

The following is a breakdown of
Pennsylvania Code Title 31
Chapter 62. Motor Vehicle Physical Damage Appraisers
"Regulation"

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Current Regulation

vs.

Revised Regulation

vs.

Current Regulation Deletions

- The Current Regulation is the terminology that is presently in effect.
- The Revised Regulation is what the Department of Insurance is proposing to replace the Current Regulation. All changes, any additional wording added to the Current Regulation is "*italized*" under sections labeled: Revised Regulation.
- Current Regulation Deletions is whatever the Department of Insurance is proposing to delete / remove from the Current Regulation. Under sections labeled: Regulation Deletions: you will find the Current Regulation with words in "**BOLD**" print which represent regulatory issues the Department of Insurance is proposing to delete!

ORIGINAL: 2001
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CHAPTER 62. MOTOR VEHICLE PHYSICAL DAMAGE APPRAISERS

Current Regulation:

31§62.1

Definitions.

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

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

Appraisal- A monetary determination of damage incurred by a motor vehicle when the making of such a determination is assigned in order to fix the value of insurance claims. Appraisals shall include a determination whether made by the insurer, its employees, its agents or related entities or made by another individual or entity otherwise assigned to make a determination.

Appraiser- A 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 the owner's representative.

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

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

Motor vehicle- A device in, upon or by which a person or property is or may be transported or drawn upon a public highway.

Revised Regulation:

31§62.1

Definitions.

The following words and terms, when used in this chapter, 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 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 to a motor vehicle when the making of such a determination is assigned in order to return the vehicle to its condition prior to the damage in question.

Appraisals *determinations* made by the insurer, its employees, its agents or related entities or other individuals or *entities* assigned to make a determination.

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

Consumer- The owner of the motor vehicle which has incurred damage or the

this is not good for Consumers →

owner's representative.

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

Motor vehicle- A motorized device including any trailer attached thereto, in, upon or by which a 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. *loss*

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

Regulation Deletions:

31§62.1

Definitions.

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

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

Appraisal- A monetary determination of damage incurred by a motor vehicle when the making of such a determination is assigned in order to fix the value of insurance claims. Appraisals shall include a determination whether made by the insurer, its employes, its agents or related entities or made by another individual or entity otherwise assigned to make a determination.

Appraiser- A 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 the owner's representative.

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

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

Motor vehicle- A device in, upon or by which a person or property is or may be transported or drawn upon a public highway.

Current Regulation:

- 31§62.2.** Licensing requirements.
- 31§62.2(a)** A person may not directly or indirectly act or hold himself out as an appraiser unless the person has first secured a license from the Commissioner in accordance with the provisions of the act and this chapter.
- 31§62.2(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 will not be returnable.
- 31§62.2(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 an authorized representative of the Department.
- 31§62.2(d)** Except as otherwise provided in the act and this chapter, a person may not be granted an appraiser's license unless he first establishes his qualifications therefor and takes and passes an examination for appraisers.
- 31§62.2(e)** An applicant for the examination shall be at least 18 years of age; shall be a resident of this Commonwealth, or a resident of another state or country which permits residents of this Commonwealth to act as appraisers in that state or country; shall be trustworthy.
- 31§62.2(f)** In order to qualify for the examination, an applicant shall establish his competency to fulfill the responsibility of being an appraiser. This may be done by showing either a minimum of 6 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.
- 31§62.2(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. Information required on forms must be completed or the application will not be processed.
- 31§62.2(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.
- 31§62.2(i)** Examinations shall be given at reasonable times and places within the Commonwealth. An applicant who fails to pass the examination is not eligible to retake an examination for 30 days from the date of the failure.
- 31§62.2(j)** Upon proper application and the payment of a fee of \$10 a person who has been employed or engaged for a period of not less than 2 years prior to the submission of the 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 5 of the act (63 P.S. § 853) and subsections (d)-(i).
- 31§62.2(k) An appraiser's license shall expire annually at midnight of June 30th next following the date of issuance.
- 31§62.2(l) Subject to the right of the Commissioner to suspend, revoke or refuse to renew an appraiser's license, the 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 the renewal, accompanied by payment of the renewal fee.
- 31§62.2(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 the license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of 5 days after the Commissioner has refused to renew the license and has mailed notice of the refusal to the licensee. A 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.

