Performance Standards
For the
Handling and Payment of Claims
By
Servicing Carriers

Commonwealth Automobile Reinsurers
100 Summer Street
21st Floor
Boston, MA 02110

Mandated by
Chapter 273, Acts of 1988
Automobile Insurance Reform Legislation

Revised:
December 2000

Introduction

Performance Standards for the Handling and Payment
Of Claims By Servicing Carriers

Introduction

Automobile Insurance Reform Legislation, Chapter 273 of the Acts of 1988,. Sections 41 and 44, require Commonwealth Automobile Reinsurers (CAR) to establish Performance Standards for Servicing Carriers designed to contain costs, ensure prompt customer service and payment of legitimate claims, and resist inflated, fraudulent, and unwarranted claims. Section 41 further requires that these Performance Standards be reviewed two years after such Standards are approved.

The Performance Standards, which CAR has developed, require Servicing Carriers to establish and maintain plans and programs to comply with the Standards. In some situations, time frames have been established to ensure prompt customer service.

Measurements of performance and compliance with the Standards are conducted through periodic surveys of claims, enhanced by relevant Statistical Plan data and procedures established by CAR. In addition to Statistical Plan data, Servicing Carriers are required to report savings brought about by SIU activities for physical damage, bodily injury, and personal injury protection claims.

The following Appendices are attached to assist Servicing Carriers to implement the Performance Standards:

Appendix A – Special Investigative Unit Standards

These SIU Investigative Standards were previously developed by CAR to help carriers resist payment of fraudulent claims, deter fraud, control costs, and ultimately help control insurance rates.

Appendix B – Regulation 211 CMR 123.00
Direct Payment of Motor Vehicle Collision and Comprehensive Coverage Claims and Referral Repair Shop Programs

Appendix C – Industry Direct Payment Plan for the Settlement of Insured Auto Damage Repairs

Appendix D – Decision and Order on the Application for Approval of the Massachusetts Automobile Rating and Accident Prevention Bureau Direct Payment Plan

Appendix E – Regulation 211 CMR 93.00
Cost and Expense Containment Standards for Motor Vehicle Insurers

The Performance Standards have also been designed to assist Servicing Carriers to respond to Regulation 211 CMR 93.00, which was promulgated by the Commissioner of Insurance pursuant to passage of the cost containment law. All Servicing Carriers should be familiar with the regulation, which addresses the areas of Auto Body Payments, Fraud, Glass, Voluntary/Ceded Claim Handling, and Expenses, which are the focus of these Standards.

Appendix F – Regulation 212 CMR 2.00
The Appraisal and Repair of Damaged Motor Vehicles

Regulation 212 CMR 2.00 was promulgated to promote public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles. This regulation was revised effective February 23, 1996 and is intended to be read in conjunction with 211 CMR 133.00, which follows in Appendix G.

Appendix G – Regulation 211 CMR 133.00
Standards for the Repair of Damaged Motor Vehicles

Regulation 211 CMR 133.00 was promulgated on February 23, 1996 to promote the public welfare and safety by establishing fair and uniform standards for the repair of damaged motor vehicles when an insurer pays for the cost of repairs. It is intended to be read in conjunction with 212 CMR 2.00 in Appendix F.

Appendix H – Regulation 211 CMR 94.00
Mandatory Pre-Insurance Inspection of Private Passenger Motor Vehicles

Appendix I – Salvage Title Law, Chapter 90D, Section 20 (a..e).

Appendix J - M.G.L. Chapter 175:Section 24D
Insurance Claim Payment Intercept Program

Appendix K - CAR Claim Department File Review Process

Appendix L - SIU File Review Process

Appendix M - Questionnaire

The Performance Standards may be revised by CAR at any time.

If you have any questions, please contact staff at CAR to discuss them.

Performance Standards

Performance Standards for the Handling and Payment
Of Claims by Servicing Carriers

I. Auto Body Payments

A. Service Times

1. Servicing Carriers (hereafter referred to as "carriers") must establish programs and procedures to ensure prompt settlements of warranted auto physical damage claims.

2. Carriers must establish procedures to permit prompt inspection of damage at drive-in locations or in the field and to make prompt claim payments of auto physical damage claims.

3. The Standard for assignment to an appraiser from the date the report is received or date of notice of recovery of theft is 2 business days.

4. The Standard for transmittal of the completed appraisal from the date of the appraisal assignment is 5 business days in accordance with 212 CMR 2:04 Section 1e.

5. The Standard for payment of a first party auto physical damage claim under any Direct Payment Plan is 5 business days from completion of the appraisal on all repairable vehicles, subject to all other provisions of the Plan.

6. The Standard for payment of a first party auto physical damage claim that is not under any Direct Payment Plan is 7 business days following receipt of a Completed Work Claim Form.

B. Direct Payment Plan

1. Carriers must have a Direct Payment Plan unless their average Massachusetts private passenger market share is less than 1 percent of the total Massachusetts private passenger market.

   a. The Automobile Insurers Bureau of Massachusetts (hereafter referred to as "AIB") Industry Plan can be adopted (see Appendix C, attached).

   b. A modification of the AIB Industry Plan can be filed for approval by the Commissioner.

   c. Carriers can develop and submit for approval their own plan.

2. Any Direct Payment Plan developed by a carrier must include a referral shop program.

3. If a Direct Payment is initially rejected and the vehicle is later not repaired, the carrier will pay only the decrease in value caused by the damage.

C. Parts Cost

1. Carriers must have programs and procedures to demonstrate their efforts to obtain discounts and pay less than full retail price for parts.

2. Carriers must consider the applicability of aftermarket, rebuilt, and like kind and quality (hereafter referred to as "LKQ") parts on all appropriate appraisals.

3. Carriers must allow for, and insist on, the use of aftermarket, rebuilt, and LKQ parts in lieu of new or cost of repair, whenever appropriate.

D. Labor Rates and Times

1. Carriers must have a plan designed to control labor costs and to seek the most competitive labor rates and times.

2. Carriers must have a plan to demonstrate their efforts to resist labor rate increases or to lower rates whenever possible.

3. Carriers must have a plan to determine whether labor repair and replacement times are reasonable and consistent with industry-recognized sources.

E. Total Loss Payments

1. Carriers shall not declare any vehicle a total loss when a prudent appraisal evaluation would have shown that the vehicle could have been repaired at an overall cost less than the actual cash value minus the salvage value.

2. The actual cash value of any vehicle must be determined based on the following requirements of Regulation 211 CMR 133.05 Determination of Value (see Appendix G, attached).

    1. Actual Cash Value: Whenever the appraised cost of repair plus the probable salvage value may be reasonably expected to exceed the actual cash value of the vehicle, the insurer shall determine the vehicle's actual cash value. This determination shall be based on a consideration of all the following factors.

    a. the retail book value for a motor vehicle of like kind and quality, but for the damage incurred.

    b. the price paid for the vehicle plus the value of prior improvements to the motor vehicle at the time of accident, less appropriate depreciation;

    c. the decrease in value of the motor vehicle resulting from prior unrelated damage which is detected by the appraiser; and

d. the actual cost of purchase of an available motor vehicle of like kind and quality but for the damage sustained.

3. Existing preinsurance inspection reports must be reviewed for options, mileage, prior condition, prior damages, and placed in the claim file on all total losses.

4. Carriers must be in compliance with the Salvage Title Law, Chapter 90D, section 20 (a..e).

F. Towing and Storage Costs

1. Carriers must have a plan to demonstrate that their staffs have knowledge of and enforce all regulations applicable to towing and storage rates and conditions.

2. Carriers must have a plan to ensure that non-regulated towing and storage charges are reasonable, or to resist and reduce said charges if they are unreasonable.

3. Carriers must have a plan to control storage costs including the prompt disposition of salvage.

G. Appraisal of Damage and Reinspections

1. Carriers must have basic guidelines for appraisers, which include the following areas:

a. Compliance with Regulation 212 CMR 2.00 - The Appraisal and Repair of Damage Motor Vehicles

b. Scoping and completing an appraisal

c. Use of aftermarket, rebuilt, LKQ parts

d. Open items and supplements

e. Refinishing

f. Depreciation and betterment

g. Unrelated damage

h. Structural damage

i. ACV estimating

j. Screening for fraudulent claims

2. Carriers must have an ongoing training plan and program for continuing education of staff appraisers, including fraud awareness.

3. Carriers must have a plan for periodic evaluation of the quality and accuracy of independent appraisers used by carriers.

4. Reinspections must be completed on 75 percent of all repaired vehicles whose damage exceeded $4,000, whether paid under a Direct Payment Plan or not.

5. Reinspections must be completed on 25 percent of all repaired vehicles whose damage was less than $4,000, whether paid under a Direct Payment Plan or not.

H. Carriers shall report any repair shop which engages in any of the following practices identified in the Automobile Insurance Reform Legislation, Section 32 (8), directly to the Division of Standards, Office of Consumer Affairs and Business Regulation, One Ashburton Place, Boston, MA 02108:

1. Advertise for motor vehicle repair in the Commonwealth without including either the number of its certificate of registration issued by the director or the words "unregistered repair shop", as part of the advertisement.

2. Fails to charge all or any part of the applicable deductible to be paid by the insured.

3. Gives any rebate, gift, prize, premium, bonus, fee, or any other monetary or tangible thing to the insured or any other person not in the employ of the repair shop as an inducement to have the repair made at the repair shop. A discount on parts, glass, labor rate or other item or customer service in connection with the repair of motor vehicles offered by a repair shop to an insurer shall not constitute a "payment, gift, or any other thing of value" for purposes of Regulation 211 CMR 123.06 (8) (a).

4. Charges or offers to charge a higher rate or discount for an insured repair than for an uninsured repair. Discounts for insured repairs may be offered through the Direct Payment Plan approved by the Commissioner.

5. Makes any false or fraudulent statement in connection with any repair or attempt to collect for a repair.

6. Without lawful authority, prevents the owner of a motor vehicle from recovering the same.

I. Carriers must establish procedures to comply with the various claims requirements of the mandatory preinsurance inspection program established by Regulation 211 CMR 94.00 (see Appendix H, attached).

II. Standards for Fraudulent Claims Definition Established Under Regulation 211 CMR 93.00 – (see Appendix E, attached)

A. Claims for nonexistent incidents, damages, or injuries.

B. Claims for substituted or nonexistent vehicles.

C. Claims for exaggerated damage or injury, such as inflated doctor's bills, repair shop bills, or wage statements.

D. Duplicate claims for the same incident, damage, or injury.

E. Claims for incidents which the claimant has arranged, such as theft, arson, or vandalism, in an effort to receive an insurance payment.

F. Any circumstances resulting from a claim submitted with the intent of receiving a larger payment from the insurer than the amount, if any, to which the claimant is entitled under the policy.

III. Fraud – Auto Physical Damage and Property Damage Claims

A. Normal Claim Handling

1. Initial screening of reports of accidents and losses.

a. All new notices should be screened by a person with sufficient experience and training to be able to identify warning signs requiring special inquiry or investigation or by an appropriate expert software system designed for fraud screening, and thereafter assigned by a person with sufficient experience and training.

b. Initial screening should determine that accident circumstances, facts, and information reported are consistent and sufficient to establish the occurrence.

c. Initial screening should identify losses involving theft or arson, which always require detailed investigation.

d. The fraud indicators of Commonwealth Automobile Reinsurers Special Investigative Unit (hereafter referred to as "CAR SIU") Standards and Fraud Profile (Appendix A, attached) should be considered to determine possible warning signs of fraud.

e. If the initial screening identifies discrepancies or inconsistencies, a determination of the type and extent must be made to evaluate extent and nature of further investigation necessary.

2. Initial Investigation

a. Contact involved parties and secure sufficient documentation of facts involving accident circumstances or loss, to verify occurrence and to establish degree of fault.

b. Secure documentation of ownership and existence of said vehicle in appropriate cases, especially total losses.

c. Secure documentation of the damages or value of the vehicle.

d. Review and evaluate discrepancies and fraud indicators to determine the scope of further investigation.

3. Appraisal Program

a. Appraisers must recognize and report discrepancies which may indicate need for further investigation.

b. Appraisals should be reviewed in conjunction with all other information developed to determine if there are any indicators of fraud.

4. Prompt Evaluation and Settlement

a. After initial investigation is complete, a decision must be made to promptly process for settlement or refer case for special investigation.

b. In the normal course of claim handling a file should be referred for special investigation when discrepancies exist that are unresolved.

5. Prior to making any payment equal to or in excess of $500 to a third-party claimant the Company must comply with the requirements of the Insurance Claim Payment Intercept Program, M.G.L. Chapter 175, Section 24D. NOTE: Failure to comply with M.G.L. Chapter 175, Section 24D will subject Company to penalties proscribed by the Department of Revenue. These penalties will be in lieu of those penalties imposed for non compliance with the Performance Standards.

B. Fraud Handling

1. Screening process for suspected fraudulent claims

a. When discrepancy is of such weight as to raise substantial questions of fraud (example: all keys accounted for and the vehicle shows no ignition damage), the case should be referred for special investigation.

b. Whenever several discrepancies exist and/or a pattern appears that matches prior suspicious cases, the case should be referred for special investigation.

c. Unresolved discrepancies, such as VIN problems, prior total loss or salvaged vehicle, title inconsistencies, or other verifiable documents should result in the case being referred for special investigation.

d. Whenever a combination of minor discrepancies occur which cannot be resolved, the case should be referred for special investigation.

2. Appraisal program

a. When damage to the vehicle is identified as inconsistent with accident circumstances, the case should be considered for special investigation.

b. Clear photographs must accompany explanation of all damage inconsistencies.

3. Special Investigation

a. Claims identified as suspicious or suspected fraudulent should be referred for more detailed special investigation.

b. The CAR SIU Standards for investigation of suspicious claims (Appendix A, attached) must be consulted and considered as part of the special investigation process.

c. The savings recorded on physical damage claims should be documented and reported to CAR on a quarterly basis.

4. Evaluation and Settlement

a. After special investigation is complete, a decision must be made to pay the claim or resist and consider referral to IFB, NICB and/or the appropriate law enforcement agency for prosecution.

b. The file must clearly document the basis for the decision and result.

C. Fraud Training

1. Carriers must have a plan that provides for ongoing training of fraud awareness and how to identify suspicious claims.

