 5(a) of the Regulatory Review Act, (71 P.S. §745.5(a)), the agency submitted a copy of this regulation on February 6, 1999 to the Independent Regulatory Review Commission and to the Chairmen of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing this final form regulation, the Department considered all comments received from IRRC, the Committees and the public. This final form regulation was (deemed) approved by the Senate and House Committees on \_\_\_\_\_. In accordance with section 5a(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), IRRC met on \_\_\_\_\_ and (deemed) approved the regulation in accordance with section 5a(e) of the Regulatory Review Act (71 P.S. §745.5a(e)).

### **Findings**

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No240) (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

### **Order**

The Commissioner, acting under the authorizing statutes, orders that:

(1) The regulations of the Department, 31 Pa. Code, are amended by adopting §§ 62.1-62.4, to read as set forth in Annex A.

(2) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(3) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) The regulation adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. Diane Koken  
Insurance Commissioner

## **Comments and Response**

A Notice of Proposed Rulemaking for this Regulation was published at 29 Pa.B. 655 (February 6, 1999) with a 30-day comment period ending March 8, 1999. During the 30-day comment period, comments were received from Automotive Service Association (ASA), Automotive Service Professionals of Pennsylvania (ASP), Michael K. Burke, Crawford's Auto Center, Inc. (Crawford's), Richard R. Diehl, Engle's Frame & Body Service (Engle's), Hedlund Glass Company (Hedlund), The Insurance Federation of Pennsylvania, Inc. (IFP), Pennsylvania Automotive Recycling Trade Society (PARTS), the Pennsylvania Collision Trade Guild (PCTG), Progressive Insurance Company (Progressive), D.J. Rudolph, State Farm Insurance Company (State Farm) and Sterling Autobody (Sterling). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. This separate comment and response document has been prepared to address these comments and is available to the public upon request.

The following is a detailed analysis of the comments received during the 30-day public comment period.

### **Section 62.1. Definitions.**

Several comments regarding the definition of "Aftermarket crash parts" and "Non-OEM aftermarket crash parts" were made. The IRRC inquired as to whether "aftermarket crash parts" pertained to only OEM parts since "Non-OEM aftermarket crash parts" was defined but there was no definition for "OEM aftermarket crash parts." The IRRC also requested that the Department clarify whether recycled or used OEM parts are covered by the definition "aftermarket crash parts". IFP also recommended deleting "sheet metal or plastic" parts because it may not reflect the changing technology in the industry. PARTS suggested that the term "aftermarket crash part" encompass all parts, new or recycled, including mechanical parts used in the repair.

The Department has reviewed these comments and, in order to clarify the regulation, has incorporated the definition of "Non-OEM aftermarket crash parts" into the definition of "aftermarket crash parts". The Department believes as do the collision repair and the insurance industries, that the term "aftermarket crash parts" applies to parts that are not made by the Original Equipment Manufacturer ("OEM"). The Department also modified the definition to include new or used parts and agreed to eliminate sheet metal or plastic from the definition.

PCTG commented that it interpreted the statute to prohibit the use of "Non-OEM aftermarket crash parts".

The Department interprets the statute to require that vehicles be repaired to their condition prior to the accident. While the statute does state: "Because an appraiser is charged with a high degree of regard for the public safety, the operation safety of the vehicle shall be paramount in considering the specification of new parts," the Department believes that the term "new parts" is not intended to mean only new OEM parts, but could include parts manufactured by someone other than the Original Equipment Manufacturer.

Comments concerning the term "appraisal" were received from IFP and the IRRC. IRRC suggested that the term "pre-damage condition" be used instead of "condition prior to the damage in question". IFP wanted the word "determination" changed to "estimates" and have "assigned by an insurer for a fee" added to the definition.

The Department has changed the definition to reflect the consistent use of the term "predamaged condition" and agrees that "estimate" is more appropriate than "determination." The Department did not add "assigned by an insurer for a fee" to the definition as not all appraisers are paid by "a fee"; some appraisers could be salaried or compensated by other means and by adding "for a fee" the Department felt that the definition would be too narrow. In addition, the Department added the term "physical" so that the term "appraisal" should read "A written monetary estimate of physical damage..."

IFP also commented that the definition of the term "consumer" should include a "lawfully designated representative."

The Department believes that by adding "lawfully designated representative" to the definition, this regulation would require more paperwork. The addition of "or the owner's representative" is believed to be sufficient to address this concern. The Department has made the change accordingly.

Crawford's, IFP, State Farm and the IRRC commented on the definition of the term "predamaged condition". Crawford's was in favor of renaming the term "pre-loss." State Farm commented that the term should be used throughout the regulation for consistency. The IFP, State Farm and the IRRC recommended that the definition of "predamaged condition" be changed to reflect "the function and appearance of the motor vehicle immediately prior to when the damage in question was incurred."

The Department upon review and consideration agrees that the term should be used consistently throughout the regulation and agreed to add "function and appearance" to enhance the definition. The Department has made these changes accordingly.

#### **Section 62.2. Licensing requirements.**

The IFP stated that it found the requirements concerning licensing to be reasonable.

The IRRC indicated that it was unclear as to what "additional information" would be required under (a)(2).

The Department does not believe that requesting additional information would be restrictive or beyond the requirements of the act or the regulation.

The IRRC commented that according to the regulation, the Department determines the trustworthiness of an applicant but that the Department does not specify how that determination will be made. IRRC also indicated that it was their understanding that the Department will base this determination on the factors listed in paragraphs (b)(1), (2), (4) and (5). The IRRC

suggested that if this was the Department's intent then the Department should delete subparagraph (b)(3) and revise (b) to reflect the change.

Section 863 of the act (63 P.S. § 853) requires that the applicant shall be trustworthy. The Department is charged with the responsibility to determine trustworthiness of applicants. Once again, information concerning applicants may vary. Trustworthiness is determined on a case by case basis after reviewing the information that is submitted to the Department. The Department, therefore, believes that "trustworthiness" is also a required criterion of (b) and not the end result based on (b)(1), (2), (4) and (5). As a result, this section has not been changed.

In addition, ASA wanted the existing language from § 62.2 to be retained and State Farm wanted "Such a determination will be made by the Department" to be deleted from (b)(3), suggesting that it was superfluous. It has been deleted.

The Department is also revising (b)(4) to provide that all felony convictions may be considered, and not just those within the previous 5 years, in determining whether an applicant should be licensed. This change was made to be consistent with sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. §§1033 and 1034). These sections provide that no one convicted of a felony involving dishonesty or breach of trust is permitted to engage in the business of insurance without a waiver from the Insurance Commissioner. In (b)(1) the term "the application" has been changed to a more appropriate term "applying". The Department believes that the new language is consistent with the intent to determine trustworthiness and has not made any further changes to the section regarding licensing requirements.

### **Section 62.3. Applicable standard for appraisal.**

Sections 62.3(b)(4) through (b)(9) have been renumbered (b)(5) to (b)(10). The Department has added new sections (b)(4) and (b)(11) as a result of the comments received and, in order for the regulation to flow better, has placed the revisions where they would be most appropriate. In addition the Department has reversed the order of paragraphs (c) and (d) to make the regulation more readable. The only other changes to these sections were as the result of comments received.

ASA, Michael K. Burke, Crawford's, IFP, State Farm and the IRRC all commented on paragraph (a), relating to applicability standards. State Farm suggested that the "be signed by the appraiser before..." requirement be removed as to allow for electronic signature. Both IFP and IRRC recommended that "signed" be changed to "authenticated". ASA, Michael K. Burke, Crawford's and the IRRC suggested that use of abbreviations in the regulation not be allowed. ASA also suggested that we not eliminate the name of the insurer on the appraisal.

The Department believes that as technology changes, security in the use of electronic signatures will become available, therefore, the Department agrees that the language in the proposed regulation, "be signed by the appraiser before the appraisal is submitted to the insurer, the consumer, or another involved party," be modified with language that allows the use of electronic signatures. The Department also agrees that if abbreviations or symbols are to be used

in describing work that is to be done or parts that are to be repaired or replaced an explanation as to what the abbreviations or symbols mean needs to be included. The Department therefore has changed (a) to reflect these comments. However, signing an appraisal, either manually or electronically, is necessary as to determine who actually did the appraisal. To have the appraisal authenticated could lead to questions in the future as to who actually did the appraisal. The signature would have a greater impact in determining this. The Department did not include in the regulation a requirement that the name of the insurer appear in the appraisal, as it is already required by statute.