Revised Regulation:

Sections 62.2(a),(b),(c),(d),(e),(f),(g),(h),(i),(j),(k),(l) & (m) have been deleted and replaced with the following:

- 31§62.2 Licensing requirements.
- 31§62.2(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:*
- 31§62.2(a)(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*
- 31§62.2(a)(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.*
- 31§62.2(b) *An application for licensing may be denied for any of the following:*
- 31§62.2(b)(1) *The applicant has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to the application for a license.*
- 31§62.2(b)(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.*
- 31§62.2(b)(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.*

- 31§62.2(b)(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, 19U.S.C. §§ 1033, 1034.*
- 31§62.2(b)(4)(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.*
- 31§62.2(b)(4)(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.*
- 31§62.2(b)(5) *The applicant has unpaid and overdue amounts, including, but not limited to, fees and civil penalties, owing to the Department.*

Regulation Deletions:

- 31§62.2. Licensing requirements.**
- 31§62.2(a) A person may not directly or indirectly act or hold himself out as an appraiser unless the person has first secured a license from the Commissioner in accordance with the provisions of the act and this chapter.**
- 31§62.2(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 will not be returnable.**
- 31§62.2(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 an authorized representative of the Department.**
- 31§62.2(d) Except as otherwise provided in the act and this chapter, a person may not be granted an appraiser's license unless he first establishes his qualifications therefor and takes and passes an examination for appraisers.**
- 31§62.2(e) An applicant for the examination shall be at least 18 years of age; shall be a resident of this Commonwealth, or a resident of another state or country which permits residents of this Commonwealth to act as appraisers in that state or country; shall be trustworthy.**
- 31§62.2(f) In order to qualify for the examination, an applicant shall establish his**

competency to fulfill the responsibility of being an appraiser. This may be done by showing either a minimum of 6 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.

31§62.2(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. Information required on forms must be completed or the application will not be processed.

31§62.2(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.

31§62.2(i) Examinations shall be given at reasonable times and places within the Commonwealth. An applicant who fails to pass the examination is not eligible to retake an examination for 30 days from the date of the failure.

31§62.2(j) Upon proper application and the payment of a fee of \$10 a person who has been employed or engaged for a period of not less than 2 years prior to the submission of the 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 (63 P.S. § 853) and subsections (d)-(i).

31§62.2(k) An appraiser's license shall expire annually at midnight of June 30th next following the date of issuance.

31§62.2(l) Subject to the right of the Commissioner to suspend, revoke or refuse to renew an appraiser's license, the 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 the renewal, accompanied by payment of the renewal fee.

31§62.2(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 the license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of 5 days after the Commissioner has refused to renew the license and has mailed notice of the refusal to the licensee. A 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.

Current Regulation:

- 31§62.3. Applicable standards for appraisal.
31§62.3(a) The appraisal statement shall adhere to the following form:
31§62.3(a)(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.
31§62.3(a)(2) An appraisal shall be signed by the appraiser before the appraisal is submitted to the insurer, the consumer or another involved party.
31§62.3(a)(3) An appraisal may not make use of abbreviations or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of the abbreviations and symbols is included.

Revised Regulation:

- 31§62.3. Applicable standards for appraisal.
31§62.3(a) The appraisal shall *be signed by the appraiser before the appraisal is submitted to the insurer, the consumer or any other involved party.*

Section 62.3(a)(1) & (3) has been deleted

Regulation Deletions:

- 31§62.3(a) The appraisal statement shall adhere to the following form:**
31§62.3(a)(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.
31§62.3(a)(3) An appraisal may not make use of abbreviations or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of the abbreviations and symbols is included.

Current Regulation:

- 31§62.3(b) The appraisal statement shall contain the following:
- 31§62.3(b)(1) Items necessary to return the vehicle to its condition prior to the damage in question, including, but not necessarily limited to labor involved; necessary painting or refinishing, and all sublet work to be done. Furthermore, there shall be a specification of 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 matter incidental to repair of the incurred damage.
- 31§62.3(b)(2) A clear indication of the cost or dollar amount value of specified items.
- 31§62.3(b)(3) A clear indication of unrelated or old damage.
- 31§62.3(b)(4) If there is a date after which an insurer will not be responsible for a related towing services or storage charges, or both, and after which the charges will be the responsibility of the consumer, the appraisal shall clearly indicate that date.