2. Carriers must have a plan for training of special investigation and handling of suspicious and suspected fraudulent claims

IV. Fraud - Bodily Injury Claims

A. *Normal Claim Handling*

1. Initial screening of reports of accident and losses

   a. All new notices should be screened by a person with sufficient experience and training to be able to identify warning signs requiring special inquiry or investigation or by an appropriate expert software system designed for fraud screening, and thereafter assigned by a person with sufficient experience and training.

   b. Initial screening should determine that accident circumstances, facts, and information reported are consistent and sufficient to establish the occurrence.

   c. Initial screening should include checking policy information and accident history, and reporting to Central Index Bureau (hereafter referred to as "CIB") to evaluate for possible warning signs.

   d. The fraud indicators of the CAR Fraud Profile should also be considered for possible warning signs.

   e. If the initial screening identifies discrepancies or inconsistencies, a determination of the type and extent of discrepancies or inconsistencies must be made to evaluate extent of further investigation necessary.

2. Initial Investigation

   a. Contact involved parties and secure sufficient documentation of facts involving accident circumstances to verify occurrence and to establish degree of fault.

   b. Secure documentation to verify that all alleged injured parties were actually involved in the accident.

   c. Review and evaluate discrepancies and fraud indicators to determine scope of further investigation.

3. Follow-Up and Continuing Investigation

   a. Verify and evaluate type and extent of injury and substantiate by available reports and/or independent examinations.

   b. Confirm and document that treatment and expenses are reasonable, necessary, and related to the accident.

   c. Review and evaluate discrepancies and fraud indicators to determine the scope of further investigation.

4. Settlement Negotiations or Denial

a. Carriers should have a settlement evaluation plan to obtain reasonable negotiated settlements of warranted claims.

b. Evaluate and pursue warranted settlements when the injury and expense end result can be established.

c. Evaluate mitigating factors that may reduce settlement value, such as comparative negligence or joint tort feasor situations.

d. Unwarranted or fraudulent claims should be resisted and denied.

e. In the normal course of claim handling, a file should be referred for special investigation when discrepancies exist that are unresolved.

5. Damage Disputed Cases – Cases in Suit

a. Carriers should have a litigation management program designed to bring cases to the earliest conclusion at a reasonable value.

b. Carriers should have an Alternative Dispute Resolution Program.

6. Prior to making any payment equal to or in excess of $500 to a third-party claimant the Company must comply with the requirements of the Insurance Claim Payment Intercept Program, M.G.L. Chapter 175, Section 24D. NOTE: Failure to comply with M.G.L. Chapter 175, Section 24D will subject Company to penalties proscribed by the Department of Revenue. These penalties will be in lieu of those penalties imposed for non compliance with the Performance Standards.

B. Fraud Handling

1. Screening Process for Suspected Fraudulent Claims

a. If in the course of the screening process or initial investigation discrepancies develop of a sufficiently serious nature or there are indications of potential fraud, such as:

Accident of unusual circumstances
Severity of accident
Unusual number of injured passengers
Prior index history
Recognition of a pattern related to prior cases of fraud
See Appendix A for other indicators

The case should be referred for special investigation.

2. Special Investigation

a. Claims identified as suspicious or suspected fraudulent should be referred for more detailed special investigation.

b. The CAR SIU Standards for investigation of suspicious claims must be consulted and considered as part of the special investigation process.

c. Carriers should have a plan designed to deal with claims involving exaggerated damages or injuries, such as inflated doctors' bills or wage statements, and such plan should provide a strategy for concluding those cases at a reasonable amount, as well as reporting same to the Detail Claim Database (DCD) at AIB. Savings realized from this process should be documented and reported by AIB on a quarterly basis.

3. Evaluation and Settlement

a. After special investigation is complete, a decision must be made to pay the claim or resist and consider referral to IFB, NICB or appropriate law enforcement agency for prosecution.

b. The file should clearly document the basis for the decision and result.

C. Fraud Training

1. Carriers must have a plan that provides for ongoing training of fraud awareness and how to identify suspicious claims.

2. Carriers must have a plan for training of special investigation and handling of suspicious and suspected fraudulent claims.

V. No-Fault Personal Injury Protection Benefits Handling

A. Screening Reports and Initial Investigation

1. All new notices should be screened by a person with sufficient experience and training to be able to identify warning signs requiring special inquiry or investigation or by an appropriate expert software system designed for fraud screening, and thereafter assigned by a person with sufficient experience and training.

2. Initial investigation should confirm that:

a. Date of loss within policy period and all policy coverage is in order.

b. Injured persons are eligible for no-fault benefits.

c. Injuries arise from use of motor vehicle.

d. Massachusetts's statute applies.

e. No exclusions apply, such as drunk driving, stolen car, workers compensation.

B. Contacts

1. Injured persons or their legal representative making a claim should be contacted within 2 business days of receipt of notice of injury for purposes of investigation and verification.

2. The named insured, if not an injured party, should be contacted within 3 business days of receipt of notice of injury for purposes of investigation and verification.

3. The insured operator, if not one of the above, should be contacted within 3 business days of receipt of notice of injury purposes of investigation and verification.

4. Necessary forms should be mailed within 5 business days after notice of injury.

C. Medical Management

1. Carriers should establish a plan to maintain a continuing awareness of the disability claimed, the medical treatment, and whether the treatment and medical expenses are reasonable, necessary, and related to the auto accident.

2. Any plan must include consideration for arranging timely independent medical examinations, and medical bill reviews, use of preferred provider organizations, managed care programs, and/or expert medical systems.

D. Subrogation

1. The initial contact and investigation should determine other parties involved in the accident, the probable extent of liability on each party, the carrier against whom subrogation will be directed, if applicable, and a preliminary notice of subrogation should be sent to the other carrier.

2. In cases of injury serious enough to exceed the tort threshold, the no-fault carrier should alert the tort carrier immediately.

E. Claim Payment

1. There should be no payment until the claimed loss has been verified and:

   a. Deductible applied.

   b. Benefits coordinated in conjunction with existing health carrier and wage continuation plans.

   c. Medical bills verified prior to payment and reviewed for reasonableness, medical necessity, and relationship to the accident.

d. Wage rate/working hours verified with employer, using wage/salary verification forms.

e. Lost wages confirmed by employer's statement as to time missed and by physician's statement verifying disability for that period of time.

f. Investigations promptly conducted, and upon agreement to pay, checks should be issued within 10 business days.

2. In the normal course of claim handling, a file should be referred for special investigation when discrepancies exist that are unresolved (see list of indicators in Appendix A).

VI. Glass

A. Carriers must establish a program to effect prompt repair or replacement of damaged or broken glass covered under automobile physical damage coverage, at a fair and competitive cost.

B. Carriers must have a plan to screen all glass bills and obtain reasonable discounts on market price lists for all domestic and foreign windshields and all side and back glass.

C. Carriers must have a plan to pay labor costs which are reasonable and competitive for glass repair or replacement.

D. Carriers must consider a plan to waive any glass deductible if the insured elects to repair the glass damage in lieu of replacement.

E. Carriers must have a plan to address fraud, including inspection or reinspection of a representative sampling of all glass losses. In no event shall the selection be based on the age or sex of the policyholder, customary operators of vehicle, or the principal place of garaging of the vehicle.

F. Carriers shall report any repair shop which engages in any of the following practices identified in the Automobile Insurance Reform Legislation, Section 32(8), directly to the Division of Standards, Office of Consumer Affairs and Business Regulation, One Ashburton Place, Boston, MA 02108:

1. Advertise for motor vehicle repair in the Commonwealth without including either the number of its certificate of registration issued by the director or the words "unregistered repair shop", as part of the advertisement.

2. Fails to charge all or any part of the applicable deductible to be paid by the insured.

3. Gives any rebate, gift, prize, premium, bonus, fee, or any other monetary or tangible thing to the insured or any other person not in the employ of the repair shop as an inducement to have the repair made at the repair shop. A discount

on parts, glass, labor rate, or other item or customer service in connection with the repair of motor vehicles offered by a repair shop to an insurer shall not constitute a "payment, gift, or any other thing of value" for purposes of Regulation 211 CMR 123.06 (8)(a).

4. Charges or offers to charge higher rate or discount for an insured repair than for an uninsured repair. Discounts for insured repairs may be offered through the Direct Payment Plan approved by the Commissioner.

5. Makes any false or fraudulent statement in connection with any repair or attempt to collect for a repair.

6. Without lawful authority, prevents the owner of a motor vehicle from recovering the same.

VII. Voluntary/Ceded Claim Handling Differential

A. There will be no differences in claims handling between policies insured voluntarily and those ceded to CAR.

B. Other than required statistical coding, there will be no evidence in claim file handling as to voluntary vs. ceded business.

VIII. Expenses

A. Carriers must establish a program with guidelines that control claim adjustment expenses.

B. Carriers must establish an Alternative Dispute Resolution Program, with guidelines to control legal defense costs.

C. Carriers must establish a program requiring adjusters to review vendor bills for accuracy, and deducting for unauthorized services.

D. Carriers must report allocated expenses properly as defined in the Statistical Plan and Manual of Administrative Procedures. Extracontractual expenses and unallocated expenses should not be reported as allocated expenses.

Measurements and Penalties
Introduction

Measurements & Penalties

Introduction

Section 44 of Chapter 273 requires that CAR purpose rules to govern the application of penalties, among other things, the failure to meet the PERFORMANCE STANDARDS FOR THE HANDLING AND PAYMENT OF CLAIMS BY SERVICING CARRIERS, as approved by the Commissioner of Insurance on July 10, 1989.

CAR monitors and evaluates the performance of a Servicing Carrier by considering three sources of information:

a. responses to a questionnaire,
b. a review of claim files, and
c. a review of statistical data.

If it is determined that a Servicing Carrier is not in compliance with the Performance Standards, the CAR Claim Department will then determine the degree to which the non-compliance exists in the following areas addressed by the Standards. Specifically, the areas are:

a. AUTO BODY PAYMENTS,
b. FRAUD - AUTO PHYSICAL DAMAGE AND PROPERTY DAMAGE,
c. FRAUD - BODILY INJURY CLAIMS,
d. NO-FAULT PERSONAL INJURY PROTECTION BENEFITS,
e. GLASS
f. VOLUNTARY/CEDED CLAIM HANDLING DIFFERENTIAL, and
g. EXPENSES.

Minor non-compliance indicates that a carrier is not in compliance with the Standards in one or more areas but the quality of claim handling is unaffected and no overpayments results from this situation.

Major non-compliance indicates that a carrier is not in compliance with the Standards in one or more areas and claim handling is affected and overpayments may be occurring as a result. The carrier will be notified of the extent and areas in which non-compliance exists and will be warned that the subsequent review of the carrier must reflect compliance in all of the cited areas to avoid penalty.

Should a carrier disagree with the findings of the CAR Claim Department, it will notify the Vice President of Claims and a meeting will be held to discuss the findings. If agreement cannot be reached, the carrier may appeal the decision to the Claims Advisory Committee.

If in the review subsequent to being warned of major non-compliance a carrier remains in non-compliance but has improved its claim handling practices significantly, a Type I penalty will be assessed for the area in which this non-compliance exists.

If in the review subsequent to being warned of major non-compliance a carrier fails to improve its claim handling practices, a Type II penalty will be assessed for the area in which this non-compliance exists.

A penalty will be assessed in each area of the Standards in which major non-compliance is found. The amount of the penalty will be determined by the type of penalty and the volume of business written by the carrier.

Carriers will be categorized into one of three levels, based on volume of business. Carriers with a larger volume of business will be assessed higher penalties than those with a smaller volume of business. Level three will include carriers with a market share of 5% or over, level two carriers with 1% or more of the market but less than 5%, and level one for carriers under 1%. The latest complete calendar year's market share at the time of the review will be used.

In the event that non-compliance continues beyond two years, the penalties will increase for the third year according to the attached "Schedule of Penalties". If non-compliance continues beyond three years, the Governing Committee will be advised and subsequent penalties will be based upon its recommendation.

Should a carrier achieve compliance after being penalized for non-compliance with the Standards, it must maintain compliance for two years before it is returned to pre-warning status.

The following appendices attached outline the review process in further detail:

1. Appendix K - CAR Claim Department File Review Process

2. Appendix L - CAR SIU File Review Process

3. Appendix M - Questionnaire

If you have any questions, please contact staff at CAR to discuss them.

Schedule of Penalties

Schedule of Penalties

Type I Penalty by Year

	1st Year	2nd Year	3rd Year	4th Year
Carriers in Level 1	W	$3,000	$15,000	GC
Carriers in Level 2	W	$6,000	$30,000	GC
Carriers in Level 3	W	$9,000	$45,000	GC

Type II Penalty by Year

	1st Year	2nd Year	3rd Year	4th Year
Carriers in Level 1	W	$10,000	$50,000	GC
Carriers in Level 2	W	$20,000	$100,000	GC
Carriers in Level 3	W	$30,000	$150,000	GC

Penalties are assessed for non-compliance in the following areas of the PERFORMANCE STANDARDS FOR THE HANDLING AND PAYMENT OF CLAIMS BY SERVICING CARRIERS: Auto Body Payments, Fraud - Auto Physical Damage and Property Damage, Fraud - Bodily Injury, No-Fault Personal Injury Protection Benefits, Glass, Voluntary/Ceded Claim Handling Differential, and Expenses.

W = Warning
GC = Governing Committee

Company	Market Share	Level
Commerce	21.3%	3
Arbella	11.2%	3
Traveler's	11.0%	3
Safety	8.5%	3
Metropolitan	7.2%	3
Liberty Mutual	7.0%	3
CU Homeland	6.1%	3
Hanover	5.6%	3
Premier	5.1%	3
C N A Commercial	4.7%	2
Trust	4.6%	2
Great American	3.6%	2
Plymouth Rock	2.9%	2
Amica	2.9%	2
Berkshire	2.7%	2
Encompass	2.4%	2
USAA	2.3%	2
American Automobile	1.7%	2
Zurich	1.5%	2
Royal	1.5%	2
USFG	1.5%	2
Empire	1.5%	2
Sentry	1.4%	2
CIGNA	1.3%	2
Pilgrim	1.3%	2
National Grange	1.1%	2
Holyoke	1.0%	2
Quincy	1.0%	2
Horace Mann	0.8%	1
New England Fidelity	0.8%	1
Norfolk & Dedham	0.8%	1
Commonwealth Mutual	0.6%	1
Peoples	0.6%	1
State Farm	0.5%	1
Electric	0.5%	1
Fitchburg	0.4%	1
MassWest	0.2%	1

Appendix A

Special Investigative Unit Standards

Appendix A

CAR Special Investigative Units Standards

The reduction of insurance fraud, by monitoring and coordinating the investigation of suspicious claims, is an important goal of Commonwealth Automobile Reinsurers. It seeks the achievement of three beneficial results:

1. Successful resistance to the payment of fraudulent claims,

2. The establishment of a deterrent to fraud, and

3. The reduction of losses, with the consequent improvement in insurance rates.

In order to achieve these results, Servicing Carriers must pursue the investigation of fraud by establishing a commitment to support and encourage the activities of their Special Investigative Units.

