

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 17 (18 **Del.C.** §311 & Ch. 17)
18 **DE Admin. Code** 602

FINAL

ORDER

Docket No. 2803

602 Motor Vehicle Physical Damage Appraisers

Proposed Amended Regulation 602 relating to Motor Vehicle Physical Damage Appraisers [Formerly Regulation 8] was initially published in the Delaware *Register of Regulations* on January 1, 2016, and re-published on March 1, 2016. The initial comment period remained open until February 1, 2016, and the second comment period remained opened until March 31, 2016. There was no public hearing on proposed amended Regulation 602. Public notices of the proposed amended Regulation 602 were published in the *Register of Regulations* in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed amended Regulation 602 from:

1. Deana Lykins, Regional Director and Legislative Counsel – CSAA Insurance Group, a AAA Insurer
2. Eric M. Goldberg, Vice President – American Insurance Association (provided comments for both public comment periods);
3. Diane Klund, Director of Regulatory Affairs – AudaExplore (provided comments for both public comment periods);
4. L. Noel Patterson, Regional Counsel – Allstate Insurance Company;
5. Oyango A. Snell, State Government Relations Counsel (DE, GA, MD, NC, SC) – Property Casualty Insurers Association of America;
6. Lars B. Kristiansen, Senior Government Relations Director – Nationwide Insurance;
7. Rebecca Kidner, Esquire – Property Casualty Insurers Association of America;
8. Jordan Hendler, Executive Director – Washington Metropolitan Auto Body Association;
9. Catherine A. Rankin, Counsel – State Farm Insurance Companies; and
10. Aaron Schulenburg, Executive Director – Society of Collision Repair Specialists.

Following the initial publication on January 1, 2016, the Department modified Section 4.1 in response to certain of the comments, and re-published the proposed regulation on March 1, 2016, as modified. The Department has received and considered additional comments, favorable and otherwise, that were submitted regarding the proposed regulation as modified. The Department has determined that no further modifications will be made to the proposed regulation.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §311 and Ch. 17 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 602 best serve the interests of the public and of insurers and comply with Delaware law, and are not likely to impose additional costs or burdens upon individuals and/or small businesses.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §311 and Ch. 17; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 602 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

TEXT AND CITATION

The text of proposed amended Regulation 602 last appeared in the *Register of Regulations* Vol. 19, Issue 9, pages 788-866.

602 Motor Vehicle Physical Damage Appraisers

Statement of Purpose

18 Del.C. Ch. 17 has been amended to include motor vehicle physical damage appraisers under the license requirements therein. The following regulation is required to set standards of conduct for appraisers and to implement the provisions of Chapter 17 and establish through regulations guideline procedures for the manner in which motor vehicle physical damage appraisers conduct their business.

It is not contemplated that this regulation shall apply where no appraisal has been assigned. Recognition is given to the fact that many minor damage claims do not require a formal appraisal and to require such would be an undue burden upon the parties involved.

1.0 Definitions.

4.1 As used in 18 Del.C. Ch. 17:

"Appraisal" is not considered to include an estimate of repair to be performed by the individual or entity making such estimate.

"Appraiser" means a motor vehicle physical damage appraiser licensed under the provisions of 18 Del.C. Ch.17. This shall include all persons who in this State practice the appraisal of motor vehicle physical damage.

~~"Appraiser" is not considered to include an estimate of repair to be performed by the individual or entity making such estimate;~~

"Motor vehicle" means any "motor vehicle" as defined in 21 Del.C. §101.

2.0 Display of Appraiser License.

2.1 Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Insurance 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 Insurance Department.

3.0 Copies of Appraisal—Specification of New Parts.

3.1 The appraiser shall exchange a legible copy of his appraisal with that of the repair shop selected to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replaced or repaired. Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

4.0 ~~Personal Inspection Required. Manner of Inspection.~~

4.1 ~~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 a personal inspection. An appraiser may prepare an appraisal or a repair estimate on a motor vehicle that has been damaged as a result of a covered loss either from the appraiser's personal inspection of the vehicle or from photographs, videos, or electronically transmitted digital imagery of the motor vehicle; provided, however, that no insurer may require an owner of a motor vehicle to submit photographs, videos, or electronically transmitted digital imagery as a condition of an appraisal. If the owner of a motor vehicle is not satisfied with an appraisal based upon photographs, videos, or electronically transmitted digital imagery of the motor vehicle, the owner of the motor vehicle may require an insurer to obtain an appraisal based on a personal inspection.~~

5.0 Specified Repair Shop Requirement.

5.1 No appraiser shall require that repairs be made in a specified repair shop.

6.0 Supplementary Allowances.

- ~~6.1~~ Every appraiser shall promptly reinspect damaged vehicles prior to the repairs in question when supplementary allowances are requested by repair shops and the amount or extent of damages is in dispute.

7.0 Conduct of Appraisers.

- 7.1 Every appraiser shall:
- 7.1.1 Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings;
 - 7.1.2 approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals;
 - 7.1.3 disregard any efforts on the part of others to influence his judgment in the interest of the parties involved;
 - 7.1.4 prepare an independent appraisal of damage;
 - 7.1.5 inspect a vehicle within six working days of assignment to the appraiser unless intervening circumstances (i.e., catastrophe, death, failure of the parties to cooperate) render such inspection impossible.

8.0 Gratuities or Other Consideration.

- 8.1 No appraiser shall:
- 8.1.1 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;
 - 8.1.2 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.

9.0 Effective Date.

This proposed amended regulation shall become effective 10 days after being published as a final regulation.

19 DE Reg. 1020 (05/01/16) (Final)