ASA, Michael K. Burke, Crawford's, Richard R. Diehl, Engle's, IFP, State Farm, PARTS, PCTG and the IRRC all commented on paragraph (b), requiring written disclosures.

Crawford's felt that the Department needed legislative authority to require a written disclosure. Engle's also believed that "in addition to the requirements of the act" exceeded the Department's statutory authority. State Farm and IFP believed that the language in the proposed regulation required a separate written disclosure. Michael K. Burke commented that this was the area that needed to be enforced by the Department.

The Department does not believe that the language in the proposed regulation requires a separate disclosure document. This disclosure can be part of the appraisal if so desired. The Department believes that it is within its authority to require a written disclosure to assure that consumers are informed of their rights and responsibilities under the Act.

Crawford's suggested that (b)(1) would be more appropriate if the dollar amount of the appraisal was changed to "preliminary dollar amount" to allow for adjustment of the appraisal.

The Department takes the position that the amount of the appraisal reflects the estimate at the time it is completed, and if subsequent reviews show that there is more work which is necessary, the consumer is entitled to have the vehicle reappraised.

ASP, Crawford's, IFP, PCTG and the IRRC all commented on (b)(2) regarding responsibility for costs above the appraised amount. ASP, Crawford's, PCTG and the IRRC questioned the use of the term "excess costs". Crawford's stated that excess costs are not possible, in that all costs associated with the repair of a motor vehicle are reasonable and necessary. PCTG stated that "excess costs" would be inconsistent with the statute. ASP felt that (b)(2) was troubling in that it is not clear what constitutes "excess charges". The IRRC stated that it was unclear what was meant by "excess costs."

The Department agrees that use of the term "excess" in conjunction with "cost above" is redundant; therefore the sentence is revised to read "A statement that costs above the appraised amount may be the responsibility of the vehicle owner." The Department believes that this change clarifies that only costs related to the return of the vehicle to predamaged condition need be included in the appraisal.

IFP wanted the term "vehicle owner" changed to "consumer." The Department believes that "vehicle owner" is more appropriate.



ASA, ASP, Richard R. Diehl, IFP, PARTS, PCTG, State Farm and the IRRC commented on (b)(3) regarding the identification of shops by the appraiser. All these commentators believed that the recommendation of an autobody shop by an appraiser may lead a consumer to believe that they must take their vehicle to a specific repair shop that was mentioned by the appraiser.

The Department had suggested that appraisers "may" offer the names of two shops in order to provide the consumer with the names of shops that would be able to do the work consistent with the amount of the appraisal. Under no circumstances could the appraiser require that the work be done at any specified repair shop. In response to the comments, the recommendation of two shops has been deleted. However, the Department believes that the consumer should be able to obtain information regarding repair facilities that will be able to repair the vehicle for the appraised amount and has added a new paragraph (b)(4) to reflect this consumer assistance. The old (b)(4) has been renumbered to (b)(5). Also a new (f)(4) has been added to specifically prohibit an appraiser from mentioning the name of any repair shop where the repairs can be made, unless the appraiser also points out that there is no requirement that the repairs be made at any specified repair shop. These important disclosures provide the consumer with notice that the repair of the damaged vehicle may be completed wherever the consumer wants it to be completed. It is paramount that the consumer be provided with enough information so that the consumer is aware of what work is being done to the damaged vehicle. Where that work will be performed is the consumer's choice. The appraiser and the insurer must disclose this option to the consumer.

ASP, Crawford's, Engle's, IFP, PCTG, State Farm and the IRRC commented on former (b)(4). This section has been renumbered to (b)(5). ASP and Crawford's believed that the language was too restrictive and not inclusive of the necessary details to return the vehicle to its predamaged condition. Engle's believed that the term "complete" should be added to the subparagraph. IFP, Engle's and the IRRC also questioned the reference to the appraisal clause. IRRC specifically was concerned that this regulation is not the appropriate manner in which to inform consumers that they may use the appraisal clause in their policy if the policy contains such a provision.

The Department has added "known at the time of appraisal" as suggested by many of the commentators to this paragraph in former paragraphs 62.3(b)(4), (b)(5) and (b)(7), now numbered as paragraphs (b)(5), (b)(6) and (b)(8). The intent is to make the appraisal less final. The Department also agreed with the IRRC comment that the invocation of the appraisal clause should be more appropriately conveyed in another manner, such as an informational brochure that the Department can send to the public when requested. Therefore, we have deleted the reference to the appraisal clause.

Several commentators including the IRRC mentioned that in former paragraph 62.3(b)(6), now known as (b)(7), the tax should be only on taxable items. The Department has made the change to clarify that only applicable items are taxed.

Engle's, IFP and State Farm commented on former paragraph 62.3(b)(8), now known as (b)(9), relating to the location of replacement parts. State Farm questioned what parts were referred to in this section, IFP wanted the Department to consider language "needed to return the motor vehicle to its pre-accident condition" rather than "condition equivalent to, or better" while Engle's stated that this did not provide a consumer protection.

The Department reviewed the suggestions and believes that the statement "listed parts" refers to any part that is used in the appraisal. The term "condition equivalent to, or better" refers to the condition of the new or recycled part to be used in the repair of the motor vehicle and not to the pre-accident condition of the part being replaced. In addition, by listing parts used in the appraisal, the consumer becomes aware of what is needed to repair the vehicle to its predamaged condition. Therefore, the Department has not made any changes in this subparagraph.

ASA, ASP, Crawford's, Engle's, IFP, PARTS, PCTG, State Farm and IRRC all commented on former paragraph (b)(9), now known as (b)(10). PCTG stated that only OEM parts should be allowed on a vehicle while the vehicle is under warranty and that the use of non-OEM parts should be allowed only after the warranty has expired. State Farm wanted the appraisal to specify what non-OEM parts were used and to clarify the warranty provisions. IFP suggested that "original part" be changed to "part being replaced" as the original part (OEM) may have already been replaced. IFP suggested that the warranty of the part being replaced only be for the remaining coverage in the existing warranty. Crawford's stated that the inclusion of non-OEM parts was inconsistent with the statute's intent. PARTS wanted the term "manufactured" inserted in lieu of "supplied". PARTS felt the key was to distinguish between OEM and Non-OEM parts and not their source of supply. ASA questioned whether recycled parts would be considered in the aftermarket term as used in this paragraph. Engle's stated that the warranty on a non-OEM part does not make the part equal to an OEM part. ASP suggested that the company should be mandated to pay for the use of OEM parts. The IRRC suggested that the Department explain why the provision should not apply to all other aftermarket crash parts. The IRRC requested that the Department clarify whether this paragraph pertained to all aftermarket crash parts or only non-OEM aftermarket crash parts. The IRRC also questioned the intent and reasonableness of the warranty being equal to or better than the warranty on the original part. This comment reflected IFP's concern. The example cited was that "if the original part had a five-year warranty and was three years old, the warranty on the replacement part should be for two years." And the IRRC wanted the Department to clarify who would make the determination that an aftermarket crash part voids the warranty on the original part.

The Department believes that the revision of the definition of "aftermarket crash part" and the deletion of "nonoriginal equipment manufacturer (non-OEM)" will allow the revised paragraph to be consistent with the intent. Because the Department cannot require the manufacturers to make parts with varying warranty periods, the Department believes that if a part is replaced, the warranty should be at least as great as the remainder of the existing warranty on the part being replaced. By matching the "OEM" warranty, the question of an inferior warranty is moot. The Department is also revising this paragraph to eliminate the use of the term "non-OEM." This will offer even a greater consumer protection as the use of aftermarket crash parts must have a warranty of equal or greater duration than the remainder of the existing warranty so as not to void the warranty on the part "being replaced or any other part" which

language has also been added to the paragraph. As to clarifying who determines the voiding of the warranty, the Department does not have statutory authority to make that determination. It is believed that the original warranty provider will make that determination and if they are not able to make that determination, recourse may be had through the legal system.

