

# RULES AND REGULATIONS

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

[31 PA. CODE CH. 62]

#### Motor Vehicle Physical Damage Appraisers

The Insurance Department (Department) amends Chapter 62 (relating to motor vehicle physical damage appraisers), to read as set forth in Annex A. The Department is publishing the amendments as a final-form rulemaking.

#### *Statutory Authority*

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

#### *Comments and Response*

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

#### *Affected Parties*

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

#### *Fiscal Impact*

#### *State Government*

There will be no increase in cost to the Department due to the amendments.

#### *General Public*

There will be no fiscal impact to the public.

#### *Political Subdivisions*

The rulemaking will not impose additional costs on political subdivisions.

#### *Private Sector*

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

#### *Paperwork*

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

#### *Effectiveness/Sunset Date*

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

#### *Contact Person*

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

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

#### *Regulatory Review*

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

In preparing this final-form rulemaking, the Department considered all comments received from IRRC, the Committees and the public. This final-form rulemaking was deemed approved by the Senate and House Committees on September 13, 1999. In accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), IRRC met on September 23, 1999, and approved the final-form rulemaking in accordance with section 5.1(e) of the Regulatory Review Act.

#### *Findings*

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

#### *Order*

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

(a) The regulations of the Department, 31 Pa. Code Chapter 62, are amended by amending §§ 62.1—62.3, and by deleting § 62.4 to read as set forth in Annex A.

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

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

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

M. DIANE KOKEN,  
Insurance Commissioner

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5357 (October 9, 1999).)

**Fiscal Note:** Fiscal Note 11-149 remains valid for the final adoption of the subject regulations.

### Annex A

## TITLE 31. INSURANCE

### PART II. AUTOMOBILE INSURANCE

#### CHAPTER 62. MOTOR VEHICLE PHYSICAL DAMAGE APPRAISERS

##### § 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 nonoriginal equipment manufacturer (non-OEM) replacement part, either new or used, for any of the nonmechanical parts that generally constitute the exterior of the motor vehicle, including inner and outer panels.

*Appraisal*—

(i) A written monetary estimate of physical damage sustained to a motor vehicle when the making of the estimate is assigned in order to allow the return of the vehicle to its predamaged condition.

(ii) The term includes estimates made by the insurer, its employes, its agents or related entities or individuals or entities assigned to make the estimate.

*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 sustained damage or the owner's representative.

*Dealer*—An individual 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*—A motorized device, including a trailer attached thereto, in, upon or by which a person or property is or may be transported or drawn upon a public highway.

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

##### § 62.2. Experience and fitness requirements for licensing.

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

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

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

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

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

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

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

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

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

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

(i) Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of an appraiser include: unlawful practices, embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.

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

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

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

##### § 62.3. Applicable standards for appraisal.

(a) The appraisal:

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

(2) May not use 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.

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

- (1) The dollar amount of the appraisal.
- (2) A statement that costs above the appraised amount may be the responsibility of the vehicle owner.
- (3) A statement that there is no requirement to use any specified repair shop.
- (4) A statement informing the consumer that information regarding repair facilities which will be able to repair the vehicle for the appraised amount is available from the insurer. If the consumer receives information from the insurer, the information shall include disclosure that there is no requirement to use any specified repair shop.
- (5) A description of repairs, known at the time of appraisal, necessary to return the vehicle to its predamaged condition, including labor involved, cost of all parts, necessary painting or refinishing and all sublet work to be done.
- (6) Incidental charges, known at the time of appraisal, including towing, protective care, custody, storage, depreciation, battery and tire replacement.
- (7) Applicable sales tax.
- (8) The date, if any, after which an insurer will not be responsible for any related towing services or storage charges, known at the time of appraisal, and after which the charges will be the responsibility of the consumer.
- (9) The location where the listed parts are available in a condition equivalent to, or better than, the condition of the replaced parts prior to the accident.
- (10) If the appraisal includes aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts, and that if the use of an aftermarket crash part voids the existing warranty on the part being replaced or any other part, the aftermarket crash part shall have a warranty equal to or better than the remainder of the existing warranty.
- (11) Identification of all aftermarket crash parts and a definition of aftermarket crash parts consistent with § 62.1 (relating to definitions), if these parts are used.

(c) An appraisal for the repair of the motor vehicle shall be made in the amount necessary to return the motor vehicle to its predamaged condition. If the consumer wishes to repair the motor vehicle to a condition better than the predamaged condition, the appraisal need only specify the cost of repairing the vehicle to its predamaged condition.

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

- (1) If the salvage value of the vehicle being appraised is known or could reasonably be determined, the appraiser shall disclose to the consumer in writing:
  - (i) The salvage value.
  - (ii) The provisions of 75 Pa.C.S. § 1117(a) (relating to vehicle destroyed, dismantled, salvaged or recycled), requiring the filing of an application for certificate of salvage with the Department of Transportation. See 75 P. S. § 1117.
  - (iii) Additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.

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

- (i) The name and address of each salvage bidder.
- (ii) The amount.
- (iii) The expiration date of each salvage bid known.

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

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

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

(i) *Guide source method.* The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as provided by guide sources approved by the Commissioner. A listing of approved guide sources will be published once a year in the *Pennsylvania Bulletin*. The appraised value shall be adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. No other deductions may be taken except for salvage and then only if the owner elects to retain the vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) There are no provisions of the act or this chapter which shall be construed as intended in any way to prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if desired by any of the involved parties.

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

**§ 62.4. (Reserved).**

[Pa.B. Doc. No. 99-1793. Filed for public inspection October 22, 1999, 9:00 a.m.]