CAR Special Investigative Unit

The CAR Special Investigative Unit exists under the authority of Article III of the Plan of Operation. It is charged with monitoring the efforts of Servicing Carriers to control fraud. In addition, it will assist member companies on request. CAR will perform one annual audit of the Special Investigative Unit of each Servicing Carrier to evaluate its effectiveness.

Assistance of the CAR Special Investigative Unit is intended to provide expert investigation beyond the capabilities of the average Servicing Carrier's investigator. The basic investigation of a suspicious claim is the responsibility of the Servicing Carrier. CAR Special Investigative Unit will also assist with the coordination of an investigation involving several Servicing Carriers.

CAR Standards for Servicing Carrier Special Investigative Units

CAR evaluations of Servicing Carrier Special Investigative Units will be based on their performance in accordance with the following guidelines:

1. Each Servicing Carrier is required by Article IV of the Plan of Operation to maintain a Special Investigative Unit to investigate suspicious claims for the purpose of eliminating fraud. A Special Investigative Unit shall be staffed by experienced salaried employees who are adequately trained in the recognition and investigation of insurance fraud. An SIU must have at least one full time employee whose responsibility is principally directed towards the recognition and investigation of fraud. The work of a Special Investigative Unit may be supplemented by closely supervised independent adjusters or investigators.

2. Each Servicing Carrier shall ensure that all automobile insurance claims, where there is a suspicion of fraud, are referred promptly to its Special Investigative Unit.

3. Each Servicing Carrier SIU shall maintain on paper or electronically, a log of cases referred to it containing at least the following information:

Date of Referral
Date of Loss
Claim Number
Policyholder
Type of Claim
Amount of Claim
Amount Paid
Date Completed

Copies of active pages of the log shall either be mailed or submitted electronically at the end of each calendar quarter to:

Commonwealth Automobile Reinsurers
100 Summer Street
Boston, MA 02110

ATTN: Special Investigative Unit

4. Regulation 211 CMR 75.00 establishes the National Insurance Crime Bureau as the central organization engaged in motor vehicle loss prevention as required by Section 113-0 of Chapter 175. It also requires certain actions by insurers with respect to theft claims. An insurer must, among other things:

A. report all thefts to National Insurance Crime Bureau,

B. obtain National Insurance Crime Bureau's acknowledgement before paying claims,

C. report disposition of salvage,

D. investigate and report evidence of fraud, and

E. defer payment in certain circumstances.

5. The National Insurance Crime Bureau (NICB) has been established as the central organization to whom insurance companies report cases of bodily injury fraud for possible further action with law enforcement agencies and criminal prosecuting authorities.

In all cases where careful further investigation has established the strong possibility of bodily injury fraud, the insurance carrier should forward a complete photocopy of the claim file to NICB for further consideration and action.

If a carrier is not a member of NICB, the carrier may refer such case directly to the appropriate local law enforcement agency for consideration of criminal prosecution.

6. The attached AUTO FRAUD PROFILE identifies circumstances in which an auto theft or fire claim should be considered suspicious. Such claims warrant a careful investigation into the possibility of fraud.

7. Both law and equity dictate that a prompt and thorough investigation precede any decision with respect to payment or denial of a claim. The provisions of Chapters 93A and 176D must be borne in mind at all times. Penalties incurred by members for violations of these laws are subject to reimbursement by CAR and may not be reported as loss or allocated expense.

8. The quality of investigation performed by an SIU is an important criterion of its effectiveness. It will be given careful consideration by CAR during an audit. It is not possible to outline every avenue of the investigation of a suspicious claim; it is limited to only by the experience and imagination of the investigator. There are, however, certain elements which are common to the investigation of suspicious fire or theft claims that should be covered in every such case referred to an SIU, or the file should reflect the reasons why they were not. They are the "guidelines" which follow:

CAR Standards for investigation of Collision and Comprehensive Losses

1. Interviews of Owner, Custodian, Companions, Witnesses, etc.

A recorded statement should be obtained from the owner of the vehicle, exploring in depth and in detail the areas described below. Statements of others with knowledge of some or all of the circumstances are also important.

The Individual Interviewed

Name, Address, Date of Birth, Occupation, Employer

The Vehicle

Year, make, model, identification number. When purchased, from whom, amount paid, vehicle traded in, amount allowed. If used, condition, odometer reading, improvements, if any, by insured. Amount borrowed, from whom, term of loan. Where kept when not in use. Who uses car, purpose. Service, inspection, repair. Problems.

Insurance

How long insured by this company. If short time, former carrier. Any other insurance. Recent changes of coverage. History of claims.

The Loss

Date, time, and place. Description of event. When and how the vehicle got to that location. Purpose of its presence there. Identity of witnesses. Was car locked. Who had keys. Activities between leaving car and discovery of loss. Time, place, and method of report to police. Identity of those responsible.

2. Police

The owner or custodian of a vehicle which is stolen or substantially damaged must report in writing to the police. An insurer may not pay a theft claim until it has confirmed the existence of such a report. Its file should contain a copy of the report or an explanation of its absence. Police reports of the recovery of a vehicle and any investigation should be obtained. Interviews of police officers are useful in selected cases. The possibility of investigation by other governmental agencies should be considered if the claim appears to be part of an organized pattern of activity.

3. Claim History

A record of the policyholder's prior losses should be obtained. The record, per se, is not evidence of impropriety, but an extensive record warrants a study of the claim files to identify patterns of activity or other information of interest. This is a fruitful source of leads.

4. Insurance

A study of the underwriting file should be undertaken. A recent application and/or changes of vehicle or coverage may suggest premeditation.

5. Mortgagee

Inquire via telephone about the timeliness of installment payments and the amount of the loan outstanding. A history of late payments and/or a delinquency of several months suggest financial difficulty which might motivate one to destroy his/her automobile.

6. Ownership and Value

Copies of the Bill of Sale, the Application for Title and/or Registration, and the Title should be obtained. These establish ownership, identify the prior owner, and establish the value at the time of purchase. Inconsistencies of purchase price suggest dishonesty. Seek verification by the seller of the price and condition at the time of sale. Be alert to prior use as a public or private livery vehicle.

7. Betterment

It is often claimed that the value of a vehicle has been enhanced by the addition of special equipment or by cosmetic improvements. Receipts for such things should be requested, and if received, verified.

8. Service and Repair

The interview with the policyholder and the examination of the vehicle should cover the service and repair history of the vehicle. The inspection sticker and stickers recording oil changes and lubrication will provide leads, as may the contents of the glove

compartment. Investigate recent service and repair activity to identify problems which might provide a motive for destroying the automobile.

9. The Vehicle (When available)

A careful, thorough, and early examination of the vehicle is important.

A. Start with the plate bearing the vehicle identification number. Look for evidence of tampering, either of the plate itself or of the rivets that hold it in place. Record the complete number by placing a paper over it and rubbing it with a pencil. Report whether the number is consistent with the type and model of the vehicle and consistent with the policy.

B. Abundant clear photographs should be obtained of the engine, passenger, and trunk compartments and all areas of the exterior, including wheels and tires. The engine, the ignition lock, and the registration plate particularly are important. Don't mark the face of a photograph; it may destroy its value as evidence.

C. Determine the odometer reading. Report whether it is consistent with the age and condition of the vehicle and with the mileage reported by the owner.

D. Examine the ignition lock. Report whether there is evidence of damage and whether it contained a key.

E. Report whether the glove or trunk compartments contain the usual articles. Take possession of bills related to service, repair, or improvements. A thief has no interest in the usual contents; their absence may suggest removal by the owner in anticipation of a loss.

F. Examine the inspection sticker. Report when and where it was inspected, whether it is current, or whether there is a rejection sticker.

G. Examine the registration plate. Report the date of expiration.

H. Record date on service or oil change stickers.

I. Try to distinguish old damage from new. The presence or absence of dirt and/or rust should be considered. Report evidence of recent changes of wheels or tires.

J. Consideration should be given to wear and tear, mechanical and electrical failures, and missing parts and equipment.

K. Determine the level and condition of crankcase and transmission oil, brake fluid, and radiator coolant.

L. In selected cases, a professional analysis of the ignition, the engine, or the transmission may be warranted.

Auto Fraud Profile

The following items should serve as indicators in determining whether an investigation, beyond normal claim handling, is justified in the processing of all automobile claims. None of these indicators is necessarily incriminating. Perfectly appropriate claims can often bear these characteristics. These items are presented only to provoke further thought on the part of the claim adjusters when one or more of the indicia are present. A common sense approach to potential fraud investigation is recommended; therefore, any factor that suggests that a fraudulent claim is being made is worth discussing with your SIU.

Collision & Comprehensive Fraud Indicators

Vehicle

- Late model vehicle with unusually high mileage
- Completely burned
- High value extras on inexpensive vehicle
- Allegedly numerous repairs prior to theft
- Extensive collision damage, especially if no collision coverage
- Inspection sticker expired, altered or otherwise defective
- Ignition or steering lock intact
- Excessive mileage on leased vehicles
- Previous total loss
- Missing parts surgically removed
- Registered other than in the state of residence.
- Gray market foreign car or American diesel.
- NICB difficulty in matching the VIN to the vehicle
- Purchase price exceptionally low

Loss

- Loss near inception of policy
- Fire late at night in remote area
- Loss prior to titling and registration
- Loss reported unusually late
- Loss near date of cancellation

Insured

- Occupation does not justify expensive vehicle
- Insured avoids use of mail
- Loan payments late
- Insured is suspiciously knowledgeable of insurance terminology and the claim process
- Insured exceptionally anxious to settle
- Insured uses PO Box, hotel, or motel as his or her address
- Insured in obvious financial difficulty
- Insured is unemployed and without visible means of support
- Insured or friend locates the stolen vehicle
- No report to police
- Bad loss record
- Insured is evasive as to identity of prior owner of vehicle
- Insured wants to retain total loss
- Insured recently purchased stated value policy
- Insured has no phone and cannot be contacted at work.

Coverage

- Coverage increased just prior to loss
- No lienholder on new model, or lienholder is an individual rather than a lending institution

Purchase

- Title a duplicate, or none available
- Previous owner cannot be located

Bodily Injury, Including No-Fault

The Accident

- No witness
- Police report fails to verify accident, or presence of claimants fails to verify any injury on the part of any claimant
- Other auto in the accident denies involvement
- Too many claimants for described accident
- Any allegation of intentional involvement
- Description of accident does not support injuries claimed
- Claimant or insured is difficult to find, claims to be self employed, or employed by another family member

The Vehicle

- No verification that described vehicle involved
- Damage seems too minor for injuries alleged
- Extent and location of damage do not match allegations

Injuries & Damages

- Injuries appear to be excessive in light of details of the accident or appear unrelated to the accident
- Treatment appears excessive for the type of injury, indicative of build-up to exceed tort threshold
- Injuries are limited to soft tissue, and recovery appears to be unusually prolonged
- Index history shows a history of claims
- The attorney and physician involved have appeared on a number of questionable cases
- Medical bills received are reproductions of originals or bear evidence of alterations
- Wage loss not verified or wage verification form not signed, bears questionable signature or is suspicious

Appendix B

Regulation 211 CMR 123.00

The Commonwealth of Massachusetts

Office of the Secretary of State

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 211 CMR 123.00

CHAPTER TITLE: Direct Payment of Motor Vehicle Collision and Comprehensive Coverage Claims and Referral Repair Shop Programs

AGENCY: Div. of Insurance

SUMMARY OF REGULATION

State the general requirements and purposes of this regulation:

The purpose of this emergency regulation is to establish a procedure ofr approval by the Commissioner of Insurance of direct payment and referral repair shop plans by motor vehicle insurers for collision, limited collision and comprehensive insurance claims, and to establish the minimum requirements for such plans, in order to implement Sections 24 and 51 of Chapter 273 of the Acts of 1988.

REGULATORY AUTHORITY: M.G.L. c.90, M.G.L. c.175, and M.G.L. c.176D

AGENCY CONTACT: Mary Miatr, Counsel PHONE: 727-7189 ext.503

ADDRESS: Div. of Insurance, 280 Friend St. Boston, MA 02114

Compliance with M.G.L. C.30A, and Promulgation and Attestation

EMERGENCY ADOPTION

If this regulation is adopted as an emergency regulation, state the nature of the emergency:

This regulation is promulgated on an emergency basis in order to implement Sections 24 and 51 of Chapter 273 of the Acts of 1988, so that the citizens of the Commonwealth benefit immediately from the automobile insurance reform legislation, as intended by the Legislature.

PRIOR NOTIFICATION AND/OR APPROVAL

If prior notification to and/or approval of the Governor, legislature or others was required, list each notification, approval and date, including notice to the local Government Advisory Commission:

N/A

PUBLIC REVIEW

Was notice of the hearing or comment period filed with the Secretary of State, published in appropriate newspapers and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period?

Yes ☐ Date of public hearing or comment period: _____

FISCAL EFFECT

Estimate the fiscal effect on the public and private sectors:

For the first and second years: The Legislature anticipates an additional four percent in savings for consumers from otherwise established automobile insurance rates

For the first five years: _____

No fiscal effect: ☐

CODE OF MASSACHUSETTS REGULATIONS INDEX

List key subject entries that are relevant to this regulation: Automobile Insurance, Direct Payment Plans, Referral Shop programs, Repair of Motor Vehicles, Collision, Comprehensive.

PROMULGATION

State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) to repeal, replace or amend. List by CMR number:

New regulation: 211 CMR 125.00

ATTESTATION

The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.

ATTEST:

Signature: Barbara Hiatr Date: December 7, 1988

Publication

To be completed by the Regulations Division

MASSACHUSETTS REGISTER NUMBER: 598

DATE: 12/23/88

EFFECTIVE DATE: 12/8/88

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages:	*Insert these pages:*
THIS IS AN EMERGENCY NO REPLACEMENT PAGES	REGULATION THERE ARE

A TRUE COPY ATTEST
MICHAEL JOSEPH CONNOLLY
SECRETARY OF STATE
DATE 12/23/88 CLERK

211 CMR 123.00: DIRECT PAYMENT OF MOTOR VEHICLE COLLISION AND COMPREHENSIVE COVERAGE CLAIMS AND REFERRAL REPAIR SHOP PROGRAMS

Section

123.01: Authority

This regulation is issued under the authority of M.G.L. c. 90, M.G.L. c. 175, and M.G.L. c. 176D.

123.02: Purpose and Scope

The purpose of this regulation is to establish a procedure for approval of direct payment and referral repair shop plans by motor vehicle insurers for collision, limited collision and comprehensive insurance claims, and to establish the minimum requirements for such plans.