Revised Regulation:

- 31§62.3(b) *In addition to the requirements in the Act, the appraiser shall contain a written disclosure which includes the following:*
- 31§62.3(b)(1) *the dollar amount of the appraisal:*
- 31§62.3(b)(2) *a statement that any excess costs above the appraised amount may be the responsibility of the vehicle owner:*
- 31§62.3(b)(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:*
- 31§62.3(b)(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:*
- 31§62.3(b)(5) *incidental charges including towing, protective care, custody, storage, battery and tire replacement:*
- 31§62.3(b)(6) *applicable sales tax payable on the total dollar amount of the appraisal:*
- 31§62.3(b)(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*
- 31§62.3(b)(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*
- 31§62.3(b)(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.*

Regulation Deletions:

- 31§62.3(b)** **The appraisal statement shall contain the following:**
- 31§62.3(b)(1)** **Items necessary to return the vehicle to its condition prior to the damage in question, including, but not necessarily limited to labor involved; necessary painting or refinishing, and all sublet work to be done. Furthermore, there shall be a specification of 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 matter incidental to repair of the incurred damage.**
- 31§62.3(b)(2)** **A clear indication of the cost or dollar amount value of specified items.**
- 31§62.3(b)(3)** **A clear indication of unrelated or old damage.**
- 31§62.3(b)(4)** **If there is a date after which an insurer will not be responsible for a related towing services or storage charges, or both, and after which the charges will be the responsibility of the consumer, the appraisal shall clearly indicate that date.**

Current Regulation:

- 31§62.3(c) In the specification of new or used parts, the following standards shall be used for the appraisal statement:
- 31§62.3(c)(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.
- 31§62.3(c)(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.

Revised Regulation:

Section 62.3(c)(1),(2) has been deleted

Regulation Deletions:

- 31§62.3(c) In the specification of new or used parts, the following standards shall be used for the appraisal statement:
- 31§62.3(c)(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.
- 31§62.3(c)(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.

Current Regulation:

- 31§62.3(d) In the appraisal of salvage value, the following standards shall be used:
31§62.3(d)(1) If the salvage value of the vehicle being appraised is known or could reasonable be found out, the appraiser shall inform the consumer of the salvage value and additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.
31§62.3(d)(2) For any 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.
31§62.3(d)(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.

Revised Regulation:

- 31§62.3(c) In the appraisal of salvage value, the following standard shall be used:
31§62.3(c)(1) If the salvage value of the vehicle being appraised is known or could reasonable be *determined*, the appraiser shall *advise* the consumer *in writing* of the salvage value and additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.
31§62.3(c)(2) *If the salvage value is listed*, the appraiser shall *advise* the consumer *in writing* of the name and address of *each salvage bidder*, and the amount and expiration date of each salvage bid known.
31§62.3(c)(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*.

Regulation Deletions:

- 31§62.3(d) In the appraisal of salvage value, the following standards shall be used:
31§62.3(d)(1) If the salvage value of the vehicle being appraised is known or could reasonable be **found out**, the appraiser shall **inform** the consumer of the salvage value and additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.
31§62.3(d)(2) **For any** 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.
31§62.3(d)(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**.

Current Regulation:

- 31§62.3(e) The following standards shall be used regarding the betterment of the vehicle:
- 31§62.3(e)(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.
- 31§62.3(e)(2) If the consumer is insistent upon the use of new parts rather than repair, or otherwise wished 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 is condition just prior to the time the damage was incurred.

Revised Regulation:

- 31§62.3(d) An appraisal for the repair of the motor vehicle *shall* be made in the amount necessary to return the motor vehicle to its *pre-damaged condition*. If the consumer *requests* the use of parts *other than those listed on the appraisal*, or otherwise wished 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*.

Regulation Deletions:

- 31§62.3(e) **The following standards shall be used regarding the betterment of the vehicle:**
- 31§62.3(e)(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.**
- 31§62.3(e)(2) **If the consumer is insistent upon the use of new parts rather than repair, or otherwise wished 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 is condition just prior to the time the damage was incurred.**

Current Regulation:

- 31§62.3(f) The following standards shall be used to determine replacement value under policy provisions covering the total loss of a motor vehicle including an uncovered motor vehicle:
- 31§62.3(f)(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.

