

Regulatory Analysis Form

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99 JAN 27 PM 4: 26

INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Insurance Department

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

11-149

Harbison

IRRC Number: 2001

(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 proposed 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 Department proposes the amendment to Title 31 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").

(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 seeks to amend 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 have also been proposed, 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.

(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.

The Pennsylvania Collision Trade Guild, the Automotive Service Association of Pennsylvania, and Insurance Federation of Pennsylvania were contacted regarding issues arising out of the existing regulation. The responses received were reviewed and taken into consideration during the review of this regulation.

(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 proposed regulation may impose some additional costs on physical damage appraisers and insurers associated with revising existing appraisal forms and procedures to incorporate the proposed 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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(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.

(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 proposed 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 proposed 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.


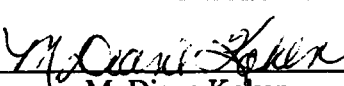
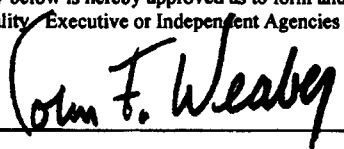
The rulemaking will have no effect on special needs of affected parties.

(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 undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission 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;">FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p style="text-align: center;">(Pursuant to Commonwealth Documents Law)</p>	<p style="text-align: center; font-size: 1.2em;">RECEIVED</p> <p style="text-align: center;">99 JAN 27 PM 4: 26</p> <p style="text-align: center;">INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p style="text-align: center; font-weight: bold;">DO NOT WRITE IN THIS SPACE</p>	
<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: <u></u> (Deputy Attorney General)</p> <p style="text-align: center;">JAN 26 1999 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;">Insurance Department _____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>11-149</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u></u> M. Diane Koken Insurance Commissioner</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: <u></u></p> <p style="text-align: center;">01/13/99 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 Proposed Rulemaking

31 Pa. Code, Chapter 62
§§62.1-62.4

Motor Vehicle Physical Damage Appraisers

PREAMBLE

The Insurance Department ("Department") hereby proposes to amend 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 proposed rulemaking. The Department proposes the amendment to Title 31 of the Pennsylvania Code 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").

Purpose

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 proposed rulemaking is to amend Chapter 62 of Title 31 of the Pennsylvania Code 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 protections for Pennsylvania consumers.

Explanation of Regulatory Requirements

Significant amendments to the proposed regulation include the following:

Section 62.1, relating to definitions, has been amended to delete the definitions of *Commissioner* and *Insurer*. These terms are defined in section 2 of the Act (63 P.S. §852) and are, therefore, redundant. The definition for *Motor Vehicle* has been amended to clarify that the definition does apply to trailers, but does not apply to non-motorized vehicles such as bicycles or buggies. Definitions for the terms *Aftermarket crash part*, *nonoriginal equipment manufacturer ("Non-OEM")* and *pre-damaged condition* have been added to clarify new provisions to the regulation.

Section 62.2, relating to licensing requirements, has been amended to include experience and competency standards for appraisers and also describe circumstances under which an application for an appraisers license may be denied, for example, a felony conviction. Similar regulatory standards currently exist for other Department licensees, including agents and brokers. Revisions also include the proposed deletion of subsections (a) through (m) as these are already requirements specified throughout the Act, or which have otherwise been incorporated into the remaining provisions.

Section 62.3, relating to applicable standards for appraisal, is proposed for significant restructure to delete redundant language and include disclosure requirements.

Sections 62.3(a)(1) and (2) are being proposed for deletion, as they are duplicative of provisions which are already specified in section 11 of the Act (63 P.S. §861). Section 62.3(a)(3), which prohibits the use of abbreviations or symbols to describe repair work, is being proposed for deletion as it has been an automotive repair industry standard to use abbreviations with definitions and, therefore, this language is found to be unnecessary. Moreover, section 11(b) of the Act (63 P.S. §861(b)) requires the appraisal be legible.

Section 62.3(b) has been revised to require a written disclosure which contains the following: (1) the amount of the appraisal; (2) a statement that any 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 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; (4) a description of repairs necessary to return the vehicle to its pre-damaged condition, including, but not necessarily limited to, labor involved, cost of all parts, necessary painting or refinishing, and all sublet work to be done. 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; (5) specification of incidental charges including towing, protective care, custody, storage, battery and tire replacement; (6) specification of applicable sales tax payable on the total dollar amount of the appraisal; (7) the date, if any, 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; (8) 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; and (9) 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 warranty on the original part, the aftermarket crash part shall have a warranty equal to or better than the warranty on the original part.

Generally, the purpose of the disclosure requirement is to remove any uncertainty for Pennsylvania consumers and fully apprise them of their rights and responsibilities under the Act. In particular, the consumer is expressly advised that there is no requirement to use any specific repair shop. However, the disclosure also assists consumers by permitting the appraiser to provide the names of repair shops able to perform the repairs in accordance with the appraisal.