123.03: Definitions

As used in this regulation, the following words will have the meanings indicated:

Claimant means any person making a claim for motor vehicle damage or loss for first or third party damages.

Collision coverage means that optional coverage defined in M.G.L. c. 90, s. 34O(1) offered as part of a motor vehicle liability policy or bond.

Commissioner means the Commissioner of Insurance appointed under the provisions of M.G.L. c. 26, s. 6, or his or her designee.

Comprehensive coverage means that optional coverage defined in M.G.L. c. 175, s. 113O as fire and theft coverage or comprehensive coverage, so-called, offered as part of a motor vehicle liability policy or bond.

Insurer means any insurance company authorized to write motor vehicle insurance in the Commonwealth.

Limited collision coverage means that optional coverage defined in M.G.L. c. 90, s. 34O(2) offered as part of a motor vehicle policy or bond.

Motor vehicle insurance means motor vehicle liability policies or bonds as defined in M.G.L. c. 90, ss. 34A, 34O, and in M.G.L. c. 175.

Plan means a detailed proposal or filing describing a formal direct payment and referral program based on a written plan.

Rating organization means an insurance rating organization licensed under M.G.L. c. 175A.

Repair shop means a motor vehicle repair shop as defined in M.G.L. c. 100A, s. 1, including glass specialty shops, but not including a shop which primarily sells tires.

123.04: Procedure for Approval of Plans

(1) Who May File: Any insurer may file a direct payment plan for approval by the Commissioner. Any licensed insurance rating organization may file a direct payment plan on behalf of its members ("industry plan"), provided that each insurer member of the rating organization which intends to implement such plan shall individually file notice of its intention to adopt the industry plan before actively implementing the plan. Any insurer may file for approval a plan which adopts some provisions of an industry plan without adopting the entire plan, but to the extent such individual plan deviates from the industry plan by omitting, adding or changing any particular provision, it shall require separate approval by the Commissioner. Any insurer filing a plan which deviates from an industry plan shall specify in detail the differences between the plans.

(2) Time for Filing: Any plan which is intended to be effective on January 1, 1989, shall be filed on or before December 15, 1988. Any plan which is intended to be effective after January 1, 1989 shall be filed at least 60 days prior to its effective date. Any notice of an insurer's intention to adopt an industry plan shall be filed at least 14 days prior to the insurer's implementation of the said plan, but in no event shall the insurer's implementation of the plan take place prior to the effective date of the industry plan, provided such plan has been approved.

(3) Method of Filing: An insurer or rating organization seeking approval of a plan shall file five copies of the proposed plan with the Commissioner. Any form intended to be used in connection with a proposed plan and which is to be delivered to consumers shall be included in the filing.

(4) Consideration of Proposed Plan: Upon receipt of a proposed plan, the Commissioner shall promptly schedule a hearing to determine whether the plan is consistent with section 34 O of Chapter 90 and section 113 O of Chapter 175 of the General Laws, as amended, with this regulation, and with other applicable laws and regulations, and whether the plan would carry out the purposes of sections 34 O and 113 O. No hearing shall be required in connection with an insurer's plan which the Commissioner determines does not substantially deviate from a previously approved plan. The Commissioner may schedule more than one plan to be considered at any given hearing. The Commissioner may require an insurer or any other party to the hearing to submit other or further information for purposes of considering the plan. The insurer or rating organization which filed the plan, and any other interested person, may file written materials in support of or in opposition to the plan.

(5) Timing of Hearing: With respect to any plan for which a hearing is required and which is filed to be effective on January 1, 1989, the Commissioner shall schedule the hearing thereon for such date as will allow a full and fair consideration of the plan, and as will allow the issuance of a decision approving or disapproving the plan prior to January 1, 1989. With respect to any other plan for which a hearing is required, the Commissioner shall schedule the hearing thereon to begin no less than 21 days after the plan is filed. The party filing the plan and other persons affected shall be notified of the date of the hearing at least ten days in advance.

(6) Approval or Disapproval of Plan: After hearing, the Commissioner shall approve or disapprove the plan in writing and if the plan is disapproved or modified, shall state the reasons for the decision. Approval of a plan may be conditioned upon its modification, including a change in its effective date. The Commissioner may, prior to approving or disapproving a plan, request the party filing it to supplement or modify it.

(7) Effective Date of Plan: The benefits of an approved plan shall be made available to all claimants submitting claims arising from accidents or other losses occurring on or after the effective date of the plan, unless and until the approval of the plan is revoked or the plan is otherwise terminated in accordance with section 123.04(9) below, or unless and until the insurer implementing such plan ceases to do so in accordance with section 123.04(10) below.

123.04: continued

(8) Reconsideration: Within 10 days after the approval of a plan, any affected person may request reconsideration. Such request may be allowed only if the person submitting such request presents new and previously unavailable information which the Commissioner determines should be considered in evaluating the plan.

(9) Revocation of Approval: At any time after approval of a plan, the Commissioner may, after due investigation, commence proceedings to revoke or suspend such approval if he or she determines the insurer is not complying with the terms of the plan or that the plan does not carry out the intent of this regulation. He or she shall commence such proceedings by issuing an order to show cause why the approval of such plan should not be revoked or suspended, which shall briefly set forth the asserted grounds for revocation or suspension. The party which filed the plan, any insurer which has filed a notice that it intends to adopt or has adopted an industry plan, and any interested person may appear at the hearing. The Commissioner may schedule the revocation of more than one plan to be considered at any given hearing. After such hearing, the Commissioner shall issue a written decision, stating reasons for any determination to revoke or suspend approval of the plan. Non-revocation may be conditioned upon modification of the plan or other means of compliance with this regulation. Unless the Commissioner for good cause orders otherwise, the institution of revocation proceedings shall not act to enjoin or suspend the operation of the plan as originally approved. The Commissioner may, instead of or in addition to revocation or suspension, impose fines or other appropriate sanctions under Chapters 175 and 176D for any violations of law or of these regulations.

(10) Voluntary Withdrawal of Plan: Any party which has filed or adopted a plan may voluntarily withdraw such plan, or voluntarily withdraw its notice of intention to implement an industry plan, prior to the Commissioner's final approval of the plan. After that date, no insurer intending to implement or actively implementing such plan shall cease implementing the plan without first notifying the Commissioner of its intent to do so at least 60 days in advance. The Commissioner may make any orders reasonably necessary to prevent such cessation from causing undue hardship to consumers or disruption to the automobile repair market, but in no event shall such cessation be delayed, without the consent of the insurer, for more than six months, unless the insurer fails to comply with orders of the Commissioner relating to the cessation.

123.05: Direct Payment Plans: Required Provisions

No plan shall be approved unless it contains each of the following provisions:

(1) Payment to the claimant: The insurer shall offer to pay every claimant for the loss of or damage to the insured motor vehicle under collision coverage, limited collision coverage or comprehensive coverage the full amount, less any applicable deductible, of the cost of repair of the damage as described in an appraisal made by a licensed automobile damage appraiser employed or designated by the insurer, subject to the terms and conditions of the applicable insurance policy. In the case of property damage liability claims, the insurer may make such offer to the claimant.

Unless such direct payment is refused by the claimant, the insurer shall make such payment at the time of, or within 2 business days after, the preparation of the said appraisal. In no event shall payment be made prior to provision of a copy of the appraisal to the claimant.Nothing in this section shall be construed to affect the right of any insurer to delay payment for a period of time reasonably necessary to investigate any claim before authorizing repair work or making payment on such claim.

If the claimant refuses such direct payment, the insurer shall comply with applicable laws and regulations relating to such payments without regard to the plan.

(2) Repair certification: Each claimant shall receive, with the appraisal and direct payment check, a repair certification form, the form for which shall be included as a part of the filed plan. The repair certification form shall at a minimum contain the following:

123.05: continued

(a) An explanation of the claimant's rights and obligations with respect thereto.
(b) Certification that the repair has been completed in accordance with the appraisal.
(c) Identification of the repair shop or individual who performed the repair.
(d) An agreement that the claimant will permit the insurer to reinspect the repaired vehicles within a reasonable period of time after return of the repair certification form.

The claimant shall return the repair certification form to the insurer upon completion of the repairs. If the claimant elects not to repair the vehicle and the repair certification form is not returned to the insurer, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible, unless and until such time as the insurer or any successor insurer receives a repair certification form.

(3) Resolution of Consumer Disputes: If the claimant disputes the accuracy of the appraisal or the amount of the payment based thereon, the insurer shall resolve such dispute as follows:

(a) The claimant, or the claimant's representative or repair shop at the direction of the claimant, must notify the insurer by telephone or in writing if the cost of repairs is expected to exceed the amount of the payment plus any applicable deductible and the claimant is seeking to have the insurer pay any part of the difference. Such notice must be prior to, or in the course of, the repair work.
(b) The insurer shall promptly evaluate the source of any differences between the insurer's appraisal and the cost of repairs and either authorize or deny a supplemental payment within 3 business days after the notification of such difference. During such 3-day period, the insurer may inspect the vehicle, and if it so requests, the claimant or repair shop shall make the vehicle available for inspection by the insurer. The insurer shall not delay such inspection for more than 3 days without the consent of the claimant. If the insurer makes a timely request for inspection the insurer will either authorize or deny a supplemental payment within 3 business days after the inspection. The claimant may direct the insurer to make any supplemental payment to the repair shop, provided the repair shop is registered under M.G.L. c. 100A. Otherwise, any supplemental payment must be made directly to the claimant.
(c) If the claimant and the insurer are unable to reach agreement as to any dispute as to the amount of the payment by the insurer, either party may demand arbitration of the dispute. The demand for arbitration must be in writing and it must include an appraisal of the cost of the repair prepared by a licensed automobile damage appraiser and an itemized bill for the actual cost of the repair, if the repair has been completed. The arbitration will be conducted pursuant to General Provision Section 11 of the Massachusetts Standard Automobile Insurance Policy and the applicable provisions of M.G.L. c. 175, section 191A. Notwithstanding this provision, the claimant may, without prejudice, pursue any other remedy which may be available.
(d) If the repair is made at a registered repair shop which is on the insurer's list of referral shops prepared pursuant to section 123.06 below, neither the repair shop nor the insurer shall require the claimant to pay more than the amount of the direct payment plus the amount of any applicable deductible to have the repair work completed, and any dispute as to the amount of the appraised damage shall be resolved between the referral repair shop and the insurer.

(4) Repair Shop Referral Lists: The plan must provide for referral to a list of repair shops as provided in section 123.06 below.

(5) Disclosures to Consumers: The plan must provide for full and accurate disclosures to consumers as provided in section 123.07 below.

123.06: Referral Repair Shop Programs

(1) Consumer's Choice of Shop: No direct payment plan approved under this regulation, and no insurer in implementing such plan, shall require a claimant to have repairs made at any specific repair shop or list of shops.

123.06: continued

(2) Number of Shops: Every plan must provide that every claimant will be given a list of at least five repair shops geographically convenient for the claimant which will perform the repairs on referred claims without undue delay. The claimant may or may not choose to use a shop on the referral list.

(a) For the first year in which this regulation is effective, i.e., calendar year 1989, the following transitional rule will apply:

Insurers implementing plans during calendar year 1989 shall provide a list of at least:

(i) two referral shops at any time a list is given to a claimant;

(ii) three shops by May 1, 1989;

(iii) four shops by September 1, 1989; and

(iv) five shops by January 1, 1990.

(b) Plans submitted to be effective on or after January 1, 1990 must provide that every claimant will be given a list of at least five repair shops.

(c) Any individual insurer wishing to implement a plan which does not meet the requirements of section 123.06(2)(a) or (b) above may petition the Commissioner for a waiver of those requirements. The insurer seeking such a waiver shall set forth the specific facts regarding market share, geographic location, availability of repair shops, or other circumstances in support of its petition. No insurer may implement a plan which does not meet the requirements of section (2)(a) and (b) above unless and until the Commissioner has granted a petition for waiver.

(3) Insurer's Choice of Shops:

(a) An insurer's referral list shall include only shops:

(i) which are registered repair shops; and

(ii) which have entered into an agreement satisfactory to the insurer, to complete repairs for claimants referred by the insurer without undue delay, for the amount of the direct payment to the insured plus any applicable deductible, plus any supplemental payment authorized by the insurer.

(b) In determining which registered repair shops will be put on such referral list, the insurer shall consider all of the following criteria, and only the following criteria: the quality and cost of repairs at a particular shop, the quality of the service given the customer, the responsiveness of the shop to the customers' needs, the ability of the shop to perform repairs without undue delay, the geographic convenience of the shop for the claimant, cooperation of the shop with pre- and post-repair inspections and the shop's compliance with applicable laws and regulations.

Each individual insurer shall maintain written guidelines incorporating these criteria as applied by the insurer in implementing its plan; such guidelines shall be deemed to be a part of the individual insurer's plan. While individual insurers which have adopted an industry plan shall maintain such written guidelines, under no circumstances shall a rating organization which files an industry plan propose or maintain such guidelines. Individual insurers' guidelines shall be made available to the Commissioner upon his or her request and shall also be made available to any repair shop in the event the insurer denies that shop placement on or strikes that shop from its list.

A repair shop shall be included on the list prepared by the insurer if the shop agrees in writing to comply fully with the plan, unless the shop is denied placement on or stricken from the list pursuant to section 123.06(5) below, and is determined by the insurer not to satisfy one or more of the criteria listed above. The form of agreement between the shops on the referral list and the insurer may provide adequate assurances that the repair shop will continue to satisfy the insurer as to such criteria.

(5) Development and Changes of Referral List: An insurer may strike a repair shop from a referral list, or deny placement thereon, provided the insurer files a statement with the Commissioner specifying the nature of the shop's failure to comply with the plan or with the agreement or proposed agreement between the insurer and the repair shop. A repair shop which claims that it has been improperly stricken from or denied placement on the list may demand arbitration. Such binding arbitration shall be conducted by a neutral arbitrator jointly agreed to by the insurer and the repair shop, or, in the absence of such

123.06: continued

agreement, within 21 days of submission of the request for arbitration to the insurer, by an arbitrator selected by the Commissioner. The parties to the arbitration shall bear the costs of the arbitration equally, but the losing party shall be liable to the prevailing party for its costs, unless the arbitrator orders otherwise. If the arbitrator finds that the losing party acted in bad faith, he or she may also award the prevailing party attorney's fees, if any. The arbitrator shall determine whether the repair shop was improperly stricken from the list, but shall make no finding or order as to any damages other than the award of costs and/or attorney's fees, if any. The decision of the arbitrator shall be final.