Revised Regulation:

- 31§62.3(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.*

Regulation Deletions:

- 31§62.3(f) **The following standards shall be used to determine replacement value under policy provisions covering the total loss of a motor vehicle including an uncovered motor vehicle:**
- 31§62.3(f)(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.**

Current Regulation:

- 31§62.3(f)(2) The replacement value of a motor vehicle shall be calculated by use of the one of the following methods:
- 31§62.3(f)(2)(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 (800) 671-9907), the *NADA Book* (Subscription Department, Post Office Box 7800, Costa Mesa, California 92628, telephone (800) 622-6232), or any similar source of information approved by the Commissioner, adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. There may be no other deductions except for salvage and then only if the owner elects to retain the vehicle.
- 31§62.3(f)(2)(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.
- 31§62.3(f)(2)(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. As least two quotations shall be secured. The figures thus secured shall be averaged.

Revised Regulation:

- 31§62.3(e)(1) *Under paragraph (e) above, replacement value under the policy provisions covering the total loss of a motor vehicle including an unrecoverable motor vehicle shall be determined by one of the following methods:*
- 31§62.3(e)(1)(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.*
- 31§62.3(e)(1)(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.*
- 31§62.3(e)(1)(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. As least two quotations shall be secured. The figures thus secured shall be averaged.

Regulation Deletions:

- 31§62.3(f)(2) The replacement value of a motor vehicle shall be calculated by use of the one of the following methods:
- 31§62.3(f)(2)(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 (800) 671-9907), the *NADA Book* (Subscription Department, Post Office Box 7800, Costa Mesa, California 92628, telephone (800) 622-6232), or any similar source of information approved by the Commissioner, adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. There may be no other deductions except for salvage and then only if the owner elects to retain the vehicle.
- 31§62.3(f)(2)(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.
- 31§62.3(f)(2)(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. As least two quotations shall be secured. The figures thus secured shall be averaged.

Current Regulation:

31§62.3(f)(3) If the motor vehicle is listed in any two of the sources authorized by paragraph (2)(i), including older car publications, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph (2). 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 reference in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Revised Regulation:

31§62.3(e)(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), (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 reference in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Regulation Deletions:

31§62.3(f)(3) If the motor vehicle is listed in **any two of the sources authorized by paragraph (2)(i), including older car publications**, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph (2). 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 reference in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Current Regulation:

31§62.3(f)(4) If the motor vehicle is not listed in any two of the sources authorized by paragraph (2)(i), including older car publications, or if the vehicle differs materially from the average vehicle because of factors not considered in guide sources, for example, antique or classic cars, vehicle 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). 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.

Revised Regulation:

31§62.3(e)(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, vehicle 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)(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.

Regulation Deletions:

31§62.3(f)(4) If the motor vehicle is not listed in **any** two of the sources authorized by paragraph (2)(i), **including older car publications**, or if the vehicle differs materially from the average vehicle because of factors not considered in guide sources, for example, antique or classic cars, vehicle 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). 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.

Current Regulation:

31§62.3(f)(5) Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value

Revised Regulation:

31§62.3(e)(4) Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value

Regulation Deletions:

No deletions

Current Regulation:

31§62.3(f)(6) 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.

Revised Regulation:

31§62.3(e)(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.

Regulation Deletions:

31§62.3(f)(6) 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.

Current Regulation:

31§62.3(f)(7) The licensed appraiser's file shall show the method used to determine the more accurate replacement value in a given locality.

Revised Regulation:

31§62.3(e)(6) The licensed appraiser's file shall show the method used to determine the replacement value in a given locality.

Regulation Deletions:

31§62.3(f)(7) The licensed appraiser's file shall show the method used to determine the more accurate replacement value in a given locality.

Current Regulation:

31§62.3(f)(8)

A copy of the total loss evaluation sheet shall be given to the consumer by the appraiser or by the insurer within 5 working days after the appraisal is completed. If an offer of settlement is made before the consumer receives the total loss evaluation sheet, the consumer shall be verbally advised of the contents thereof and of his right to receive a copy within 5 days after its completion.

Revised Regulation:

31§62.3(e)(7)

The appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within five (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 receive a copy within 5 days after its completion.

Regulation Deletions:

31§62.3(f)(8)

A copy of the total loss evaluation sheet shall be given to the consumer by the appraiser or by the insurer within 5 working days after the appraisal is completed. If an offer of settlement is made before the consumer receives the total loss evaluation sheet, the consumer shall be verbally advised of the contents thereof and of his right to receive a copy within 5 days after its completion.