The IRRC also stated that it was not clear if the appraisal must specifically indicate which replacement parts are non-OEM or just simply indicate that the appraisal is based on the use of non-OEM parts. The IRRC wanted the appraisal to indicate what parts are non-OEM parts and that, for it to be meaningful, the appraisal should include the definition of non-OEM aftermarket crash part. The IRRC also suggested that disclosure is required if the appraisal includes "aftermarket crash parts supplied by a source other than the manufacturer of the motor vehicle." The IRRC believed it was the Department's intent to require disclosure of parts not certified or manufactured by the original vehicle manufacturer. The IRRC also wanted the Department to include when the use of recycled OEM parts are used.

The Department has revised the definition of "aftermarket crash parts" to be "a nonoriginal equipment manufacturer (non-OEM) replacement part, either new or used, for any of the nonmechanical parts that generally constitute the exterior of the motor vehicle, including inner and outer panels". The Department agrees that it is necessary for the identification of all aftermarket crash parts, and that if such parts are used that a definition of "aftermarket crash parts" shall be included in the appraisal. Therefore the subparagraph has been revised to reflect these changes. New subparagraph (b)(11) has been added to require a definition if aftermarket crash parts are used.

In former paragraph (c), now known as (d), relating to salvage value, ASA wanted to retain the language that existed under the original 62.2(c). Engle's wanted to include other equipment such as airbags and supplemental restraint systems. IFP wanted to merge (c)(1) and (2) to form another unified paragraph. PARTS recommended that reference to section 1117(a) of the Motor Vehicle Code be provided to the consumer. State Farm wanted to eliminate the requirement that the salvage amount be in writing. And the IRRC agreed with PARTS that reference to section 1117(a) be included in this regulation.

The Department agreed with PARTS and the IRRC and has changed (d) to include reference to section 1117(a). In addition, the Department believes that it is in the consumer's best interest to have this salvage amount presented in writing to the consumer. Therefore, this provision remains in the regulation.

In former paragraph (d), now known as (c), regarding betterment of the vehicle, Engle's disagreed with the changes while IFP agreed with the Department's changes. The IRRC requested that the Department be consistent with the term "predamaged condition" as suggested by State Farm. The IRRC also questioned whether it was the Department's intent to clarify "excess costs" raised in (b)(2) and that the deletion of the old heading has caused some confusion here. The IRRC also suggested language that would clear up their second concern with this paragraph concerning the phrase "request the use of parts other than those listed on the appraisal, or otherwise wishes to repair the motor vehicle to a condition better than that existing prior to the damage incurred."

The Department has eliminated the term "excess" in (b)(2) and it is not our intent to address the issue of excess cost in paragraph (d). The Department does agree with the IRRC on the latter revision and has revised the regulation to now read "If the consumer wishes to repair the motor vehicle to a condition better than the predamaged condition, the appraisal need only specify the cost of repairing the vehicle to its predamaged condition."

In paragraph (e), relating to the valuation of total losses, ASP argued that this language limited the replacement value by limiting the use of one method. Crawford's disputed the evaluation of total loss settlements. IFP suggested that the Department consider eliminating the terms "satisfactorily and reasonably", permit use of "electronic data source or guide source method", and suggested that (e)(1), (2) and (3) should be merged and modernized. State Farm wanted to retain the current guide source language. IFP and State Farm also suggested that the appraiser or insurer be allowed to issue a total loss evaluation report. IRRC suggested that the Department needed to define the terms "satisfactorily or reasonably" repaired. IRRC also suggested that the list of approved guide sources be published with the regulation. IRRC also agreed with IFP that the Department should revise the provision found in (e)(7) to require that the consumer be advised of the right to "be sent" a copy of the report within five days and that "predamaged condition" should be used in this paragraph rather than "just prior to the damage in question".

The Department agrees that in order to achieve consistency throughout the regulation "just prior to the damage in question" has been changed to "predamaged condition". The Department also changed "to be received" to "be sent" as suggested. In addition, the Department will publish annually the approved list of guide sources. The first publication will be with the publication of this final form regulation. As to "satisfactorily and reasonably", the Department believes that a vehicle repaired to its "predamaged condition" has been satisfactorily or reasonably repaired and therefore eliminated the redundant provision. The Department believes that using any of the approved guide sources (including electronic information) will be acceptable in determining the total loss, and preparing an evaluation report. If any of these methods prove unacceptable to the Department, those sources that provide the methods will not receive the Department's approval.

PARTS and IRRC agreed that the terms "salvor" and "salvager" are not used any more and that these terms should be updated.

The Department has no objection and has made the changes accordingly.

With regard to (g), relating to general standards of behavior, Crawford's and Engle's wanted the old language in (g) retained.

The Department did not retain this language in the drafting of this regulation as this language is clearly expressed in the statute.

Crawford's, IFP, PCTG and the IRRC had concerns with "direct or indirect" conflict of interest. Crawford's believed that conflict of interest should prohibit direct repair shops entirely.

PCTG wanted to define conflict of interest to include an appraiser with an association to the insurer, the insured or any autobody shop. The IRRC recommended that these terms be defined.

The Department believes that a conflict of interest is the critical factor in the standard and not whether that conflict is direct or indirect. There may be some contractual relationship between the appraiser and the interested party requesting the appraisal, and the mere existence of the contractual relationship does not create a conflict. Whether any other relationship creates a conflict of interest can only be determined on a case by case basis. Consequently, the Department has removed "direct or indirect" from the regulation.

Engle's wanted language from the current version and not the proposed version retained which prohibited the appraiser from "in any manner whatsoever attempt to directly or indirectly coerce, persuade, influence, or advise..." that work be done at a particular repair shop. Engle's also wanted the use of photographs prohibited.

Although the Department believes that the statute sufficiently addresses both issues, a new subparagraph (f)(4) has been added to emphasize that appraisers may not mention any repair shop, unless the appraiser also points out that there is no requirement that the repairs be made at any specified repair shop. There is, however, no prohibition in the statute or this regulation which prevents the identification of shops which can make the repairs.

IFP suggested that the term "discuss" in paragraph (f)(3) be changed to the more appropriate "review". The term "review" implies a more extensive and thorough exchange regarding the items listed in the appraisal and is of benefit to the consumer. Accordingly, the Department has made this change.

PCTG wanted to retain the language that is in the existing 62.3(f)(8).

The Department believes that the revisions are more appropriate and has kept the proposed language.

ASA, Crawford's, Engle's, IFP, PARTS, PCTG and the IRRC all provided comments on parts of 62.3(g), regarding reappraisal of the vehicle. IFP recommended a new subsection to provide access to direct repair shops. PARTS wanted the Department to re-emphasize direct or indirect conflict of interest. ASA felt that personal inspection of the vehicle should be retained. ASA, Engle's and the IRRC questioned why the reappraisal and supplemental allowance sections were being deleted. IRRC suggested that this provision should be retained because it will provide notice to the consumers and insurance companies that they may seek more than one appraisal. It also provides notice that the original appraiser may need to make a second appraisal based upon new information. PCTG and Crawford's wanted the language concerning unsolicited requests in existing (g)(12)(iii) to be retained. Crawford's also wanted the Department to retain language located at existing (g)(8) and (g)(9).

The provisions to allow for reappraisals have been added to a new section (g). However, the Department feels that to retain existing language in sections (g)(8) and (12) would be duplicative of the statute and (g)(9) would be inconsistent with the statute. The Department did add an

emphasis that an appraiser shall not mention the name of any repair shop where the repairs can be made (new (f)(4)), unless the appraiser discloses that there is no requirement to use any specified repair shop. Old subsection (g) has been renamed (h) in order to accommodate this change.

IFP wanted to add a paragraph to impose insurer obligations in the regulation.

The Department did not believe that this was the proper manner in which to impose insurer obligations as this regulation pertains to appraisers and their obligations and not the insurers and their obligations.

#### **Section 62.4. Sanctions for violation.**

ASP wanted to retain subsection 62.4 (relating to sanctions for violation).