(6) Insurer's Guarantee: If a claimant has a repair performed at a repair shop included on the insurer's list, then the insurer shall guarantee the quality of the materials and workmanship used in making the repairs. No insurer may petition the Commissioner for a waiver of this requirement. This guarantee by the insurer shall be in addition to all other guarantees which may be made by the manufacturer and the repair shop. The agreement between the insurer and the repair shop may provide for indemnification of the insurer by the repair shop for any costs associated with such guarantee under such terms and conditions as the parties to the agreement shall specify.

(7) Reinspection Requirements: Every plan shall provide that the insurer shall have a licensed automobile damage appraiser reinspect vehicles following completion of repairs as follows:

(a) with respect to repairs as to which the appraisal indicates that the cost is expected to exceed $4,000, at least 75% of such vehicles shall be reinspected;

(b) with respect to repairs as to which the appraisal indicates that the cost is not expected to exceed $4,000, at least 25% of such vehicles shall be reinspected.

In no event shall the selection of vehicles for reinspection be based on the age or sex of the policyholder or of the customary operators of the vehicle, or on the principal place of garaging the vehicle.

(8) Conflicts of Interest:

(a) No employee or agent of an insurer with responsibility for creating, managing, or maintaining a list of repair shops as prescribed in section 123.06(3) above shall receive or ask for any payment, gift or any other thing of value from any repair shop included, or seeking to be included, in the insurer's list of repair shops. No repair shop, or employee or owner thereof, shall give, pay or offer to give or pay, any thing of value to any employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops. No repair shop, or employee, owner or agent thereof, shall give or pay, or offer to give or pay, any thing of value to any person in exchange for being included, or as an inducement for being included, on an insurer's list of repair shops. For purposes of this paragraph, the words "employee", "owner" and "agent" shall also include any spouse or child of an employee, owner or agent.

(b) A discount on parts, glass, labor rate or other item or customer service in connection with the repair of motor vehicles offered by a repair shop to an insurer shall not constitute a "payment, gift or any other thing of value" for purposes of section 123.06(8)(a) above.

123.07: Disclosures to Consumers

(1) Every claimant under a plan shall be given full and adequate disclosure, with the appraisal and at such other times as the insurer may determine, that:

(a) the claimant may elect to accept direct payment under the plan and receive a list of referral shops, or he or she may choose to pursue the claim without regard to the plan;

(b) if the claimant accepts direct payment, he or she may choose to have repairs made at any repair shop, whether or not the shop appears on the insurer's referral list;

(c) if the claimant accepts direct payment, the claimant may choose a shop on the insurer's referral list, in which case the insurer will guarantee the

123.07: continued

materials and workmanship of the repair, and the cost of the repair to the claimant will not exceed the amount of the insurer's direct payment to the claimant plus any applicable deductible.
(d) the procedure for resolving claimants' disputes under the plan; and,
(e) such other information as will aid the claimant in exercising his or her rights under the plan.

123.08: Penalties

(1) A violation of any provision of this regulation shall be considered to be an unfair or deceptive act or practice, in violation of M.G.L. c. 176D.

(2) A violation of any provision of this regulation by any insurance agent, insurance broker, insurer or employee or representative of an insurer, or motor vehicle damage appraiser shall be grounds for suspension or revocation of the license of such person or persons.

(3) Nothing herein shall be deemed to preclude the claimant or policyholder, the Commissioner, the Attorney General or the Director of the Division of Standards from pursuing any other remedy or penalty provided by law for a violation hereof, including any remedy provided under M.G.L. c. 93A or M.G.L. c. 100A.

123.09: Effective Date

These regulations shall be effective on December 8, 1988.

123.10: Severability

If any section or portion of a section of this regulation or the applicability thereof to any person, entity or circumstance is held invalid by any court, the remainder of this regulation or the applicability of such provision to other persons, entities or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

Appendix C

Industry Direct Payment Plan for the Settlement of Insured Auto Damage Repairs

AUTOMOBILE INSURANCE RATE FILING

OF THE

MASSACHUSETTS AUTOMOBILE RATING AND ACCIDENT PREVENTION BUREAU

Docket 88-57

Industry Direct Payment Plan

(Line of Business)

December 15, 1988

(Date of Filing)

Industry Direct Payment Plan for the Settlement of Insured Auto Damage Repairs

Objective: In order to provide, by January 1, 1989, for the implementation of a Direct Payment Plan for auto damage repairs insured under collision, limited collision and comprehensive coverages, excluding glass claims, in accordance with Sections 24 and 51 of c.273 of the Acts of 1988 and Regulation 211 CMR 123 (the "Regulation"), as issued on an emergency basis 12/8/88 and attached as Exhibit A, the Massachusetts Automobile Rating and Accident Prevention Bureau (MARB) files the following plan on behalf of its member companies under 211 CMR 123.04(1) to be effective for the settlement of all auto physical damage claims arising from accidents on or after January 1, 1989, provided, however, that each member company electing to implement the industry plan shall file a Notice of Election of the Industry Plan, attached as Exhibit B, at least 14 days prior to implementation as required by the Regulation. Any member insurer may deviate from the industry Direct Payment Plan upon approval by the Commissioner of the insurer's own individual plan filed in accordance with Sections 24 and 51 and the Regulation using the Notice of Election of a Modified Industry Plan form attached as Exhibit C or their own filing format.

The Industry Plan

1. Payment to the claimant:

The insurer shall offer to pay every claimant for the loss of or damage to the insured motor vehicle under collision coverage, limited collision coverage or comprehensive coverage, excluding glass claims, the full amount, less any applicable deductible, of the cost of repair[1] of the damage as described in an appraisal made by a licensed automobile damage appraiser employed or designated by the insurer, subject to the terms and conditions of the applicable insurance policy. Direct payments will be offered by each insurer electing to implement this industry plan to claimants for accidents on or after the insurer's implementation date but no sooner than January 1, 1989.

Unless such direct payment is refused by the claimant, the insurer shall make such payment at the time of, or within 5 business days after, the preparation of the said appraisal. In no event shall payment be made prior to provision of a copy of the appraisal to the claimant. Nothing in this section shall be construed to affect the right of any insurer to delay payment for a period of time reasonably necessary to investigate any claim before authorizing repair work or making payment on such claim.

If the claimant refuses such direct payment, the insurer shall comply with applicable laws and regulations relating to such payments without regard to the plan.

---

[1]The insured cost of repairs described in an appraisal may differ from the actual cost of repairs due to the replacement of used or depreciated components by new components in the actual course of repairs, so-called "betterment". Common examples of betterment are tires, batteries and the use of new parts in place of used parts at the direction of the insured. Betterment will be excluded throughout this plan when referring to the insured cost of repairs.

2. Repair Certification Form

Each insured receiving a direct payment under collision, limited collision and comprehensive coverages shall receive, with the appraisal or direct payment check, a Repair Certification Form containing an explanation of the insured's rights. The insured shall return the Repair Certification Form to the insurer upon completion of repairs. If the completed Repair Certification Form is not returned to the insurer, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible. The sample Repair Certification Form for use with the industry plan is attached as Exhibit D.

3. Resolution of Consumer Disputes

If the claimant disputes the accuracy of the appraisal or the amount of the payment based thereon, the insurer shall resolve such dispute as follows:

(1) The claimant, or the claimant's representative or repair shop at the direction of the claimant, must notify the insurer by telephone or in writing if the insured cost of repairs, excluding betterment, is expected to exceed the amount of the payment plus any applicable deductible and the claimant is seeking to have the insurer pay any part of the difference. Such notice must be prior to, or in the course of, the repair work.

(2) The insurer shall promptly evaluate the source of any differences between the insurer's appraisal and the cost of repairs and either authorize or deny a supplemental payment within 3 business days after the notification of such difference and inspection of the vehicle. During such 3-day period, the insurer may inspect the vehicle, and if it so requests, the claimant or repair shop shall make the vehicle available for inspection by the insurer. The insurer shall not delay such inspection for more than 3 days without the consent of the claimant. If the insurer makes a timely request for inspection the insurer will either authorize or deny a supplemental payment within 3 business days after the inspection. The claimant may direct the insurer to make any supplemental payment to the repair shop, provided the repair shop is registered under M.G.L. c. 100A. Otherwise, any supplemental payment must be made directly to the claimant.

(3) If the claimant and the insurer are unable to reach agreement as to any dispute as to the amount of the payment by the insurer, either party may demand arbitration of the dispute. The demand for arbitration must be in writing and it must include an appraisal of the cost of the repair prepared by a licensed automobile damage appraiser and an itemized bill for the actual cost of the repair, if the repair has been completed. The arbitration will be conducted pursuant to General Provision Section 11 of the Massachusetts Standard Automobile Insurance Policy and the applicable provisions of M.G.L. c. 175, section 191A, attached as Exhibit E.

(4) If the repair is made at a repair shop which is on the insurer's list of referral shops prepared pursuant to paragraph 5 below, neither the repair shop nor the insurer shall require the claimant to pay more than the amount of the direct payment plus the amount of any applicable deductible to have the insured repair work, excluding betterment.

completed, and any dispute as to the amount of the appraised damage shall be resolved between the referral repair shop and the insurer.

4. Disclosure of Insured Rights and Duties

Each direct payment shall be accompanied by a notice on the Repair Certification Form explaining to the insured his or her rights and duties under the Direct Payment plan including:

(1) the right to shop around and to obtain repairs at the repair shop of his or her choice for the amount of the insurer's appraisal.

(2) the right to be given a list of geographically convenient repair shops which will provide quality repairs, excluding betterment, for the amount of the payment made directly to the insured plus any applicable deductible. The insurer will guarantee the quality of the materials and workmanship used in making the repairs at any shop on its list.

(3) the duty to notify the insurer, by phone or in writing, prior to or in the course of repairs, if the insured cost of repairs, excluding betterment, exceeds the amount of the direct payment, plus any applicable deductible, and the claimant seeks payment for any part of that excess from the insurer. The insurer has the right to inspect the vehicle within three (3) business days of notification. The insurer has the duty to authorize or deny a supplemental payment within three (3) business days after the inspection.

(4) the right to pursue resolution of any differences in repair costs through contact with the insurer and the procedure established in General Provision Section 11 of the Massachusetts Standard Automobile Policy.

(5) the duty to return a completed Repair Certification Form when the vehicle is repaired. If the completed Repair Certification Form is not returned to the insurer, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

(6) the duty to allow the insurer, upon request, to reinspect the repaired vehicle after receipt of the Repair Certification Form. If the repaired vehicle is not made available for inspection within a reasonable amount of time, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

5. Referral Repair Shop Programs

(1) Consumer's Choice of Shop: No insurer in implementing the Industry Direct Payment Plan shall require a claimant to have repairs made at any specific repair shop or list of shops.

(2) Number of Shops: Unless the requirement is specifically waived by the Commissioner, the insurer shall provide that every claimant will be given a list of at least five repair shops geographically convenient for the claimant which will perform the repairs on referred claims without

undue delay. The claimant may or may not choose to use a shop on the referral list.

(a) For the first year in which this Industry Plan is effective, i.e., calendar year 1989, the following transitional rule will apply:

Insurers implementing plans during calendar year 1989 shall provide a list of at least:
(i) two referral shops at any time a list is given to a claimant;
(ii) three shops by May 1, 1989;
(iii)four shops by September 1, 1989; and
(iv) five shops by January 1, 1990.

(b) Any individual insurer which wishes to implement the Industry Plan but does not meet the minimum requirements of (2)(a) above may petition the Commissioner for a waiver of those requirements. The insurer seeking such a waiver shall set forth the specific facts regarding market share, geographic location, availability of repair shops, or other circumstances in support of its petition. No insurer may implement the Industry Plan if it does not meet the requirements of section (2)(a) above unless and until the Commissioner has granted a petition for waiver using the Petition for Waiver form attached as Exhibit F or any other format. A copy of the Massachusetts Automobile Market Share for each insurer and each insurer group is attached as Exhibit G.

(3) Insurer's Choice of Shops

(a) An insurer's referral list shall include only shops:

(i) which are registered repair shops and,
(ii) which have entered into an agreement satisfactory to the insurer, to complete insured repairs, excluding betterment, for claimants referred by the insurer without undue delay, for the amount of the direct payment to the insured plus any applicable deductible, plus any supplemental payment authorized by the insurer.

(b) In determining which registered repair shops will be put on such referral list, the insurer shall consider all of the following criteria, and only the following criteria: the quality and cost of repairs at a particular shop, the quality of the service given the customer, the responsiveness of the shop to the customer's needs, the ability of the shop to perform repairs without undue delay, the geographic convenience of the shop for the claimant, cooperation of the shop with pre- and post-repair inspections and the shop's compliance with applicable laws and regulations.

Each individual insurer shall maintain written guidelines incorporating these criteria as applied by the insurer in implementing its plan; such guidelines shall be deemed to be a part of the individual insurer's implementation of the Industry Plan. While individual insurers which implement the Industry Plan shall maintain such written guidelines, under no circumstances shall the Massachusetts Automobile Rating and Accident Prevention Bureau propose or maintain such guidelines. Individual insurers'

guidelines shall be made available to the Commissioner upon his or her request and shall also be made available to any repair shop in the event the insurer denies that shop placement on, or strikes that shop from, its list.

A repair shop shall be included on the list prepared by the insurer if the shop agrees in writing to comply fully with the Industry Plan, unless the shop is denied placement on, or is stricken from, the list pursuant to paragraph four (4) below, and is determined by the insurer not to satisfy one or more of the criteria listed above. The form of agreement between the shops on the referral list and the insurer may provide adequate assurances that the repair shop will continue to satisfy the insurer as to such criteria.

(4) Development and Changes of Referral List

An insurer may strike a repair shop from a referral list, or deny placement thereon, provided the insurer files a statement with the Commissioner specifying the nature of the shop's failure to comply with the Industry Plan or with the agreement or proposed agreement between the insurer and the repair shop. A repair shop which claims that it has been improperly stricken from or denied placement on the list may demand arbitration. Such binding arbitration shall be conducted by a neutral arbitrator jointly agreed to by the insurer and the repair shop, or, in the absence of such agreement, within 21 days of submission of the request for arbitration to the insurer, by an arbitrator selected by the Commissioner. The parties to the arbitration shall bear the costs of the arbitration equally, but the losing party shall be liable to the prevailing party for its costs, unless the arbitrator orders otherwise. If the arbitrator finds that the losing party acted in bad faith, he or she may also award the prevailing party attorney's fees, if any. The arbitrator shall determine whether the repair shop was improperly stricken from the list, but shall make no finding or order as to any damages other than the award of costs and/or attorney's fees, if any. The decision of the arbitrator shall be final.