Section 62.3(c) is being proposed for deletion in its entirety as it is duplicative of provisions already specified in section 11 of the Act (63 P.S. §861), or which have otherwise been made part of the disclosure requirements.

Section 62.3(d) now appears as section 62.3(c) and, with the exception of minor changes for clarity and structure, remains unchanged.

Section 62.3(e) now appears as section 62.3(d) and, with the exception of minor changes for clarity and structure, remains unchanged.

Section 62.3(f) now appears as section 62.3(e) and, in addition to minor changes for clarity and structure, has been modified to delete reference to specific guide sources (e.g., Red Book, NADA Book). Rather, the Commissioner will now publish annually in the *Pennsylvania Bulletin* a listing of all approved guide sources.

Section 62.3(g) now appears as section 62.3(f) and is proposed for amendment to delete provisions which are redundant, and to make the remaining provisions consistent with the provisions of the Act. Subsections (g)(1)-(5) are proposed for deletion as they are duplicative of provisions specified in sections 11(f)(1)-(5) of the Act (63 P.S. §861(f)(1)-(5)). Subsections (g)(6) and (7) are proposed for deletion as they are duplicative of provisions specified in sections 11(g)(1) and (2) of the Act (63 P.S. §861(g)(1), (2)). Subsections (g)(8) and (9) (relating, in part, to prohibitions against appraisers recommending or referring customers to specified shops) are proposed for amendment so that they more appropriately conform to section 11(d) of the Act (63 P.S. §861(d)), which only specifies that an appraiser shall not "require" that repairs be made in any specified shop. The prohibition against an appraiser requiring the use of a specified shop has now been made part of the disclosure requirement set forth in section 62.3(b)(1). The remainder of subsection 62.3(g)(9) has been re-numbered as 62.3(f)(1) to reflect the correct sequence as a result of the deletion of subsections (g)(1)-(9). Subsection (g)(10) has been re-numbered as 62.3(f)(2) and reflects only minor changes for structure and clarity. Subsections (g)(11), (g)(12)(i) and the first sentence of (g)(12)(ii) are proposed for deletion as they are duplicative of provisions specified in sections 11(b) and (c) of the Act (63 P.S. §§861(b), (c)). The remaining portion of subsection (g)(12)(ii) has now been re-numbered as 62.3(f)(3) and reflects only minor changes in language. Subsection (g)(12)(iii) is being deleted as it has been replaced with the disclosure requirement set forth in Section 62.3(b)(9). Subsection (g)(13) is being proposed for deletion as it is duplicative of Sections 11(e) of the Act (63 P.S. §861(e)). Finally, section 62.3(g)(14) is proposed for deletion as it is found to serve no purpose and does not otherwise enhance the provisions of the Act.

Section 62.3(g) has been added to notify appraisers that penalties for violations of the Act and its regulations are set forth in the Act.

Section 62.4, relating to sanctions for violations, is being proposed for deletion in its entirety as it is duplicative of sections 5-7 of the Act (63 P.S. §§855-857) and section 9 of the Act (63 P.S. §859)).

External Comments

The Pennsylvania Collision Trade Guild, the Automotive Service Association of Pennsylvania, and Insurance Federation of Pennsylvania were contacted regarding issues arising out of the existing regulation. The responses received were reviewed and taken into consideration during the review of this regulation.

Fiscal Impact

The proposed regulation will have no impact on costs associated with the Department's licensing of physical damage appraisers. The proposed regulation may impose some additional costs on physical damage appraisers and insurers associated with revising existing appraisal forms and procedures to incorporate the proposed disclosure requirements. The proposed regulation has no impact on costs to political subdivisions. There are no costs to the general public associated with this proposed regulation.

Paperwork

The proposed regulation imposes no additional paperwork requirements on the Department or the general public. Physical damage appraisers and insurers will have to revise existing appraisal forms to include the proposed disclosure requirements.

Persons Regulated

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

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, Pennsylvania 17120 within 30 days following the publication of this proposed regulation in the Pennsylvania Bulletin.

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 1/27/99 to the Independent Regulatory Review Commission and to the Chairmen of the House Insurance Committee and the Senate Banking and 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.

If the Commission has any objections to any portion of the proposed amendments, it will notify the agency within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

**M. Diane Koken
Insurance Commissioner**

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 [(75 P.S. §3001 et seq.)] ~~(63 P.S. §851-863)~~.

~~*Aftermarket crash part* -- a replacement for any of the non-mechanical sheet metal or plastic parts that generally constitute the exterior of the motor vehicle, including inner and outer panels.~~

Appraisal -- A ~~written~~ monetary determination of damage incurred [by] ~~to~~ a motor vehicle when the making of such a determination is assigned in order [to fix the value of insurance claims] ~~to return the vehicle to its condition prior to the damage in question~~. Appraisals [shall] include [such a determination whether] ~~determinations~~ made by the insurer, its employees, its agents or related entities or [made by any] other individuals or [entity] ~~entities~~ [otherwise] assigned to make such a determination.

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 damage or his or her 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 any 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.