The Department believes it has statutory authority to address any violation without the need to be redundant in the regulation.

#### **Other Changes**

The subtitle to section 62.2, relating to licensing requirements, was originally proposed to be renamed "Experience and fitness requirements for licensing." The Department did not notice that it was incorrectly printed in the Pa. Bulletin and has made the change in the final form to reflect the proposed version.

In section 62.3, relating to applicable standards for appraisal, subparagraphs (d)(1) and (d)(2) have been changed to read that "the appraiser shall 'disclose to' the consumer in writing:" instead of "the appraiser shall 'advise' the consumer in writing 'of'." This change provides consistency within the regulation in regards to disclosure.

Also, during the review of comments, the Department noticed that section 11 of the act was erroneously stated as (63 P.S. §851). The proper citation for this section is (63 P.S. §861). The proper citations were also added to 62.2(a) (relating to licensing) and 62.3(h) (relating to penalties).

#### **Other Comments**

D. J. Rudolph opposed the entire regulation commenting that it was not in the consumers' interest. The Department reviewed these comments and believes that the regulation is in the consumers' best interest.

Hedlund wanted the Department to expand the operational safety provisions of the act to include the proper installation of auto glass and wanted to repeat Federal regulations in this regulation. The Department believes that it is not appropriate to set forth Federal regulation here as it would be redundant to repeat the information.

In addition to positive and supportive statements from a number of the commentators above, Progressive's and Sterling's comments supported the regulation in its entirety.

CONTINUATION SHEET FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
Pursuant to Commonwealth Documents Law

ANNEX A

Title 31. Insurance, Part VII. Property, Fire and Casualty Insurance, Chapter 62, Motor Vehicle Physical Damage Appraisers.

Sections

- 62.1. Definitions.
- 62.2. [Licensing] Experience and fitness requirements for licensing.
- 62.3. Applicable standards for appraisal.
- 62.4. [Sanctions for violation.] Reserved.

§ 62.1 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

*Act* -- The Motor Vehicle Physical Damage Appraiser Act (63 P.S. §851-863).

Aftermarket crash part -- A NONORIGINAL EQUIPMENT MANUFACTURER (NON-OEM) replacement PART, EITHER NEW OR USED, for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of the motor vehicle, including inner and outer panels.

*Appraisal* -- A written monetary ~~determination~~ ESTIMATE of PHYSICAL damage ~~incurred~~ SUSTAINED [by] to a motor vehicle when the making of such a ~~determination~~ AN ESTIMATE is assigned in order [to fix the value of insurance claims] to ALLOW THE return OF the vehicle to its PREDAMAGED CONDITION ~~condition prior to the damage in question.~~ Appraisals [shall] include [a determination whether] determinations ESTIMATES made by the insurer, its employes, its agents or related entities or [made by another individual] individuals or [entity otherwise] entities assigned to make such a ~~determination~~ AN ESTIMATE.



*Appraiser* -- Any natural person in this Commonwealth who makes "appraisals" of motor vehicle physical damage.

*Commissioner* -- The Insurance Commissioner of the Commonwealth.

*Consumer* -- The owner of the motor vehicle which has incurred SUSTAINED damage or his or her representative OR THE OWNER'S REPRESENTATIVE.

*Dealer* -- An individual duly licensed, active, and knowledgeable in the sale of used motor vehicles similar to that being appraised.

*Insurer* -- All companies, associations, and exchanges engaged in the insurance business of insurance companies and self-insurers.

*Motor vehicle* -- Any motorized device, including a trailer attached thereto, in, upon, or by which any person or property is or may be transported or drawn upon a public highway.

~~Nonoriginal equipment manufacturer ("Non-OEM") aftermarket crash part -- An aftermarket crash part not made for or by the manufacturer of the motor vehicle.~~

*Predamaged condition* - The ~~condition~~ FUNCTION AND APPEARANCE of the motor vehicle just prior to WHEN the damage in question WAS ~~incurred~~ SUSTAINED.

§ 62.2 [Licensing] Experience and fitness requirements for licensing.

(a) [A person may not directly or indirectly act or hold himself out as an appraiser unless such person has first secured a license from the Commissioner in accordance with the provisions of the act and this chapter.

(b) The fee to be paid to the Commissioner by an applicant for an appraiser's license shall be \$10 at the time the application is made and \$10 annually for the renewal thereof. In the event of failure to pass the examination, the fee of \$10 shall not be returnable.

(c) Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to any authorized representative of the Department.

(d) Except as otherwise provided in the act and the provisions of this chapter, no person shall be granted an appraiser's license unless he shall first establish his qualifications therefor and shall take and pass an examination for appraisers.

(e) An applicant for such examination shall be at least 18 years of age; shall be a resident of this Commonwealth, or a resident of any other state or country which permits residents of this Commonwealth to act as appraisers in such other state or country; shall be trustworthy.

(f) In order to qualify for the examination, an applicant must establish his or her competency to fulfill the responsibility of being an appraiser. This may be done by showing either a minimum of six months continuous experience at an occupation directly involving the estimation of physical damage to motor vehicles, such as a body repairman; or by providing written documentation of successful completion of special education or training related to appraising motor vehicle physical damage and acceptable to the Commissioner as assuring minimum standards of competency.

(g) Applications for an examination as appraiser shall be made to the Commissioner upon forms prescribed and furnished by him and shall be accompanied by the proper fee. All information required on forms must be completed or the application will not be processed in any way.

(h) The examination for licensure which shall be given under the supervision of the Commissioner shall consist of a written examination that shall include the act of appraising one or more damaged motor vehicles and shall be supplemented by an oral examination. At the discretion of the Commissioner an oral examination in lieu of the aforesaid written examination may be given but only for reason of an applicant's physical handicap. An oral examination shall include the act of appraising one or more damaged motor vehicles.

(i) Examinations shall be given at reasonable times and places within the Commonwealth. Any applicant who fails to pass such examination shall not be eligible to retake an examination for 30 days from the date of such failure.

(j) Upon proper application and the payment of a fee of \$10 any person who has been employed or engaged for a period of not less than two years prior to the submission of such application in the appraising of physical damages to motor vehicles and is currently so engaged shall be licensed without examination as an appraiser if the application is made on or before July 1, 1973, and the applicant possesses the qualifications required of applicants as provided in section 3 of the act (75 P.S. § 3003) and subsections (d)- (i) of this section.

(k) An appraiser's license shall expire annually at midnight of June 30th next following the date of issuance.

(l) Subject to the right of the Commissioner to suspend, revoke, or refuse to renew an appraiser's license, any such license may be renewed for another annual period commencing the first day of July and expiring at midnight of June 30th next following by filing with the Commissioner on or before the expiration date a written request, by or on behalf of the licensee, for such renewal, accompanied by payment of the renewal fee.

(m) If the request and fee for renewal of the license is filed with the Commissioner prior to the expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of five days after the Commissioner has refused to renew the license and has mailed notice of such refusal to the licensee. Any request for renewal not so filed until after the day of expiration may be considered by the Commissioner as an application for a new license.]

In addition to the requirements in sections 3, 4, 8, AND 11 of the act (63 P.S. §§ 853, 854, 858 and 861), to qualify to take the examination required for appraisers, an applicant shall establish competency to fulfill the responsibility of being an appraiser.

(1) Competency may be demonstrated by providing written documentation of one of the following:

(i) A minimum of 6 months continuous experience within the last PREVIOUS 3 years at an occupation, such as body repair, that directly involves the estimation of physical damage to motor vehicles.

(ii) Successful completion of education or training related to appraising motor vehicle physical damage taken within the last PREVIOUS 3 years.

(2) The Applicant shall provide additional information ~~on~~ RELATING TO experience, education or training to the Commissioner or designee upon request.

(b) An application for A LICENSE ~~licensing~~ may be denied for any of the following:

(1) The applicant has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to ~~the application~~ APPLYING for a license.

(2) The applicant has been denied a license ~~by the Department~~ or has had an existing license revoked, suspended or not renewed by THE DEPARTMENT OR ~~an insurance A~~

regulatory authority in another state, territory or possession of the United States, or in the District of Columbia, or the Canadian provinces.