(5) Insurer's Guarantee

If a claimant has a repair performed at a repair shop included on the insurer's list, then the insurer shall guarantee the quality of the materials and workmanship used in making the repairs. No insurer may petition the Commissioner for a waiver of this requirement. This guarantee by the insurer shall be in addition to all other guarantees which may be made by the manufacturer and the repair shop. The agreement between the insurer and the repair shop may provide for indemnification of the insurer by the repair shop for any costs associated with such guarantee under such terms and conditions as the parties to the agreement shall specify.

6. Reinspection

The insurer shall have a licensed automobile damage appraiser reinspect vehicles following completion of repairs, excluding glass only claims, as follows:

(a) with respect to repairs as to which the appraisal indicates that the cost is expected to exceed $4,000, at least 75% of such vehicles shall be reinspected;

(b) with respect to repairs as to which the appraisal indicates that the cost is not expected to exceed $4,000, at least 25% of such vehicles shall be reinspected.

In no event shall the selection of vehicles for reinspection be based on the age or sex of the policyholder or of the customary operators of the vehicle, or on the principal place of garaging the vehicle.

If the repaired vehicle is not made available for reinspection within a reasonable amount of time, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

7. Conflicts of Interest

(a) No employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops as prescribed above shall receive or ask for any payment, gift or any other thing of value from any repair shop included, or seeking to be included, on the insurer's list of repair shops. No repair shop, or employee or owner thereof, shall give, pay or offer to give or pay, any thing of value to any employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops. No repair shop, or employee, owner or agent thereof, shall give or pay, or offer to give or pay, any thing of value to any person in exchange for being included, or as an inducement for being included, on an insurer's list of repair shops. For purposes of this paragraph, the words "employee", "owner" and "agent" shall also include any spouse or child of an employee, owner or agent.

(b) A discount on parts, glass, labor rate or other item or customer service in connection with the repair of motor vehicles offered by a repair shop to an insurer shall not constitute a "payment, gift or any other thing of value" for purposes of (7)(a) above.

8. Disclosures to Consumers

Every claimant under a plan shall be given full and adequate disclosure with the appraisal, and at such other times as the insurer may determine, explaining that:

(a) the claimant may elect to accept direct payment under the plan and receive a list of referral shops, or he or she may choose to pursue the claim without regard to the plan;

(b) if the claimant accepts direct payment, he or she may choose to have repairs made at any repair shop, whether or not the shop appears on the insurer's referral list;

(c) if the claimant accepts direct payment, the claimant may choose a shop on the insurer's referral list, in which case the insurer will guarantee the materials and workmanship of the repair, and the cost of the insured repair, excluding betterment, to the claimant will not exceed the amount of the insurer's direct payment to the claimant plus any applicable deductible.

(d) the procedure for resolving claimants' disputes under the plan; and,

(e) such other information as will aid the claimant in exercising his or her rights under the plan.

Memorandum

Differences Between Regulation 211 CMR 123
and the Industry Direct Payment Plan

Regulation 211 CMR 123, Direct Payment of Motor Vehicle Collision and Comprehensive Coverage Claims and Referral Repair Shop Programs, was issued on an emergency basis effective December 8, 1988. The Bureau is filing a direct payment plan on behalf of its member companies (The "Industry Plan") prior to any hearing on the Regulation in order to have an Industry Plan in effect on January 1, 1989. Since the filing deadline for an Industry Plan is December 15, 1988, the Bureau takes this opportunity to clarify the Regulation and to recommend changes where necessary. This memorandum will explain the differences between the Industry Plan and relevant parts of the Regulation.

1. Section 123.03 Definitions

Regulation	Industry Plan
"Claimant" means any person making a claim for motor vehicle damage or loss for first or third party damages.	"Claimant" means any person making a claim for motor vehicle damage or loss for first party damages.

Explanation

The Direct Payment and Referral Shop program rules and regulation should apply to claims made by first parties under the auto physical damage coverages of collision, limited collision and comprehensive. The title of the regulation and Sections 24 and 51 of c.273 refer to the physical damage coverages only. Although the extension of the plan to third party property damage liability coverage seems to be voluntary with the company (123.05(1)), it should be made clear that these regulations will apply to first party payments only. Some of the reasons for excluding property damage liability claims from the Industry Plan are that (1) a direct payment system is already in place for appropriate PDL claims; (2) direct payments and appraisals may not make sense and/or may duplicate effort for some

PDL claims, such as subrogated claims; (3) PDL claim settlements may be delayed or reduced depending upon the determination of liability and comparative negligence; and (4) the restoration of the decrease in value and/or reinspection of repairs through a completed repair certification form would be meaningless on third party claims.

Regulation	Industry Plan
"Repair Shop" means a motor vehicle repair shop as defined in M.G.L. c100A, Section 1, including glass speciality shops, but not including a shop which primarily sells tires.	"Repair Shop" means a motor vehicle shop as defined in M.G.L. c100A, Section 1, but not including glass speciality shops or shops which primarily sell tires.

Explanation

The Direct Payment and Referral Shop Program should not apply to glass claims under comprehensive coverage. There currently exists an active and efficient system of insurer referral shops for glass claims. The glass shop referral system allows the claimant to have glass damage repaired by a referral shop at the request of the insurer and at the convenience of the insured. The system allows for direct payment to the referral shop at negotiated rates for labor and parts discounts.[1] Allowing the insured to "shop around" with a direct payment in hand, but with broken glass, would (1) tend to increase the cost of the system[2] by requiring appraisals, reinspections and the inability to direct insureds to

---

[1]According to the State Rating Bureau, glass discounts averaged 36% (1987 Bodyshop Hearing, Ex. 11).

[2]The 1987 average glass claim was about $275.

specific referral shops[3] and (2) tend to increase the hazard to safe driving by having active motorists with broken windshields who are either "shopping around" or have decided not to repair.

Regulation	Industry Plan
None.	"Cost of Repair" shall mean the insured cost to restore the damaged vehicle to a condition equal to that prior to the accident under the terms of the policy. The (insured) cost of repair does not include any increase in value, so-called "betterment", due to the replacement of used components with new components during the actual course of repairs, such as in the case of tires and batteries.

Explanation

The exclusion of betterment seems to have been implicitly recognized in Section 123.05(1), Payment to the Claimant by the use of the terms "subject to the terms and conditions of the applicable insurance policy".

Other parts of the Regulation, specifically Sections 123.05(3)(d) and 123.07(1)(c), convey the (incorrect) impression that the claimant will pay only the deductible and the amount of the direct payment for repairs completed at the insurer's referral shops. Although this indeed may be true in a large number of cases, there will often be times when the vehicle will increase in value due to the repairs (repair of old damage, new tires, etc.) and that increase in value.

---

[3]This requirement might prove costly in light of the newly enacted $100 deductible glass coverage.

so-called betterment, must be paid for by the claimant. The Industry Plan emphasizes this important distinction throughout the text of the plan.

2. Section 123.04 Procedure for Approval of Plans

The MARB interprets sections 123.04(1) and (2) as allowing each member insurer to adopt the approved industry plan in its entirety, with the Industry Plan effective date of January 1, 1989, and to implement that plan on or after January 1, 1989 by filing a notice of election of the Industry Plan (Exhibit B) at least 14 days prior to the implementation date and by receiving the approval of the Commissioner of Insurance. The principal reason for this interpretation of these sections is the impracticality of the 14 day notice requirements combined with the January 1 effective date and the extremely tight filing/hearing/decision schedule for this initial plan.

For each individual insurer adopting the Industry Plan in its entirety, the benefits of the Industry Plan shall be made available to all claimants submitting claims arising from accidents or other losses occurring on or after the implementation date. (Compare 123.04(7)).

3. Section 123.05: Direct Payment Plans: Required Provisions

(1) Payment to Claimant

MARB interprets "cost of repair" to exclude betterment (see 123.03 above).

MARB recognizes the voluntary nature of the offer (direct payment) to the claimant under property damage liability, but believes it is unnecessary (see 123.03 above).

MARB also recognizes that the intention of the Regulation requirement to "make such payment at the time of, or within 2 business days after, the preparation of said appraisal" is to minimize the time between the claimants' receipt of the appraisal and his or her receipt

of the direct payment check. The recognition of actual diverse claim department check writing and accounting systems among companies, however, leads MARB to substitute a more realistic time frame of 5 business days to cover all cases. For some company operations it will be possible to present a claimant with all necessary material at once (appraisal, Repair Certificate Form, general instructions, and check). For others the process, especially for drive-in claim service, may separate the issuance and mailing of the direct payment check from the completion of the appraisal. A five (5) business days limit should accommodate all operational forms in a direct payment plan. MARB notes that the current payment limitation after receiving the completed Work Claim Form on repairs is seven (7) days.

(2) Repair Certification

MARB has recognized the inappropriateness of asking the insured to certify that repairs were made "in accordance with the appraisal" and has designed the Industry Repair Certification Form (RCF) to certify only the fact and the location of the repairs. Appraisers doing reinspections are asked to note on the RCF the items of repair that differ from the appraisals. It seems appropriate to delete that phase for the insured in order (1) to minimize the ambiguity of the RCF, and (2) to allow return of the RCF without the involvement of the repair shop in determining whether its repair was "in accordance" with the appraisal.

MARB has also chosen to allow the decrease in value (DIV), whether or not the claimant repairs the vehicle, in all cases where the RCF is not returned. The DIV will be eliminated upon the subsequent receipt of the completed RCF.

(3) Resolution of Consumer Disputes

The various "3-day" requirements of subsection (b) seem inconsistent. The MARB has replaced the overall 3-day requirements of the Regulation by requiring the authorization or denial-of a supplemental payment "within 3 business days" after the notification of such difference and inspection of the vehicle. The two individual notification and inspection 3-day constraints of the Regulation still apply for the Industry Plan.

Under subsection (d), the repair shop and the insurer may require the payment of betterment by the insured. (Sec 123.03 - "cost of repairs" above).

4. Section 123.06 Referral Repair Shop Programs

The MARB has assumed in its filing that the procedure for the registration of repair shops, required for (3a) and (3b) will be in place and that a sufficient number of such registered shops will be available for the implementation of the plan. To the extent that this assumption is not realized, the implementation of a viable direct payment plan program will be delayed.

The MARB knows of no subsection (4) of the Regulation.

The MARB has added to the requirements of subsection (7), Reinspection, the allowance of a decrease in value (DIV) if the reinspection is not permitted by the claimant and/or the repair shop within a reasonable time.

5. Section 123.07 Disclosures to Consumers

MARB expects that individual insurers will advise claimants of the election of direct payments (1) (a) through revised company claim process literature that is normally distributed to claimants.

NOTICE OF ELECTION
OF
INDUSTRY DIRECT PAYMENT PLAN

The Honorable Roger M. Singer
Commissioner of Insurance
The Commonwealth of Massachusetts
Department of Banking and Insurance
280 Friend Street
Boston, MA 02114

Dear Commissioner Singer:

Please be advised that the undersigned auto insurance company(s) elects to implement a modification of the Industry Direct Payment Plan as filed by the Massachusetts Automobile Rating and Accident Prevention Bureau in accordance with 211 CMR 123 and approved by you. If approved, the effective date of our implementation of the modified industry plan will be _____.

The extent of our modifications to the industry plan are detailed on the attached page(s).

Company Name(s) _____

_____

_____

Company Officer

_____
Name

_____
Signature

_____
Title

_____
Telephone Number

_____
Date

Please send copy to:

Richard A. Derrig
Vice President - Research
Massachusetts Rating Bureaus
40 Broad Street
Boston, MA 02108

NOTICE OF ELECTION
OF
INDUSTRY DIRECT PAYMENT PLAN

Differences from the Industry Direct Payment Plan

Company Name _____

1. Effective Date _____

2. Payment to Claimant

3. Repair Certification Form (Attach Modified Form)

4. Resolution of Consumer Disputes

5. Repair Shop Referral Lists

6. Disclosure to Consumers

[Individual Company Authorization and Information ...]

REPAIR CERTIFICATION FORM

(to be returned to your insurance company upon completion of repairs)

Company Information

Insured _____

Claim Number _____

Date of Accident _____

Policyholder Information

I. Explanation of Your Rights and Duties for Repairing Damaged Vehicle

1. It is your right to shop around and to obtain repairs at the repair shop of your choice for the amount of our appraisal.

2. It is your right to be given a list of geographically convenient repair shops which will provide quality repairs for the amount of the payment made directly to you plus any applicable deductible plus any increase in value due to the repairs. We guarantee the quality of the materials and workmanship used in making the repairs at any shop on our list.

3. It is your duty to notify us, by phone or in writing, prior to or in the course of repairs, if the cost of repairs is expected to exceed our payment plus any applicable deductible and increase in value and you wish us to pay any part of that excess cost. We have the right to inspect the vehicle within three (3) business days of your notification and we have the duty to authorize or deny any supplemental payments within three (3) business days after inspection.

4. It is your right to pursue resolution of any differences in repair costs through contact with us and the procedure established in General Provision Section 11 of the policy.

5. It is your duty to complete and to return this Repair Certification Form when the vehicle is repaired. If the completed Repair Certification Form is not returned to us, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

6. It is your duty to allow us, upon request, to reinspect the repaired vehicle after receipt of the Repair Certification Form. If the repaired vehicle is not made available for reinspection within a reasonable amount of time, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

II. Certification of Repair

I certify that my damaged vehicle has been repaired by:

Repair Shop Name _____

Address _____

_____

Telephone _____

Policyholder Name: _____

Policyholder Signature: _____

Date: _____

Company Reinspection

(check one) ____ Repair work completed in accordance with appraisal

____ Other (explain) _____

_____

Licensed Appraiser _____

Date _____

24

General Provisions And Exclusions (Continued)

11. If we Disagree On The Amount Of Damage To Your Auto	Sometimes there may be a disagreement as to the amount of money we owe for losses or damage to an auto under Collision, Limited Collision and Comprehensive (Parts 7, 8 and 9). If so, Massachusetts law provides for a method of setting the disagreement. Either you or we can, within 60 days after you file your proof of loss, demand in writing that appraisers be selected. The appraisers must then follow a procedure set by law to establish the amount of damage. Their decision will be binding on you and us. You and we must share the cost of the appraisal.
12. Sales Tax	Under Collision, Limited Collision and Comprehensive (Parts 7, 8 and 9) we will pay, subject to your deductible, all sales taxes applicable to the loss of an auto or damage to an auto.
13. Secured Lenders	When your Coverage Selections Page shows that a lender has a secured interest in your auto, we will make payments under Collision, Limited Collision and Comprehensive (Parts 7, 8 and 9) according to the legal interests of each party. The secured lender's right of payment will not be invalidated by your acts or neglect except that we will not pay if the loss of or damage to your auto is the result of conversion, embezzlement, or secretion by you or any household member. When we pay any secured lender we shall, to the extent of our payment, have the right to exercise any of the secured lender's legal rights of recovery. If you do not file a proof of loss as provided in this policy, the secured lender must do so within 30 days after the loss or damage becomes known to the secured lender. In order for us to cancel the rights of any secured lender shown on the Coverage Selections Page, a notice of cancellation must be sent to the secured lender as provided in this policy.
14. No Benefits To Anyone In The Auto Business	Coverage under Collision, Limited Collision and Comprehensive (Parts 7, 8 and 9) shall not in any way benefit any person or organization having possession of your auto for the purpose of servicing, repairing, parking, storing, or transporting it or for any similar purpose.
15. If Two Or More Autos Are Insured Under This Policy	Two or more autos may be insured under this policy. There may be different limits for each auto. If so, when someone covered under this policy is injured while a pedestrian or is using an auto other than your auto at the time of the accident, the most we will pay under any applicable Part is the highest limit shown for that Part for any one auto on your Coverage Selections Page.