Current Regulation:

- 31§62.3(g) The general standards of behavior of an appraiser shall include the following:
- 31§62.3(g)(1) Conduct to inspire public confidence by fair and honorable dealings.
- 31§62.3(g)(2) Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.
- 31§62.3(g)(3) Disregard of attempts of others to influence his judgement in the interest of he parties involved.
- 31§62.3(g)(4) Preparation of an independent appraisal of damage.
- 31§62.3(g)(5) Inspection of a vehicle within 6 working days of assignment to the appraiser unless intervening circumstances (for example catastrophe, death, failure of the parties to cooperate) render the inspection impossible.
- 31§62.3(g)(6) An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.
- 31§62.3(g)(7) An appraiser may not traffic in automobile salvage if the salvage is obtained as a result of appraisal services rendered by him for his own benefit.
- 31§62.3(g)(8) An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.

Revised Regulation:

- 31§62.3(f) *In addition to the requirements set forth in section 11 of the Act, an appraiser shall:*

section 62.3(g)(1),(2)(3),(4),(5),(6),(7) & (8) have been deleted

Regulation Deletions:

- 31§62.3(g) **The general standards of behavior of an appraiser shall include the following:**
- 31§62.3(g)(1) **Conduct to inspire public confidence by fair and honorable dealings.**
- 31§62.3(g)(2) **Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.**
- 31§62.3(g)(3) **Disregard of attempts of others to influence his judgement in the interest of he parties involved.**
- 31§62.3(g)(4) **Preparation of an independent appraisal of damage.**
- 31§62.3(g)(5) **Inspection of a vehicle within 6 working days of assignment to the appraiser unless intervening circumstances (for example catastrophe, death, failure of the parties to cooperate) render the inspection impossible.**
- 31§62.3(g)(6) **An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.**
- 31§62.3(g)(7) **An appraiser may not traffic in automobile salvage if the salvage is obtained as a result of appraisal services rendered by him for his own benefit.**
- 31§62.3(g)(8) **An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.**

Current Regulation:

31§62.3(g)(9) An appraiser may 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 conflict of interest in the making of an appraisal. Unless as otherwise specified in this chapter or act, a licensed appraiser may not 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 a particular locations or by a particular individual or business.

Revised Regulation

31§62.3(f)(1) *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 eliminate conflict of interest in the making of an appraisal.

Regulation Deletions:

31§62.3(g)(9) An appraiser may 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 conflict of interest in the making of an appraisal. **Unless as otherwise specified in this chapter or act, a licensed appraiser may not 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 a particular locations or by a particular individual or business.**

Current Regulation:

- 31§62.3(g)(10) Before an appraiser authorizes the removal of a motor vehicle from one location to another, the consent of the consumer shall be obtained.
- 31§62.3(g)(10)(i) The need for consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.
- 31§62.3(g)(10)(ii) An appraiser authorizing removal of a motor vehicle to a salvage yard shall inform the salvor in writing that possession is merely for safekeeping purposes and that the salvor does not have an ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received indicating that ownership has been transferred.

Revised Regulation

- 31§62.3(f)(2) *obtain the consent of the consumer* before *authorizing* the removal of a motor vehicle from one location to another.
- 31§62.3(f)(2)(i) The consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.
- 31§62.3(f)(2)(ii) An appraiser authorizing removal of a motor vehicle to a salvage yard shall inform the *salvager* in writing that possession is merely for safekeeping purposes and that the *salvager* does not have an ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received indicating that ownership has been transferred.

Regulation Deletions:

- 31§62.3(g)(10) Before an appraiser authorizes the removal of a motor vehicle from one location to another, the consent of the consumer shall be obtained.
- 31§62.3(g)(10)(i) The need for consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.
- 31§62.3(g)(10)(ii) An appraiser authorizing removal of a motor vehicle to a salvage yard shall inform the salvor in writing that possession is merely for safekeeping purposes and that the salvor does not have an ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received indicating that ownership has been transferred.

Current Regulation:

- 31§62.3(g)(11) Personal inspection of damaged property by the appraiser is required as follows:
- 31§62.3(g)(11)(i) An appraiser may not secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in a manner other than personal inspection.
- 31§62.3(g)(11)(ii) If a damaged motor vehicle is in the custody of a repair shop, an appraiser may not take photographs of the damaged motor vehicle until after a legible copy of his appraisal is left with the repair shop although the appraisal may contain certain open items.