(3) The applicant does not possess the professional competence and trustworthiness required to engage in conducting motor vehicle appraisals. This determination will be made by the Department.

(4) A showing that, within 5 years prior to applying for a license under the act, an AN applicant has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony in a court of competent jurisdiction, or has pleaded guilty, entered a plea of nolo contendere, or been found guilty of criminal conduct which relates to the applicant's suitability to conduct motor vehicle appraisals. If applicable, applicants shall also comply with the insurance-related provisions in sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C.A. §§ 1033 and 1034).

(i) Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of an appraiser include, BUT ARE NOT LIMITED TO, unlawful practices, embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.

(ii) Examples of violations or incidents which the Department will not consider related to the applicant's suitability to engage in the business of an appraiser are all summary offenses, records of arrests if there is no conviction of a crime based on the arrest, convictions which have been annulled or expunged or convictions for which the applicant has received a pardon from the Governor.

(5) If applicable, applicants shall also comply with the insurance-related provisions in sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C.A. §§ 1033 and 1034).

(5)(6) The applicant has unpaid and overdue amounts, including, fees and civil penalties, owing to the Department.

§ 62.3 Applicable standards for appraisal.

(a) The appraisal [statement] shall [adhere to the following form]: ~~be signed by the appraiser before the appraisal is submitted to the insurer, the consumer, or another involved party.~~

(1) BE SIGNED BY THE APPRAISER BEFORE THE APPRAISAL IS SUBMITTED TO THE INSURER, THE CONSUMER, OR ANOTHER INVOLVED PARTY. THE APPRAISER MAY UTILIZE AN ELECTRONIC SIGNATURE.

(2) NOT MAKE USE OF ABBREVIATION OR SYMBOLS TO DESCRIBE WORK TO BE DONE OR PARTS TO BE REPAIRED OR REPLACED UNLESS AN EXPLANATION OF SUCH ABBREVIATIONS AND SYMBOLS IS INCLUDED.

[(1) An appraisal shall state the name of the insurance company, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected.

(2) An appraisal shall be signed by the appraiser before the appraisal is submitted in any way to the insurer, the consumer or any other involved party.

(3) An appraisal shall not make use of abbreviation or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of such abbreviations and symbols is included.]

(b) [The appraisal statement], In addition to the requirements in the act, the appraisal shall contain a written disclosure which includes the following:

(1) The dollar amount of the appraisal.

(2) A statement that excess-costs above the appraised amount may be the responsibility of the vehicle owner.

(3) A statement that there is no requirement to use any specific SPECIFIED repair shop. The appraiser may provide the consumer with the names of at least two repair shops able to perform the repair in accordance with the appraisal.

[Items] (4) A STATEMENT INFORMING THE CONSUMER THAT INFORMATION REGARDING REPAIR FACILITIES WHICH WILL BE ABLE TO REPAIR THE VEHICLE FOR THE APPRAISED AMOUNT IS AVAILABLE FROM THE INSURER. IF THE CONSUMER RECEIVES INFORMATION FROM THE INSURER, SUCH INFORMATION SHALL INCLUDE DISCLOSURE THAT THERE IS NO REQUIREMENT TO USE ANY SPECIFIED REPAIR SHOP.

~~(4)(5)~~ A description of repairs, KNOWN AT THE TIME OF APPRAISAL, necessary to return the vehicle to its predamaged condition [prior to the damage in question], including[, but not necessarily limited to,] labor involved[;], cost of all parts, necessary painting or refinishing, and all sublet work to be done. [Furthermore, there shall be a specification of any charges relating to towing, protective care, custody, storage, depreciation, including but not limited to new battery and tire replacement, applicable sales tax payable on the total dollar amount of the appraisal, and all other matters incidental to repair of the incurred damage.] ~~If there is a dispute regarding the cost of repairs to an insured's vehicle, the insured or the insurer may seek resolution through the invocation of the appraisal clause provision or other similar provision which provides a process for dispute resolution in the policy contract.~~

[(2) A clear indication of the cost or dollar amount value of all specified items.

(3) A clear indication of all unrelated or old damage.

(4) If there is a date after which an insurer will not be responsible for any related towing services or storage charges and after which such charges will be the responsibility of the consumer, the appraisal shall clearly indicate that date.]

~~(5)(6)~~ Incidental charges, KNOWN AT THE TIME OF APPRAISAL, including towing, protective care, custody, storage, DEPRECIATION, battery and tire replacement.

~~(6)(7)~~ Applicable sales tax payable on the total dollar amount of the appraisal.

~~(7)(8)~~ The date, if any, after which an insurer will not be responsible for any related towing services or storage charges, KNOWN AT THE TIME OF APPRAISAL, and after which the charges will be the responsibility of the consumer.

~~(8)(9)~~ The location where the listed parts are available in a condition equivalent to, or better than, the condition of the replaced parts prior to the accident.

~~(9)(10)~~ If the appraisal includes Non-OEM aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts supplied by a source other than the manufacturer of the motor vehicle, and that if the use of an aftermarket crash part voids the EXISTING warranty on the original part BEING REPLACED OR ANY OTHER PART, the aftermarket crash part shall have a warranty equal to or better than the REMAINDER OF THE EXISTING warranty on the original part.

(11) IDENTIFICATION OF ALL AFTERMARKET CRASH PARTS AND A DEFINITION OF AFTERMARKET CRASH PARTS CONSISTENT WITH SECTION 62.1 (RELATING TO DEFINITIONS), IF SUCH PARTS ARE USED.

[(c) In the specification of new or used parts, the following standards shall be used for the appraisal statement:

(1) The operational safety of the motor vehicle shall be paramount especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system, or tires.

(2) If used parts are specified in the appraisal, the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. The appraiser shall specify the locations where such used parts are in fact available.

(d) In the appraisal of salvage value, the following standards shall be used:

(1) If the salvage value of the vehicle being appraised is known or could reasonably be found out, the appraiser shall inform the consumer of the salvage value and any additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.

(2) For a salvage value listed, the appraiser shall inform the consumer of name and address of salvage buyer, and the amount and expiration date of each salvage bid known.

(3) If the ownership and possession of the damaged motor vehicle is not retained by the owner or his representative, this subsection dealing with salvage value need not be complied with.

(e) The following standards shall be used regarding the betterment of the vehicle:

(1) An appraisal for the repair of the motor vehicle will be made in the amount necessary to return the motor vehicle to its same condition just prior to the damage in question being incurred.

(2) If the consumer is insistent upon the use of new parts rather than repair, or otherwise wishes to repair the motor vehicle to a condition better than that existing prior to the damage incurred, the appraisal need only specify the cost of repairing the vehicle to its just prior to the time the damage was incurred.

(f)The following standards shall be used to determine replacement value under policy provisions covering the total loss of a motor vehicle including an unrecovered motor vehicle:

(1) If the costs of repair of a motor vehicle exceed its appraised value, less salvage value, or the motor vehicle cannot be satisfactorily or reasonably repaired to its condition just prior to the damage in question being incurred, the appraised value of the loss shall be the replacement value of the motor vehicle.

(2) The replacement value of a motor vehicle shall be calculated by use of one of the following methods:]

(C) AN APPRAISAL FOR THE REPAIR OF THE MOTOR VEHICLE SHALL BE MADE IN THE AMOUNT NECESSARY TO RETURN THE MOTOR VEHICLE TO ITS PREDAMAGED CONDITION. IF THE CONSUMER WISHES TO REPAIR THE MOTOR VEHICLE TO A CONDITION BETTER THAN THE PREDAMAGED CONDITION, THE APPRAISAL NEED ONLY SPECIFY THE COST OF REPAIRING THE VEHICLE TO ITS PREDAMAGED CONDITION.

(D) IN THE APPRAISAL OF SALVAGE VALUE, THE FOLLOWING STANDARD SHALL BE USED:

(1) IF THE SALVAGE VALUE OF THE VEHICLE BEING APPRAISED IS KNOWN OR COULD REASONABLY BE DETERMINED, THE APPRAISER SHALL DISCLOSE TO THE CONSUMER IN WRITING:

(i) THE SALVAGE VALUE.