175:191A. Notice and Arbitration Provisions in Policies Insuring Against Physical Damage to Motor Vehicles of Assured.

Section 191A. No company shall issue a policy or contract which insures against physical damage to a motor vehicle of the insured unless said policy contains in substance the following provisions:—

In case of any loss or damage insured against under the policy, the named insured shall give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of larceny, robbery or pilferage, to the police, and within sixty days after filing proof of loss the company shall pay the amount of loss as provided in the policy.

If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the named insured or the company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

PETITION FOR WAIVER OF MINIMUM
NUMBER OF SHOPS ON REFERRAL SHOP LISTS

The Honorable Roger M. Singer
Commissioner of Insurance
Department of Banking and Insurance
Commonwealth of Massachusetts
280 Friend Street
Boston, MA 02114

Dear Commissioner Singer:

Please be advised that the undersigned auto insurance company(s) petitions for a waiver from the requirements of 211 CMR 123.06 (2), the minimum number of geographically convenient referral repair shops to be provided claimants, under the Industry Direct Payment Plan. For the reasons set forth on the attached page(s), we will be unable to comply with the Regulation minimum of 2 repair shops after January 1, 1988, 3 repair shops after May 1, 1989, 4 repair shops after September 1, 1989 and 5 repair shops after January 1, 1990. Our Massachusetts Auto Market Share for 1987 was _____%.

Company Name(s) _____

_____

_____

Company Officer _____
Name

_____
Signature

_____
Title

_____
Telephone Number

_____
Date

Please send copy to:

Richard A. Derrig
Vice President - Research
Massachusetts Rating Bureaus
40 Broad Street
Boston, MA 02108

PETITION FOR WAIVER OF MINIMUM
NUMBER OF SHOPS ON REFERRAL SHOP LISTS

Company Name _____

1987 Market Share _____

We request a waiver from the minimum number requirement for referral repair shops on our referral shop list under 211 CMR 123.06 (2) for the following reasons:

Appendix D

Decision and Order on the Application for Approval of the Massachusetts Automobile Rating and Accident Prevention Bureau Direct Payment Plan

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION
DIVISION OF INSURANCE

DOCKET NO. G89-10

AMENDMENTS TO RULE 13 OF THE RULES OF OPERATION OF COMMONWEALTH AUTOMOBILE REINSURERS	DECISION AND ORDER

BACKGROUND

On February 16, 1989 the Governing Committee of Commonwealth Automobile Reinsurers ("CAR") filed a proposed amendment to Rule 13(A)(2)(a) of the CAR Rules of Operation ("the Rules") with the Division of Insurance ("the Division"). On March 16, 1989 the CAR Governing Committee filed an additional proposed amendment to Rule 13(A)(2)(a). Rule 13 of the Rules details the obligations of CAR member companies who have been appointed as servicing carriers.

United States Fidelity and Guaranty Company ("USF&G") requested a hearing on both proposed amendments to Rule 13(A)(2)(a). Pursuant to M.G.L. c. 175, §113H and the CAR Plan and Rules, a public hearing on the proposed amendments was held on April 14, 1989 at 9:30 a.m. at the Division. Interested parties were invited to submit oral and written testimony at the hearing. Parties were also given the opportunity to submit additional post-hearing statements and rebuttal.

Representatives from CAR and two insurance companies presented oral and written testimony concerning the proposed amendments. Testimony in support of the proposed amendments was offered by Joseph J. Maher, Jr., Vice President and General Counsel of CAR, and Fran Delage, a member of CAR's Claims Advisory Committee and the Technical Claim Manager of the New England Branch of the Hanover Insurance Company. USF&G and Holyoke Mutual Insurance Company ("Holyoke Mutual"), both presented testimony in opposition to the proposed amendments.

ISSUES

In order to assure the protection of the public interest, Rule 13 (A)(2)(a) of the CAR Rules of Operation lists specific services which a member company must demonstrate it has the capability of performing in order to be considered for appointment as a servicing carrier. Once appointed, a servicing carrier must continue to satisfy those requirements. There are currently six (6) specific requirements, which include the ability to 1) provide policy issuance and premium collection to all eligible classes of risks; 2) service claims in every state; 3) administer a direct billing program for private passenger risks; 4) provide an installment payment plan; 5) maintain a special investigative unit; 6) report information to CAR in an accurate and timely manner.

CAR's proposed amendments place an additional requirement upon servicing carriers, namely, to adopt and maintain an approved direct payment plan. CAR proposed this additional requirement for servicing carriers in response to the recently enacted automobile insurance reform legislation, c. 273 of the Acts of 1988, specifically, §§24 and 51 of c. 273. CAR argues that, while §§24 and 51 of c. 273 do not require an insurer to have a direct payment plan, insurers should take advantage of every cost-savings device available in Massachusetts. CAR claims that approval of its proposed amendments to Rule 13 will result in cost savings and improved service which is beneficial to both the industry and the consumer.

The two companies opposing the proposed amendments to Rule 13 argue that forcing servicing carriers to adopt and maintain an approved direct payment plan is contrary to the intent of §§24 and 51 of c. 273, since those sections do not require insurers to file a direct payment plan with the Division. They claim that each insurer should be left to determine, based on its own internal policies and methods, whether or not to establish a direct payment plan. They also point out certain aspects of the current regulation governing direct payment plans which cause them difficulty, such as potential exposure resulting from guarantees of repair shop workmanship and quality of materials, and the potential problems associated with creating and maintaining a referral shop list. Holyoke

Mutual emphasized that the increased staff costs associated with creating and maintaining a referral shop list are particularly burdensome to servicing carriers with a small market share. Holyoke Mutual also noted that these servicing carriers would be unable to demand significant discounts from repair shops due to the small volume of work to be offered to the repair shops. USF&G and Holyoke Mutual are not, however, opposed in principle to a direct payment plan; they argue only that a direct payment plan should not be required of a servicing carrier.

DECISION AND ORDER

M.G.L. c. 175, §113H(C) clearly mandates that CAR "shall establish reasonable eligibility requirements for appointment as a servicing carrier, including but not limited to, the maintenance of a specific investigative unit to investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud." In the current Rule 13(A)(2)(a)(1-6), CAR has created six eligibility requirements, all for the purpose of protecting the public interest. CAR now seeks to add another requirement which was specifically created to benefit consumers as well as the insurance industry as a cost-saving and service-enhancing device; indeed, the Legislature, in enacting §§24 and 51 in c. 273, intended to encourage insurance companies to develop programs which would

assure consumers the greatest possible savings in insurance costs. Clearly, a requirement imposed upon servicing carriers which is beneficial to both the industry in general and the consumer is reasonable and will protect the public interest. I am not persuaded by the testimony presented that the potential problems insurers may encounter in establishing a direct payment plan are sufficient justification for disapproving the proposed amendments in their entirety, for two reasons: first, the problems are, by the opponents' own admission, hypothetical; second, of the eleven direct payment plans which I have approved and which are currently in effect in the Commonwealth, ten have been filed by insurers who are CAR servicing carriers. In other words, approximately one half of the current servicing carriers have overcome whatever problems may exist in establishing a direct payment plan. I note, however, that the servicing carriers who have thus far established direct payment plans insure approximately 60% of the private passenger risks insured in the Commonwealth, and may be better able to afford the costs associated with establishing and maintaining such plans than are servicing carriers with a comparatively small private passenger market share. However, I see no reason why most policyholders should not have the opportunity to take advantage of this new, more efficient cost-saving device.

Therefore, it is ordered that the proposed amendments to Rule 13 filed by CAR Governing Committee on February 16, 1989 and March 16, 1989 are hereby approved, with the following modification: a CAR member who is currently appointed as a servicing carrier shall be required to establish and maintain a direct payment plan only if that servicing carrier's average Massachusetts private passenger market share for the years 1986, 1987, and 1988 equals or exceeds one percent (1%) of the total Massachusetts private passenger market for 1988. This criteria shall also apply to any CAR member appointed as a servicing carrier during the calendar year 1989. For CAR members appointed as a servicing carriers subsequent to 1989, this determination shall be made using the average market share percentage for the three years preceding the year of appointment compared to the total market for the year immediately preceding appointment. In view of the fact that an industry-sponsored direct payment plan has been filed and approved by the Division, it is further ordered that all servicing carriers shall have until January 1, 1990 to establish a direct payment plan.

This decision may be appealed to the Superior Court pursuant to M.G.L. c. 175, §113H.

Dated:
October 10, 1989

Timothy H. Gailey
Commissioner

MASSACHUSETTS AUTOMOBILE RATING AND ACCIDENT PREVENTION BUREAU
40 Broad Street, Boston, Massachusetts 02109
(617) 542-5080
FAX: (617) 338-7582

November 7, 1989

CIRCULAR LETTER TO CLAIM PERSONNEL

Direct Payment Plan - Disclosure Notice and Referral Lists

The enclosed documents and cover letter are being distributed at the request of the Commissioner of Insurance.

The first document now provides specific text for the disclosure form as generally required by Section 123.07 of Regulation 211 CMR 123:00. Also enclosed is the text for "Explanation of Your Rights and Duties for Repairing Damaged Vehicle" as it appears in the approved Repair Certification Form for the Industry Plan. This text is to be printed on the reverse side of the disclosure form.

The second document provides text to be included with the repair shop referral list as required by Section 123.06 of the foregoing Regulation.

The third document provides the Commissioner's interpretation of eligibility criteria for inclusion of a repair shop on the referral list.

You should consult prior Circular Letters to Claim Personnel dated December 16, 1988, January 6, 1989 and April 6, 1989 for further detail.

LORENZO A. RAIMONDI

Personal Lines Manager

LAR/mp

Enclosures

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF INSURANCE
280 FRIEND STREET BOSTON 02114
(617) 727-7189

TIMOTHY H. GAILEY
COMMISSIONER OF INSURANCE

November 1, 1989

Mr. Daniel Johnston
Massachusetts Automobile Rating &
Accident Prevention Bureau
40 Broad Street
Boston, MA 02109

Re: New Consumer Disclosure Notices and Eligibility Requirements Under Direct Payment/Referral Plans

Dear Mr. Johnston:

As you may know, the Division of Insurance has been meeting with representatives of the autobody repair shop industry, the insurance industry and consumer groups over the last seven months to develop improvements in direct payment/referral plans.

These meetings have resulted in the attached documents. Please distribute them to each of your member companies, with a copy of this letter. The two disclosure notices to consumers should be incorporated into the routine administration of each company's direct payment/referral program. The last document, an interpretive bulletin regarding eligibility requirements for shops, should be taken into account as each insurer develops its referral list.

Please keep me advised as to any significant changes in consumer practices, or in insurance or repair industry practices, attributable to the circulation of these materials.

We are interested in continued savings in repair shop costs as well as in fairness to the autobody repair industry. Thank you for your assistance in this matter.

Sincerely,

Timothy H. Gailey
Commissioner of Insurance

enclosures (3)

cc: The Honorable Linda Melconian
The Honorable Francis Woodward
E. Michael Sloman, Esquire
James A. Castleman, Esquire
Joshua Kratka, Esquire
Richard Derrig
Brian Hickey
Anne D'Agostino
Gerry Gnazzo

[additional disclosure form directed to consumers, handed, delivered or sent at the first contact regarding a claim, whether agent or co.]

***

NOTICE

_____ Insurance Company may provide a check directly to you for payment of the loss of or damage to your motor vehicle less any applicable deductible. We may also provide to you a list of repair shops which will perform the repair work that appears on our appraisal, for the amount we pay to you, and whose quality of repairs we are required to guarantee. With this notice or soon thereafter, you may be receiving a written appraisal, a direct payment check, a list of referral repair shops and a Repair Certification Form. These are part of a Direct Payment/Referral Plan. You are not required to use this plan.

You have four options:

(1) Use the direct payment check at a repair shop on the list. See explanation of Rights and Duties on the back of this sheet.

(2) Cash the direct payment check and use the proceeds to have the repairs done at any other shop of your choice.

(3) Choose not to participate in the Direct Payment/Referral Plan by returning the check to us and taking your car to the shop of your choice.

(4) Keep the check. Be aware, however, that the value of your car will be reduced by the amount of the check, plus any applicable deductible.

However, if you choose Option 2 or Option 3, you should be aware that we cannot be sure that the shop you choose will perform the listed repairs on your vehicle for the amount we have approved. We may not be required to pay the difference between what your shop charges to do the repairs and what one of our referral shops would have charged, nor are we required to guarantee the quality of repairs at non-referral shops.

[reverse side is to be the list of Rights and Duties from the Repair Certification Form as approved under the MARB Industry Plan]

[text for reverse side of Consumer Disclosure Notice]

Explanation of Your Rights and Duties for Repairing Damaged Vehicle

1. It is your right to shop around and to obtain repairs at the repair shop of your choice for the amount of our appraisal.

2. It is your right to be given a list of geographically convenient repair shops which will provide quality repairs for the amount of the payment made directly to you plus any applicable deductible plus any increase in value due to the repairs. We guarantee the quality of the materials and workmanship used in making the repairs at any shop on our list.

3. It is your duty to notify us, by phone or in writing, prior to or in the course of repairs, if the cost of repairs is expected to exceed our payment plus any applicable deductible and increase in value and you wish us to pay any part of that excess cost. We have the right to inspect the vehicle within three (3) business days of your notification and we have the duty to authorize or deny any supplemental payments within three (3) business days after inspection.

4. It is your right to pursue resolution of any differences in repair costs through contact with us and the procedure established in General Provision Section 11 of the policy.