Revised Regulation

sections 62.3(g)(11)(i) & (ii) have been deleted

Regulation Deletions:

- 31§62.3(g)(11) Personal inspection of damaged property by the appraiser is required as follows:
- 31§62.3(g)(11)(i) An appraiser may not secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in a manner other than personal inspection.
- 31§62.3(g)(11)(ii) If a damaged motor vehicle is in the custody of a repair shop, an appraiser may not take photographs of the damaged motor vehicle until after a legible copy of his appraisal is left with the repair shop although the appraisal may contain certain open items.

Current Regulation:

- 31§62.3(g)(12) The responsibility of the appraiser shall include delivery and explanation of the appraisal as follows:
- 31§62.3(g)(12)(i) The appraiser shall provide a legible copy of the appraisal to the consumer.
- 31§62.3(g)(12)(ii) At the request of an involved party or as is otherwise necessary, the appraiser shall leave a copy of the appraisal with selected repair shop. The appraiser shall discuss the appraisal with the selected repair shop owner, its authorized representative or any other parties as is reasonably necessary to insure that the actual costs of repairs are adequately covered in the appraisal.
- 31§62.3(g)(12)(iii) Upon the unsolicited request of the consumer, an appraiser shall provide the 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.

Revised Regulation:

- 31§62.3(f)(3) discuss the appraisal with *an authorized representative of the repair shop, which shop is selected by the consumer*, or any other party as is reasonably necessary to *demonstrate* that the actual costs of repairs are adequately covered in the appraisal.

Section 62.3(g)(12)(i) & (iii) has been deleted

Regulation Deletions:

- 31§62.3(g)(12) The responsibility of the appraiser shall include delivery and explanation of the appraisal as follows:
- 31§62.3(g)(12)(i) The appraiser shall provide a legible copy of the appraisal to the consumer.
- 31§62.3(g)(12)(ii) At the request of an involved party or as is otherwise necessary, the appraiser shall leave a copy of the appraisal with selected repair shop. The appraiser shall discuss the appraisal with the selected repair shop owner, its authorized representative or any other parties as is reasonably necessary to insure that the actual costs of repairs are adequately covered in the appraisal.
- 31§62.3(g)(12)(iii) Upon the unsolicited request of the consumer, an appraiser shall provide the 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.

Current Regulation:

31§62.3(g)(13) An appraiser shall promptly reinspect damaged vehicles prior to the repairs in questions: when supplementary allowances are requested by repair shops or when the amount or extent of damages is in dispute, or both.

Revised Regulation:

Section 62.3(g)(13) has been deleted

Regulation Deletions:

31§62.3(g)(13) An appraiser shall promptly reinspect damaged vehicles prior to the repairs in questions: when supplementary allowances are requested by repair shops or when the amount or extent of damages is in dispute, or both.

Current Regulation:

31§62.3(g)(14) A provision of the act or this chapter may not be construed as intended to prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if such is desired by any of the involved parties.

Revised Regulation:

Section 62.3(g)(14) has been deleted

31§62.3(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*

Regulation Deletions:

31§62.3(g)(14) A provision of the act or this chapter may not be construed as intended to prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if such is desired by any of the involved parties.

Current Regulation:

- 31§62.4. Sanctions for violation.
- 31§62.4(a) The Commissioner may deny initial issuance of, suspend, revoke or refuse to renew an appraiser's license for any cause specified in the act, or this chapter, or for any of the following reasons:
- 31§62.4(a)(1) For cause for which issuance of the license could have been refused had it been existent and been known to the Commissioner.
- 31§62.4(a)(2) If the licensee willfully violates, or fails to comply with or knowingly participates in the violation of or failure to comply with the act, or this chapter or another rule or regulation promulgated thereunder.
- 31§62.4(a)(3) If the licensee has obtained or attempted to obtain a license through willful misrepresentation or fraud, or has failed to pass an examination required under this act.
- 31§62.4(a)(4) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract; or has engaged or is about to engage in a fraudulent transaction.
- 31§62.4(a)(5) If the licensee has been convicted, by final judgment, of a felony.
- 31§62.4(a)(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.
- 31§62.4(b) Every order suspending a license shall specify the period during which suspension will be effective, which may in no event exceed 12 months.
- 31§62.4(c) The holder of a license which has been revoked or suspended shall immediately surrender the license to the Commissioner at his request.
- 31§62.4(d) The Commissioner shall not reinstate the license or relicense a licensee or former licensee whose license has been suspended, revoked or renewal refuse while the cause for the suspension, revocation or refusal of the license persists.
- 31§62.4(e) Except as otherwise provided in the act, 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.
- 31§62.4(f) The license of an individual found in violation 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 1 year, or both.