(ii) THE PROVISIONS OF SECTION 1117(A) OF THE PENNSYLVANIA VEHICLE CODE REQUIRING THE FILING OF AN APPLICATION FOR CERTIFICATE OF SALVAGE WITH THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION. SEE 75 P.S. §1117 (RELATING TO VEHICLE DESTROYED, DISMANTLED, SALVAGED OR RECYCLED).

(iii) ANY ADDITIONAL CHARGES FOR TOWING SERVICES OR STORAGE CHARGEABLE AGAINST THE MOTOR VEHICLE AS OF THE DATE OF THE APPRAISAL.

(2) IF THE SALVAGE VALUE IS LISTED, THE APPRAISER SHALL DISCLOSE TO THE CONSUMER IN WRITING:



(I) THE NAME AND ADDRESS OF EACH SALVAGE BIDDER.

(II) THE AMOUNT.

(III) THE EXPIRATION DATE OF EACH SALVAGE BID KNOWN.

(3) IF THE OWNERSHIP AND POSSESSION OF THE DAMAGED MOTOR VEHICLE IS NOT RETAINED BY THE OWNER OR THE OWNER'S REPRESENTATIVE, THIS SUBSECTION DEALING WITH SALVAGE VALUE IS INAPPLICABLE.

(e) The appraised value of the loss shall be the replacement value of the motor vehicle if the cost of repairing a motor vehicle exceeds its appraised value less salvage value, or the motor vehicle cannot be satisfactorily or reasonably repaired to its PREDAMAGED condition just prior to the damage in question being incurred.

(1) Under this subsection, replacement value under the policy provisions covering the total loss of a motor vehicle including an unrecovered motor vehicle shall be determined by one of the following methods:

(i) *Guide source method.* The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as [stated in the corrected edition of the Red Book (National Market Reports, Inc., Circulation Department, 300 West Adams Street, Chicago, Illinois 60606, telephone 1-800-671-9907, the NADA Book (Subscription Department, P.O. Box 7800, Costa Mesa, California 92628, telephone 1-800-622-6232), or any similar source of information] provided by guide sources approved by the Commissioner. A listing of approved guide sources shall be published once a year in the *Pennsylvania Bulletin*. The appraised value shall be adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. [There may be no] No other deductions may be taken except for salvage and then only if the owner elects to retain the vehicle.

(ii) *Actual cost method.* The appraiser shall determine the actual cost of purchase of an available motor vehicle of like kind and quality in condition similar to or better than the motor vehicle being appraised IN ITS PREDAMAGED CONDITION. just prior to the damage in question being incurred. The appraiser shall specify, in writing, the location of the vehicle of like kind and quality.

(iii) *Dealer quotation method.* The appraiser shall consult with dealers or other persons knowledgeable in the field to secure quotations as to the value of the motor vehicle being appraised. At least two quotations shall be secured. The figures thus secured shall be averaged.

[(3)](2) If the motor vehicle is listed in [any] at least two [of the sources authorized by paragraph (2)(i), including older car publications] guide sources approved by the Commissioner, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph [(2)](1)(i) and (ii). If the actual cost method is used, and the owner of the damaged vehicle shows that the replacement vehicle is not of the same kind and quality, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

[(4)](3) If the motor vehicle is not listed in [any] at least two of the sources authorized by paragraph [(2)](1)(i), [including older car publications,] or if the vehicle differs materially from the average vehicle because of factors not considered in the guide sources, for example, antique or classic cars, vehicles no longer manufactured and unique vehicles, the replacement value shall be calculated by the actual cost method or by the dealer quotation method, as described in paragraph [(2)] (1)(ii) and (ii)(iii). If the dealer quotation method is used, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

[(5)](4) Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value.

[(6)](5) The licensed appraiser's [Total Loss Evaluation Report] total loss evaluation report shall contain the names and addresses of those persons from whom quotations were secured, the date secured, and whether or not a similar vehicle was available.

[(7)](6) The licensed appraiser's file shall show the method used to determine the [more accurate] replacement value in a given locality.

[(8) A](7) The appraiser is responsible for ensuring that a copy of the total loss evaluation [sheet shall] report be [given] sent within 5 working days to the consumer by the appraiser [or by the insurer within 5 working days] after the appraisal is completed. If [an offer of settlement] a settlement offer is [made] extended before the consumer receives the total loss evaluation [sheet] report, the consumer shall be [verbally] advised of the total loss evaluation report's contents

[thereof] and of [his] the consumer's right to ~~receive~~ BE SENT a copy within 5 days after its completion.

[(g)The general standards of behavior of an appraiser] (f) In addition to the requirements in section 11 of the act (63 P.S. §851§ 861), an appraiser shall [include the following]:

- (1) [Conduct to inspire public confidence by fair and honorable dealings.
- (2) Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.
- (3) Disregard of attempts of others to influence his judgment in the interest of the parties involved.
- (4) Preparation of an independent appraisal of damage.
- (5) Inspection of a vehicle within 6 working days of assignment to the appraiser unless intervening circumstances (for example catastrophe, death, and failure of the parties to cooperate) render such inspection impossible.
- (6) No appraiser shall receive directly or indirectly any gratuity or other consideration in connection with his appraisal services from any person except his employer or, if self-employed, his customer.
- (7) No appraiser shall traffic in automobile salvage if such salvage is obtained in any way as a result of appraisal services rendered by him for his own benefit.
- (8) No appraiser or his employer shall recommend or require that repairs be made at any particular place or by a particular individual.
- (9) An appraiser shall not have] Not have a ~~direct or indirect~~ conflict of interest in the making of an appraisal. This chapter and the act, and this section in particular, shall be strictly interpreted to protect the interest of the consumer and place the burden upon the appraiser to [fully]eliminate any conflict of interest in the making of an appraisal. [Unless as otherwise specified in this chapter or act, a licensed appraiser shall not, in any manner whatsoever, attempt to directly or indirectly coerce, persuade, induce, or advise the consumer that appraised motor vehicle physical damage must be, should be, or could be repaired at any particular location or by any particular individual or business.

(10) Before an appraiser authorizes] ~~(2) Obtain the consent of the consumer~~ CONSUMER'S CONSENT before authorizing the removal of a motor vehicle from one location to another[, the consent of the consumer must be obtained].

(i) The [need for] consent of the consumer shall not be necessary for initial removal of the motor vehicle from the scene of an accident.

(ii) Any appraiser authorizing removal of a motor vehicle to a salvage yard BY A VEHICLE SALVAGE DEALER must inform the [salvor] ~~salvager~~ VEHICLE SALVAGE DEALER in writing that possession is merely for safe-keeping purposes and that the [salvor] ~~salvager~~ VEHICLE SALVAGE DEALER does not have any ownership rights to the motor vehicle, its parts or accessories, until a certificate of title OR CERTIFICATE OF SALVAGE is received duly indicating that ownership has been transferred.

[(11) Personal inspection of damaged property by the appraiser is required as follows:

(i) No appraiser shall secure or use repair estimates that have been obtained by the use of photographs, telephone calls, or in any manner other than personal inspection.

(ii) If a damaged motor vehicle is in the custody of a repair shop, an appraiser shall not take photographs of the damaged motor vehicle until after a legible copy of his appraisal is left with such repair shop although the appraisal may contain certain open items.

(12) The responsibility of the appraiser shall include delivery and explanation of the appraisal as follows:

(i) The appraiser shall provide a legible copy of the appraisal to the consumer

(ii) At the request of any involved party or as is otherwise necessary, the appraiser shall leave a copy of the appraisal with the selected repair shop. The appraiser shall discuss]

(3) ~~Discuss~~ REVIEW the appraisal with [the selected] an authorized representative of the repair shop [owner its authorized representative] which shop is selected by the consumer or WITH any other [parties] ~~party~~ PERSON as is reasonably necessary to [insure] demonstrate that the actual costs of repairs are adequately covered in the appraisal.

[(iii) Upon the unsolicited request of the consumer, an appraiser shall provide names and addresses of auto body shops, garages, or repair shops within a reasonable distance of where the motor vehicle is located and where work will be done in accord with the written appraisal.