Pre-damaged condition - Condition of the motor vehicle just prior to the damage in question incurred.

§ 62.2 Licensing requirements.

(a) No person shall 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.]

(a) In addition to the requirements set forth in sections 3, 4, 8, 11 of the Act, to qualify to take the examination required for appraisers, an applicant must establish his or her competency to fulfill the responsibility of being an appraiser. Competency may be demonstrated by providing written documentation of:

(1) a minimum of six months continuous experience within the last three (3) years at an occupation, such as body repair, that directly involves the estimation of physical damage to motor vehicles; or

(2) successful completion of education or training related to appraising motor vehicle physical damage taken within the last three (3) years.

The Applicant shall provide to the Commissioner or her designee upon request any additional information on experience, education or training.

(b) An application for 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 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 an insurance 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. Such determination will be made by the Department.

(4) A showing that, within 5 years prior to applying for a license under the Act, 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 must also comply with the insurance-related provisions of the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §§1033, 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 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) The applicant has unpaid and overdue amounts, including, but not limited to, 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 any other involved party.

[(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 any 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 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;

[(1)] (4) a description of repairs [All items] necessary to return the vehicle to its pre-damaged 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. 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; [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.]

[(2)] (5) [A clear indication of the cost or dollar amount value of all specified items.] incidental charges including towing, protective care, custody, storage, battery and tire replacement;

[(3)] (6) [A clear indication of all unrelated or old damage.] applicable sales tax payable on the total dollar amount of the appraisal;

[(4)] (7) [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.] the date, if any, 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:

(8) 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; and

(9) 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 warranty on the original part, the aftermarket crash part shall have a warranty equal to or better than the warranty on the original part.

[(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)] (c) In the appraisal of salvage value, the following standard[s] shall be used:

(1) If the salvage value of the vehicle being appraised is known or could reasonably be determined [found out], the appraiser shall [inform] advise the consumer in writing 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 any] If the salvage value is listed, the appraiser shall [inform] advise the consumer in writing of the name and address of each salvage [buyer]bidder, 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] the owner's representative, this subsection dealing with salvage value [need not be complied with] is inapplicable.

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

(1)] An appraisal for the repair of the motor vehicle [will] shall be made in the amount necessary to return the motor vehicle to its [same condition just prior to the damage in question being incurred]pre-damaged condition. [(2)] If the consumer [is insistent upon] requests the use of [new] parts other than those listed on the appraisal [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 pre-damaged condition [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.]

(e) The appraised value of the loss shall be the replacement value of the motor vehicle if the cost of repairing 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.

(1) Under paragraph (e) above, 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 [stated in the current 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] 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 shall 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 just prior to the damage in question being incurred. The appraiser must specify, in writing, the location of said 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)(i), (ii)] (1)(i), (1)(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)(ii), (iii)] (1)(i), (1)(ii). 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)]~~(7) The appraiser is responsible for ensuring that a [A] copy of the total loss evaluation report [sheet shall] be [given] sent within five (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 report [sheet], the consumer shall be [verbally] advised of the total loss evaluation report's contents [thereof] and of [his] the consumer's right to receive a copy within 5 days after its completion.

~~[(g)]~~ (f) [The general standards of behavior of an appraiser] In addition to the requirements set forth in section 11 of the Act, 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)]~~ (l) [An appraiser shall not have] not have any direct or indirect conflict of interest in the making of an appraisal. Provisions of 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)] ~~(2) obtain the consent of the consumer~~ [B]before [an appraiser authorizes] ~~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 must inform the [salvor] ~~salvager~~ in writing that possession is merely for safe-keeping purposes and that the [salvor] ~~salvager~~ does not have any ownership rights to the motor vehicle, its parts or accessories, until a certificate of title 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]

~~(3) discuss the appraisal with [the selected] an authorized representative of the repair shop [owner], which shop is selected by the consumer,~~[its authorized representative,] or any other party[ies] 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.]

(g) The penalties for violating provisions of the Act and its regulations are set forth in sections 5, 6, 7, and 9 of the Act.

§ 62.4 [Sanctions for violation.

(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.] Reserved.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

**OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120**

**Phone: (717) 787-4429
Fax: (717) 705-3873
E-mail: psalvato@ins.state.pa.us**

January 27, 1999

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

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

Dear Mr. Nyce:

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

The purpose of this proposed rulemaking is to amend Chapter 62 to make it consistent with existing statutory language. The Department is also proposing to repeal those provisions of the regulation that are duplicative of the Act, and to add language that enhances the Act and which provides additional 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 that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

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

99 JAN 27 PM 4:26

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-27-99	<i>B. Dapagos</i>	HOUSE COMMITTEE ON INSURANCE
1/27/99	<i>Denise Patton</i>	SENATE COMMITTEE ON BANKING & INSURANCE
1/27/99	<i>Ken C. Dornier</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
1-27-99	<i>Cipriano Lee</i>	LEGISLATIVE REFERENCE BUREAU

January 27, 1999