Revised Regulation:

31§62.4 *Reserved*

Section 62.4(a)(1),(2)(3),(4),(5),(6)(b),(c),(d),(e) &(f) have been deleted

Regulation Deletions:

- 31§62.4.** Sanctions for violation.
- 31§62.4(a)** The Commissioner may deny initial issuance of, suspend, revoke or refuse to renew an appraiser's license for any cause specified in the act, or this chapter, or for any of the following reasons:
- 31§62.4(a)(1)** For cause for which issuance of the license could have been refused had it been existent and been known to the Commissioner.
- 31§62.4(a)(2)** If the licensee willfully violates, or fails to comply with or knowingly participates in the violation of or failure to comply with the act, or this chapter or another rule or regulation promulgated thereunder.
- 31§62.4(a)(3)** If the licensee has obtained or attempted to obtain a license through willful misrepresentation or fraud, or has failed to pass an examination required under this act.
- 31§62.4(a)(4)** If the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract; or has engaged or is about to engage in a fraudulent transaction.
- 31§62.4(a)(5)** If the licensee has been convicted, by final judgment, of a felony.
- 31§62.4(a)(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.
- 31§62.4(b)** Every order suspending a license shall specify the period during which suspension will be effective, which may in no event exceed 12 months.
- 31§62.4(c)** The holder of a license which has been revoked or suspended shall immediately surrender the license to the Commissioner at his request.
- 31§62.4(d)** The Commissioner shall not reinstate the license or relicense a licensee or former licensee whose license has been suspended, revoked or renewal refuse while the cause for the suspension, revocation or refusal of the license persists.
- 31§62.4(e)** Except as otherwise provided in the act, 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.
- 31§62.4(f)** The license of an individual found in violation 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 1 year, or both.

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May 3, 1999

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Re: Chapter 62 of Title 31 - Motor Vehicle
Physical Damage Appraisers

Peter
Dear Mr. Salvatore:

The following are our comments on those set forth by the Independent Regulatory Review Commission in its April 8 letter.

Section 62.1 - Definitions

"Aftermarket crash part:" We agree with the IRRC that this should be merged with the definition of "non-OEM aftermarket crash part" to incorporate both recycled OEM and new non-OEM parts. The only time these terms are used is Section 62.3(b)(9) relating to disclosure and warranties of these parts, and the rules for both recycled and non-OEM parts should be the same.

"Appraisal:" I may finally understand why this term, and the Appraiser Act generally, have been so troublesome to all involved with direct repair programs, regardless of which side they take. The reality is, direct repair programs were developed after the Appraiser Act and operate outside the appraisal system. They are, on the financial side, contracts between repair shops and insurers rather than between shops and consumers, since the shop and the insurer are bound to the dollar amounts to which they have separately contracted.

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As such, repair shop programs do not necessarily involve appraisals: When a consumer uses these programs, the "monetary determination of damage" - the key responsibility of the appraiser - is no longer an issue, at least for the consumer.

Granted, many of the protections the Department has set forth in this regulation are appropriate for direct repair programs. But they are needed not because an appraisal is being done - since that does not necessarily happen in a direct repair program. Rather, they are needed because they go to the integrity of the claims process; an appraisal, if done, is a part of that process, so its integrity is important - but it is important as part of the claims process, not in isolation.

To that end, the protections in this regulation are, in many instances, appropriate not just for those who perform an appraisal, but also for all those retained or employed by the insurer who are involved in the claims process - whether through a direct repair program or otherwise.

The Department may not be able to use this regulation to impose these protections on those not performing an appraisal. But you should consider a separate regulation relating to the handling of auto claims that imposes these protections even where an appraisal has not been assigned.

For the purpose of this definition, however, our principle concern is that the definition of "appraisal" recognize that many people involved in handling an auto claim - particularly those involved through a direct repair shop program - may not be acting as appraisers.