(13) An appraiser shall promptly reinspect damaged vehicles prior to the repairs in question: when supplementary allowances are requested by repair shops or when the amount or extent of damages is in dispute, or both.

(14) No provision of the act or this chapter shall be construed as intended to in any way prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if such is desired by any of the involved parties.]

(4) NOT MENTION THE NAME OF ANY REPAIR SHOP, UNLESS THE APPRAISER INCLUDES DISCLOSURE THAT THERE IS NO REQUIREMENT TO USE ANY SPECIFIED REPAIR SHOP.

(G) NO PROVISION OF THE ACT OR THIS CHAPTER SHALL BE CONSTRUED AS INTENDED TO IN ANY WAY PROHIBIT OR LIMIT THE SUBSEQUENT APPRAISAL OR REAPPRAISAL OF DAMAGE BY DIFFERENT LICENSED APPRAISERS, IF SUCH IS DESIRED BY ANY OF THE INVOLVED PARTIES.

(g)(H) The penalties for violating provisions of the act and its regulations thereunder are set forth in sections 5, 6, 7, and 9 of the act (63 P.S. §§ 855, 856 AND 859)

§ 62.4 [Sanctions for violation.] Reserved.

[(a) The Commissioner may deny initial issuance of, suspend, revoke, or refuse to renew any appraiser's license for any cause specified in any other provisions of the act, or this chapter, or for any of the following causes:

(1) For any cause for which issuance of the license could have been refused had it been existent and been known to the Commissioner.

(2) If the licensee willfully violates, or fails to comply with, or knowingly participates in the violation of or failure to comply with any provision of the act, or this chapter, or any other rule or regulation promulgated thereunder.

(3) If the licensee has obtained or attempted to obtain any such license through willful misrepresentation or fraud, or has failed to pass any examination required under this act.

(4) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction.

(5) If the licensee has been convicted, by final judgment, of a felony.

(6) If in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the Commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

(b) Every order suspending any such license shall specify the period during which suspension will be effective, which shall in no event exceed 12 months.

(c) The holder of any license which has been revoked or suspended shall immediately surrender the license to the Commissioner at his request.

(d) The Commissioner shall not reinstate the license or relicense any licensee or former licensee whose license has been suspended, revoked, or renewal refused while the cause for the suspension, revocation, or refusal of such license persists.

(e) Except as otherwise provided in the act, all actions of the Commissioner shall be taken subject to the right of notice, hearing and adjudication, and the right to appeal therefrom as provided by law.

(f) The license of any individual found in violation of any of the provisions of this chapter or the act may be suspended or revoked by the Commissioner. In addition, any person who violates any of the provisions of this chapter or the act may be guilty of a misdemeanor and upon conviction thereof, for each offense, may be sentenced to pay a fine not exceeding \$500, or to undergo imprisonment not exceeding one year, or both.]



COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT

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August 23, 1999

Mr. Robert Nyce  
Executive Director  
Independent Regulatory Review Comm.  
333 Market Street  
Harrisburg, PA 17120

99 AUG 23 PM 3:40  
INSURANCE DEPARTMENT  
HARRISBURG, PA

Re: Insurance Department  
Proposed Regulation No.  
11-149, Motor Vehicle  
Physical Damage Appraisers

Dear Mr. Nyce:

The Department submitted the final form regulation of Chapter 62, Motor Vehicle Physical Damage Appraisers today.

In addition, the Department is supplying the Committees and IRRC with a "clean" version of the regulation. This "clean" version has language that has been added in **bold** print. The **bold** print allows changes to be more easily identified.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

Peter J. Salvatore  
Regulatory Coordinator

CONTINUATION SHEET FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
Pursuant to Commonwealth Documents Law

ANNEX A

Title 31. Insurance, Part VII. Property, Fire and Casualty Insurance, Chapter 62, Motor Vehicle Physical Damage Appraisers.

Sections

- 62.1. Definitions.
- 62.2. **Experience and fitness requirements for licensing.**
- 62.3. Applicable standards for appraisal.
- 62.4. Reserved.

§ 62.1 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

*Act* -- The Motor Vehicle Physical Damage Appraiser Act (63 P.S. §851-863).

***Aftermarket Crash Part* -- a nonoriginal equipment manufacturer (Non-OEM) replacement part, either new or used, for any of the nonmechanical parts that generally constitute the exterior of the motor vehicle, including inner and outer panels.**

***Appraisal* -- A written monetary estimate of physical damage sustained to a motor vehicle when the making of such an estimate is assigned in order to allow the return of the vehicle to its predamaged condition. Appraisals include estimates made by the insurer, its employees, its agents or related entities or individuals or entities assigned to make such an estimate.**

***Appraiser* -- Any natural person in this Commonwealth who makes "appraisals" of motor vehicle physical damage.**

***Commissioner* -- The Insurance Commissioner of the Commonwealth.**

***Consumer* -- The owner of the motor vehicle which has sustained damage or the owner's representative.**



Clean version of final form regulation

*Dealer* -- An individual duly licensed, active, and knowledgeable in the sale of used motor vehicles similar to that being appraised.

*Insurer* -- All companies, associations, and exchanges engaged in the insurance business of insurance companies and self-insurers.

*Motor vehicle* -- Any **motorized** device, **including a trailer attached thereto**, in, upon, or by which any person or property is or may be transported or drawn upon a public highway.

***Predamaged condition* - the function and appearance of the motor vehicle just prior to when the damage in question was sustained.**

§ 62.2 Experience and fitness requirements for licensing.

(a) In addition to the requirements in sections 3, 4, 8 and 11 of the act (63 P.S. §§ 853, 854, 858 and 861), to qualify to take the examination required for appraisers, an applicant shall establish competency to fulfill the responsibility of being an appraiser.

(1) Competency may be demonstrated by providing written documentation of one of the following:

(i) A minimum of 6 months continuous experience within the previous 3 years at an occupation, such as body repair, that directly involves the estimation of physical damage to motor vehicles.

(ii) Successful completion of education or training related to appraising motor vehicle physical damage taken within the previous 3 years.

(2) The Applicant shall provide additional information relating to experience, education or training to the Commissioner or designee upon request.

(b) An application for a license may be denied for any of the following:

(1) The applicant has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to applying for a license.

(2) The applicant has been denied a license or has had an existing license revoked, suspended or not renewed by the department or a regulatory authority in another state, territory or possession of the United States, or in the District of Columbia, or the Canadian provinces.

**(3) The applicant does not possess the professional competence and trustworthiness required to engage in conducting motor vehicle appraisals.**

**(4) An applicant has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony in a court of competent jurisdiction, or has pleaded guilty, entered a plea of nolo contendere, or been found guilty of criminal conduct which relates to the applicant's suitability to conduct motor vehicle appraisals.**

**(i) Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of an appraiser include, but are not limited to, unlawful practices, embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.**

**(ii) Examples of violations or incidents which the Department will not consider related to the applicant's suitability to engage in the business of an appraiser are all summary offenses, records of arrests if there is no conviction of a crime based on the arrest, convictions which have been annulled or expunged or convictions for which the applicant has received a pardon from the Governor.**

**(5) If applicable, applicants shall also comply with the insurance-related provisions in sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C.A. §§ 1033 and 1034).**

**(6) The applicant has unpaid and overdue amounts, including, fees and civil penalties, owing to the Department.**

§ 62.3 Applicable standards for appraisal.

**(a) The appraisal shall:**

**(1) Be signed by the appraiser before the appraisal is submitted to the insurer, the consumer, or another involved party. The appraiser may utilize an electronic signature.**

**(2) Not make use of abbreviation or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of such abbreviations and symbols is included.**

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**(b) In addition to the requirements in the act, the appraisal shall contain a written disclosure which includes the following:**

**(1) The dollar amount of the appraisal.**

**(2) A statement that costs above the appraised amount may be the responsibility of the vehicle owner.**

**(3) A statement that there is no requirement to use any specified repair shop.**

**(4) A statement informing the consumer that information regarding repair facilities which will be able to repair the vehicle for the appraised amount is available from the insurer. If the consumer receives information from the insurer, such information shall include disclosure that there is no requirement to use any specified repair shop.**

**(5) A description of repairs, known at the time of appraisal, necessary to return the vehicle to its predamaged condition, including labor involved, cost of all parts, necessary painting or refinishing, and all sublet work to be done.**

**(6) Incidental charges, known at the time of appraisal, including towing, protective care, custody, storage, depreciation, battery and tire replacement.**

**(7) Applicable sales tax.**

**(8) The date, if any, after which an insurer will not be responsible for any related towing services or storage charges, known at the time of appraisal, and after which the charges will be the responsibility of the consumer.**

**(9) The location where the listed parts are available in a condition equivalent to, or better than, the condition of the replaced parts prior to the accident.**

**(10) If the appraisal includes aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts, and that if the use of an aftermarket crash part voids the existing warranty on the part being replaced or any other part, the aftermarket crash part shall have a warranty equal to or better than the remainder of the existing warranty.**

**(11) Identification of all aftermarket crash parts and a definition of aftermarket crash parts consistent with section 62.1 (relating to definitions), if such parts are used.**

**(c) An appraisal for the repair of the motor vehicle shall be made in the amount necessary to return the motor vehicle to its predamaged condition. If the consumer wishes to repair the**

**motor vehicle to a condition better than the predamaged condition, the appraisal need only specify the cost of repairing the vehicle to its predamaged condition.**

**(d) In the appraisal of salvage value, the following standard shall be used:**

**(1) If the salvage value of the vehicle being appraised is known or could reasonably be determined, the appraiser shall disclose to the consumer in writing:**

**(i) The salvage value.**

**(ii) The provisions of section 1117(a) of the Pennsylvania vehicle code requiring the filing of an application for certificate of salvage with the Pennsylvania Department of Transportation. See 75 P.S. §1117 (relating to vehicle destroyed, dismantled, salvaged or recycled).**

**(iii) Any additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.**

**(2) If the salvage value is listed, the appraiser shall disclose to the consumer in writing:**

**(i) The name and address of each salvage bidder.**

**(ii) The amount.**

**(iii) The expiration date of each salvage bid known.**

**(3) If the ownership and possession of the damaged motor vehicle is not retained by the owner or the owner's representative, this subsection dealing with salvage value is inapplicable.**

**(e) The appraised value of the loss shall be the replacement value of the motor vehicle if the cost of repairing a motor vehicle exceeds its appraised value less salvage value, or the motor vehicle cannot be repaired to its predamaged condition.**

**(1) Under this subsection, replacement value under the policy provisions covering the total loss of a motor vehicle including an unrecovered motor vehicle shall be determined by one of the following methods:**

**(i) *Guide source method.* The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as provided by guide sources approved by the Commissioner. A listing of approved guide sources shall be published once a year in the *Pennsylvania Bulletin*. The appraised value shall be adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in**

question. **No other deductions may be taken** except for salvage and then only if the owner elects to retain the vehicle.

(ii) *Actual cost method.* The appraiser shall determine the actual cost of purchase of an available motor vehicle of like kind and quality in condition similar to or better than the motor vehicle being appraised **in its predamaged condition. The appraiser shall specify, in writing, the location of the vehicle of like kind and quality.**

(iii) *Dealer quotation method.* The appraiser shall consult with dealers or other persons knowledgeable in the field to secure quotations as to the value of the motor vehicle being appraised. At least two quotations shall be secured. The figures thus secured shall be averaged.

**(2)** If the motor vehicle is listed in **at least two guide sources approved by the Commissioner**, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph **(1)(i) and (ii)**. If the actual cost method is used, and the owner of the damaged vehicle shows that the replacement vehicle is not of the same kind and quality, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

**(3)** If the motor vehicle is not listed in **at least two of the sources** authorized by paragraph **(1)(i)**, or if the vehicle differs materially from the average vehicle because of factors not considered in **the** guide sources, for example, antique or classic cars, vehicles no longer manufactured and unique vehicles, the replacement value shall be calculated by the actual cost method or by the dealer quotation method, as described in paragraph **(1)(ii) and (iii)**. If the dealer quotation method is used, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

**(4)** Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value.

**(5)** The licensed appraiser's **total loss evaluation report** shall contain the names and addresses of those persons from whom quotations were secured, the date secured, and whether or not a similar vehicle was available.

**(6)** The licensed appraiser's file shall show the method used to determine the replacement value in a given locality.

**(7) The appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within 5 working days to the consumer by the appraiser after the appraisal is completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the consumer shall be advised of the total loss evaluation report's contents and of the consumer's right to be sent a copy within 5 days after its completion.**

**(f) In addition to the requirements in section 11 of the act (63 P.S. §861), an appraiser shall:**

**(1) Not have a conflict of interest in the making of an appraisal. This chapter and the act, and this section in particular, shall be strictly interpreted to protect the interest of the consumer and place the burden upon the appraiser to eliminate any conflict of interest in the making of an appraisal.**

**(2) Obtain the consumer's consent before authorizing the removal of a motor vehicle from one location to another.**

**(i) The consent of the consumer shall not be necessary for initial removal of the motor vehicle from the scene of an accident.**

**(ii) Any appraiser authorizing removal of a motor vehicle by a vehicle salvage dealer must inform the vehicle salvage dealer in writing that possession is merely for safe-keeping purposes and that the vehicle salvage dealer does not have any ownership rights to the motor vehicle, its parts or accessories, until a certificate of title or certificate of salvage is received duly indicating that ownership has been transferred.**

**(3) Review the appraisal with an authorized representative of the repair shop which is selected by the consumer or with any other party as is reasonably necessary to demonstrate that the actual costs of repairs are adequately covered in the appraisal.**

**(4) Not mention the name of any repair shop, unless the appraiser includes disclosure that there is no requirement to use any specified repair shop.**

**(g) No provision of the act or this chapter shall be construed as intended to in any way prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if such is desired by any of the involved parties.**

**(h) The penalties for violating provisions of the act and its regulations thereunder are set forth in sections 5, 6, and 9 of the act (63 P.S. §§ 855, 856 and 859).**

Clean version of final form regulation

**These commentators have requested a copy of the final form regulation listed below.  
Copies of the final form regulation were sent to these commentators.**

**Reg #      Regulation Title**  
**11-149      Motor Vehicle Physical Damage Appraisers**

---

**Mr. Richard R. Diehl**

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**Date Received      3/1/1999**

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August 23, 1999

Mr. Robert Nyce  
Executive Director  
Independent Regulatory Review Comm.  
333 Market Street  
Harrisburg, PA 17120

Re: Insurance Department Final  
Form Regulation No. 11-149,  
Motor Vehicle Physical  
Damage Appraisers

Dear Mr. Nyce:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your review and approval is final form regulation 31 Pa. Code, Chapter 62, Motor Vehicle Physical Damage Appraisers.

Chapter 62 of Title 31 was adopted by the Department on December 28, 1973 and amended on May 10, 1974. The regulations were promulgated to clarify the licensing requirements and occupational standards for physical damage appraisers. The regulations were adopted prior to the enactment of the Regulatory Review Act, Act of June 25, 1982 (P.L. 633, No. 181). Consequently, the regulations were not subject to review by the Independent Regulatory Review Commission. The purpose of this final form rulemaking is to amend Chapter 62 to make it consistent with existing statutory language, to repeal those provisions of the regulation which are duplicative of the Act, and to add additional language which enhances the Act and which provides additional disclosures and protections for Pennsylvania consumers.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script, reading "Peter J. Salvatore".

Peter J. Salvatore  
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

**I.D. NUMBER:** 11-149  
**SUBJECT:** Motor Vehicle Physical Damage Appraisers  
**AGENCY:** DEPARTMENT OF INSURANCE

**TYPE OF REGULATION**

Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions                      b. Without Revisions

RECEIVED  
 59 AUG 23 PM 3:40

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
7-23-99	<i>D. Raphael</i>	HOUSE COMMITTEE ON INSURANCE
7/23/99	<i>Sevise Patton</i>	SENATE COMMITTEE ON BANKING & INSURANCE
8/23/99	<i>Dr. Melnick</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

August 18, 1999