Several language changes would help do this. First, the term "determination" should be changed to "estimate." Second, the term "assign" should be clarified to include "for a fee or other compensation." Third, the definition should be modified to apply when the assignment is "for the exclusive purpose" of preparing an estimate.

These changes will clarify that, when a shop in a direct repair program makes a determination of the cost to fix a car, it is not acting as an appraiser: It is not giving the vehicle owner an estimate for the purpose of determining the insurer's liability or shopping the cost at various shops; rather, it is agreeing to fix the car and working out with the insurer what the cost will be.

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Section 62.3 - Applicable standards for appraisal

Subsection (b) - Disclosures

We again ask that you consider the editorial comments raised in our March 8 letter. While the IRRC did not offer much on the editorial side, we believe these are clarifications that will make it easier for all involved to operate under the regulation. In addition, we offer the following comments on the matters raised by the IRRC.

(b) (2): The IRRC recommended the Department develop a definition of "excess cost." The cleaner approach may be to simply delete the adjective "excess."

(b) (3): We agree with the IRRC's recommended deletion of the sentence requiring the listing of two shops where a repair may be done at the appraiser's estimate. We are, however, concerned by its statement that "allowing an appraiser to recommend specific repair shops raises a concern about an appraiser's independence and could influence the consumer's selection of a repair shop."

If I follow the language that would remain in the regulation under the IRRC's recommendation - here and through the deletions of (g) (8) & (9) to which the IRRC did not object - we have no objection. But it is important to stress that the only limit in the Act on an appraiser or an insurer is to prohibit requiring that a repair be made at a specific shop. Expressly stating this in the appraisal is enough.

(b) (4): The IRRC's understanding that the appraisal clause mentioned in this subsection is not a mandate presumably comes from its discussions with the Department. If that is the case, we would recommend brevity here. The reality is that individual disputes here, as in any other claims matter absent an express statutory claims resolution process (e.g., those applicable to managed care under Act 68), would have to go to court.

(b) (9): As an editorial comment, everybody should remember that the use of an aftermarket part - recycled or non-OEM - does not void the warranty of the replaced part, as that part is no more. Further, consistent with the IRRC's

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recommendations in the related definition sections, this section should cover both recycled and non-OBM aftermarket crash parts.

While not mentioned by the IRRC, we believe it is important to clarify that the warranty on any aftermarket part may come from the insurer as well as the aftermarket crash part manufacturer or supplier, for the reasons noted in our March 8 letter.

A final comment on this subsection: As noted in our comments on the "appraisal" definition, these are the protections that the Department may want to consider imposing on all those involved with an auto claim, not just on appraisers if and when an appraisal is assigned.

Subsection (e) - Total loss evaluations

We recommend that the term "satisfactorily or reasonably" repaired be deleted, not defined, as recommended by the IRRC. I am not sure what type of definition would work - and inserting the language "repaired to the car's pre-damaged condition" does.

As an editorial observation, we renew our recommendation that (e)(7) reinstate that a report may come from the insurer or the appraiser, not just the appraiser.

Subsection (f) - Conflicts of interests

We recommend deleting the phrase "direct or indirect" rather than trying to define each term, as recommended by the IRRC. The statutory sections cited by the IRRC should be enough.

Subsection (g) - Reappraisals

We agree with the IRRC's concept, that reappraisals are needed. However, this should be part of an ongoing process, not a new appraisal. The IRRC seemed to recognize this in some of its earlier recommendations - namely, those in subsection (b) that referred to estimates and information "as known at the time given."

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We also urge that the Department consider the other editorial suggestions in our March 8 letter, even if not mentioned by the IRRC. I think they will add clarity to the regulation, and none of them constitute substantive changes to what you have proposed.

Again, we appreciate the opportunity to work with the Department and other interested parties on getting a regulation that is consistent with the Appraiser Act it is supposed to implement.

I also want to reiterate our interest in working with the Department to establish protections similar to those in your proposed Section 62.3(b) to cover the conduct of all those involved in handling an auto claim, not just those performing an appraisal. I suspect that, going forward, that is the protection that consumers will need.

Sincerely,



Samuel R. Marshall

c: Helfried G. LeBlanc
Deputy Insurance Commissioner
Office of Consumers Services and Enforcement

Fiona E. Wilmarth, Regulatory Analyst
Independent Regulatory Review Commission

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Date May 3, 1999

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REMARKS:

[Empty box for remarks]