5. It is your duty to complete and to return the Repair Certification Form when the vehicle is repaired. If the completed Repair Certification Form is not returned to us, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

6. It is your duty to allow us, upon request, to reinspect the repaired vehicle after receipt of the Repair Certification Form. If the repaired vehicle is not made available for reinspection within a reasonable amount of time, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

[statement to appear on every referral list]

***

REMEMBER

WHEN USING A SHOP NOT LISTED HERE

You are not required to take your car to one of these shops, but the amount of the direct payment check may or may not be sufficient to pay the cost of repairing your car if you take your car to a shop not listed here. If necessary, we will negotiate with your shop provided the shop is registered by the state, but we cannot guarantee that we will pay the difference between our approved payment and the amount your shop charges to repair your car. Nor are we required to guarantee the quality of repairs.

[interpretive bulletin from Commissioner of Insurance addressed to insurers re: eligibility criteria for inclusion on referral shop list]

***

Pursuant to 211 CMR 123.06(3)(b), in determining which registered repair shops will be put on your referral lists, you are to consider the quality, speed and cost of repairs, the quality of customer service, geographical convenience, cooperation with inspection requirements and compliance with all applicable laws and regulations.

With regard to the cost of repairs, you may consider the labor rate and any discount on parts a repair shop is willing to give you. Should you be unable to reach an agreement on these matters, the following alternative should be pursued. Some shops, working at a higher labor rate or without offering a parts discount, may be able to match the overall cost of repairs through increased efficiency, and such shops should be given the opportunity to convince you of this.

Secondly, as you know, you are required to guarantee repairs performed by your referral shops under 211 CMR 123.06(6). You may seek indemnification agreements with the shops on your list. One way to satisfy your indemnification request may be to have the shop add your name as an additional insured on the shop's garagemen's liability policy. If such an arrangement is not acceptable to shops, however, companies should seek other mutually agreeable indemnification arrangements.

DIRECT PAYMENT PLAN
AVERAGE PP MARKET SHARE
'86 '87 '88

	CAR YEARS '86	'87	'88	CAR YEARS AVERAGE	% MARKET SHARE
147 AMERICAN UNIVERSAL	$19,918	$26,415	$29,946	$25,426	0.8%
153 ARBELLA	$0	$0	$40,792	$13,597	0.4%
198 BERKSHIRE	$5,430	$6,988	$11,934	$8,117	0.2%
295 CNA	$15,753	$40,997	$46,076	$34,275	1.0%
474 HOLYOKE	$30,745	$29,750	$32,799	$31,098	0.9%
511 JOHN HANCOCK	$23,387	$13,070	$11,923	$16,127	0.5%
731 PLYMOUTH ROCK	$30,392	$51,066	$66,916	$49,458	1.5%
INDUSTRY	$3,230,979	$3,343,968	$3,392,592	$3,322,513	

DECISION AND ORDER ON
THE APPLICATION FOR APPROVAL OF THE
MASSACHUSETTS AUTOMOBILE RATING AND ACCIDENT
PREVENTION BUREAU DIRECT PAYMENT PLAN

In accordance with Chapter 90, §340, Chapter 175, §1130 of the Massachusetts General Laws, as amended by Sections 24 and 51 of Chapter 273 of the Acts of 1988, and 211 CMR 123.00, a consolidated hearing, Docket No. 88-57, was held on December 22, 1988.

The purpose of the hearing was to afford all interested persons an opportunity to provide testimony regarding several plans for the direct payment to consumers by insurers for motor vehicle collision and comprehensive claims. The Massachusetts Automobile Rating and Accident Prevention Bureau ("MARB"), filing the plan addressed in this order (the "Industry Plan"), was respresented by Richard A. Derrig and E. Michael Sloman. The Massachusetts Auto Body Association ("MABA"), the Massachusetts Glass Dealers Association ("MGDA"), the Attorney General ("AG"), Liberty Mutual Insurance Company, and representatives of three individual automobile repair shops participated as interested persons.

The Industry Plan submitted in final form on December 15,

1988 by the MARB is hereby APPROVED under 211 CMR 123.04(6).

Although this regulation does not require that the reasons for this approval be set forth in this Order and Decision, because this plan is among the first three plans approved under the provisions of the recently enacted automobile insurance reform legislation (Chapter 273 of the Acts of 1988), a number of additional issues are addressed in this order.

1. AMENDMENTS TO DIRECT PAYMENT REGULATIONS

The approved Industry Plan differs in two respects from 211 CMR 123.00 as originally promulgated on an emergency basis on December 8, 1988. However, for the reasons set forth below, the regulations will be amended. The Industry Plan conforms with and is approved under the regulations as amended.

(a.) Exclusion of Glass Claims:

The Industry Plan excludes glass specialty shops from the definition of "repair shop." This contravenes 211 CMR 123.03 as originally promulgated. The MARB argues, however, that glass claims should be excluded from the scope of the regulation. According to the MARB, there already exists an active and efficient system of insurer referral shops for glass claims, and subjecting insurers to 211 CMR 123.00 for glass claims would not only increase costs but also would pose a threat to safe driving. The Executive Director of the Massachusetts Glass Dealers Association, representing approximately 80 percent of the glass dealers in Massachusetts,

testified essentially that some measure of consumer choice is desirable under any referral system, but expressed no specific position as to whether or not 211 CMR 123.00 should apply to glass claims. The Attorney General maintained that glass repairs do fall within the scope of repairs the statute and regulation were designed to cover. MABA concurred with the AG. The AG claimed that not all insurers now have glass referral programs. He proposed that an insurer be allowed an exemption from 211 CMR 123.00 for glass claims only if it could demonstrate that it has an effective glass referral system already in place. The MARB responded that such a proposal would only delay the implementation of the plans, and might well discourage some companies from participating at all.

In the interest of consumer safety, direct payment plans shall be permitted to exclude glass claims. Moreover, while no thorough examination of the glass specialty shop referral system currently in place has been conducted, it has not been shown that subjecting glass claims to the requirements of 211 CMR 123.00 would contribute to cost containment.

(b.) Timing of Direct Payment:

The provisions of 211 CMR 123.05(1) as originally promulgated allowed an insurer two days to issue a direct payment check following an appraisal. The MARB asserted that because of diverse claim department check-writing and accounting systems among the companies, a two-day limit was unrealistic and that a limit of five days would accommodate all

operational forms in a direct payment plan. No evidence was presented nor argument made that five days is an unreasonable period of time within which to require an insurer to provide a consumer with a direct payment check following an appraisal. The plan provisions to that effect are therefore approved.

2. REGISTRATION OF REPAIR SHOPS

The Industry Plan provides that only registered repair shops be included on a company's referral list and that only registered shops qualify for supplemental payments sent directly from the insurer. Unavoidable delay in the registration process being administered by the Division of Standards under M.G.L. c. 100A, however, will preclude the immediate use of registered repair shops. In the interest of assuring consumers the greatest possible savings as anticipated by the Legislature, the requirement contained in 211 CMR 123.06(3)(i), that shops appearing on insurers' referral lists be registered shops, and the prohibition contained in 211 CMR 123.05(3)(b), that no insurer may make any supplemental payment directly to an unregistered shop, are therefore waived until such time as shops are legally able to acquire registered status. It is expected that by March 1, 1989, the delay in registration of shops will have been eliminated. Therefore, the provisions in the Industry Plan limiting participation to registered repair shops are suspended during January and February, 1989. Insurers will thereafter be expected to revise

or modify their referral lists to comply with the regulation as written.

3. EXCLUSION OF SO-CALLED "BETTERMENT" FROM COST OF REPAIR

The MARB excludes so-called "betterment," i.e., the replacement of used or depreciated components (tires, batteries, sheet metal parts) with new components, from the "cost of repair," as that term is used throughout the Industry Plan. Because of the use of this term, MABA argued that the Industry Plan should be disapproved. MABA argued that approval of the plan would in effect give regulatory approval to a concept that may not be legally valid in many instances. The AG joined MABA in noting that the term "betterment" itself does not appear in the Standard Massachusetts Automobile Insurance Policy, and both were concerned that the MARB's proposal could operate as a subtle policy coverage change, limiting insurers' liability.

As pointed out by the MARB, however, 211 CMR 123.05(1) requires that direct payments be made "subject to the terms and conditions of the applicable insurance policy." It was not the intent of the Division to expand or contract the legal liability of insurers for the "cost of repair," only to administer a new method by which such liability may be discharged. The Industry Plan's use of the term "betterment" should not be construed as changing in any respect the determination of such liability. The definition of "cost of

repair" remains a question to be resolved by the parties in accordance with their contract.

4. NUMBER OF SHOPS ON REFERRAL LISTS, SUPPLEMENTAL PAYMENTS AND DISCOUNTS

MABA also questioned the propriety of the number of shops to be on insurers' referral lists, the right of insurers to make supplemental payments to their referral shops, and the propriety of repair shops offering discounts to insurers. All these issues turn on the statutory construction of the enabling statute. Only a strict, literal interpretation of the statute might prohibit the transitional rule governing the number of shops as set forth in 211 CMR 123.06(2), the allowance of supplemental payments in appropriate circumstances as set forth in 211 CMR 123.05(3)(b), and the clarification of the statute's conflict of interest provisions set forth in 211 CMR 123.06(8). The Legislature could not have intended such an application of the statute.

Direct payment plans, as contemplated by the statute, are to be implemented at the option of the insurers. If the plans are too stringently regulated, their appeal to insurers, and thus their value to consumers, will be lost. The Division has been granted authority to promulgate regulations which will promote such plans in order to achieve savings in insurance costs, the ultimate goal of the legislation. To the extent that that goal may be realized through flexibility and the

exercise of some discretion in regulating the plans, the regulations, and the approval of the plans in accordance with the regulations, must focus on that goal. Therefore, without a convincing argument as to the need for such a strict reading of the statute which, as a practical matter, would undermine the spirit and intent of the law as a whole, MABA's recommendations are not adopted.

5. PROCEDURAL OBJECTIONS

MABA objected to the hearing on procedural grounds, arguing that it was not given ten days' notice of the hearing on the plan, and that the plan on which the hearing was held was not timely filed with the Division.

An Industry Plan was originally submitted on November 15, 1988, at which time no regulations had yet been issued. Conceivably, even in the absence of regulations, that initial plan could have been the subject of the hearing since Sections 24 and 51 of Chapter 273 of the Acts of 1988 require only that a hearing be held prior to approval of any such plan; the statute is permissive as to the Commissioner's authority to promulgate regulations. As a practical matter, however, the Division made every effort to obtain the input of "persons affected," including MABA, in the review of the plans as they were submitted and in the preparation of the regulations. When the regulations were issued, on December 8, 1988, all persons affected were provided a better idea of the conditions under

which a plan would be approved. This afforded MABA adequate notice in that it was able to submit a thorough and comprehensive analysis of the plan on the day of the hearing.

MABA also questioned the need for emergency regulations and an expedited hearing process. However, Chapter 273 was enacted with an emergency preamble, demonstrating the clear intent of the Legislature that direct payment plans be in place for policy year 1989. The promulgation and amendment of the regulations on an emergency basis, as well as special provisions within those regulations for plans expected to be effective on January 1, 1989, are therefore necessary and appropriate actions for the Division to have taken.

6. RECORDKEEPING REQUIREMENTS

As noted above, the AG participated in the hearing as an interested person. The AG supported the emergency regulations and immediate approval of the plan in light of the legislative mandate compelling prompt action. However, the AG also recommended establishing clearly-defined, uniform recordkeeping requirements and standards by which the plan could be monitored. MABA agreed with the AG on this point. The MARB countered that this was neither the time nor the forum for development of such data requirements and that to demand that additional data be kept as part of the regulation might increase the costs of implementing the system and would surely delay the proposed January 1, 1989 effective date. The AG

Appendix E

Regulation 211 CMR 93.00

COST AND EXPENSE CONTAINMENT STANDARDS FOR MOTOR VEHICLE INSURERS

Section

§93.01. Authority.

These standards are promulgated in accordance with the authority granted to the Commissioner by M.G.L. c. 175, s. 113B.

§93.02. Purpose and scope.

This regulation establishes cost and expense containment standards pursuant to St. 1986, c. 622 for use in connection with the fixing and establishing of motor vehicle insurance rates by the Commissioner.

§93.03. Definitions.

For the purposes of this regulation, the following shall have the following meanings.

Bodyshop payments, payments made for or related to the repair and replacement of damaged motor vehicles, including reimbursements to automobile bodyshops for repair work done;

CAR, Commonwealth Automobile Reinsurers, created pursuant to M.G.L. c. 175, s. 113H or any successor organization;

Commissioner, the Commissioner of Insurance appointed under the provisions of M.G.L. c. 25, s. 6, or his designee;

Division, the Division of Insurance within the Department of Banking and Insurance;

Fraudulent claims, claims submitted with the intent of receiving a larger payment from the insurer than the amount, if any, to which

STATUTORY AUTHORITY: M.G.L c. 175, s. 113B.

Added, 1987-2

the claimant is entitled under the policy, including claims for (i) non-existent losses; (ii) amounts in excess of actual losses; or (iii) incidents which the claimant has arranged in an effort to receive an insurance payment;

Glass claims payment, payments associated with any Comprehensive or collision claims involving damaged glass;

Insurer, any insurance company authorized to write motor vehicle insurance in the Commonwealth;

MARB, the Massachusetts Automobile Rating and Accident Prevention Bureau of any successor licensed by the Division as a rating organization to act on behalf of insurers;

Motor vehicle insurance, motor vehicle policies or bonds, both as defined in M.G.L. c. 90, ss 34A and 34O and M.G.L. c. 175, ss. 113A, 113C and 113L;

Presiding Officer, means the Commissioner or any person or persons designated by the Commissioner who shall preside over the hearing and render the findings, order and decision;

Representative group of insurers, a group of insurers, representing at least 50% of the market in premium volume and 25% in number of insurers writing private passenger motor vehicle insurance in the Commonwealth in the most recent calendar year, selected so that the group is representative of the entire private passenger motor vehicle insurance industry in the Commonwealth. The group shall at a minimum be representative with respect to the following characteristics:

(a) the proportions of non-servicing carriers and of servicing carriers in the group by premium volume shall be similar to the proportions of non-servicing carriers and of servicing carriers, respectively, in the industry as a whole;

(b) the proportions of agency companies and of direct writers in the group by number of insurers shall be similar to the proportions of agency companies and of direct writers, respectively, in the industry as a whole; and

(c) the proportions of stock companies and of mutual companies in the group by number of insurers shall be similar to the proportions of stock companies and of mutual companies, respectively, in the industry as a whole. The group shall also be selected so that it meets at a minimum the following additional specific criteria:

Added, 1987-2

(a) It shall include companies of varying sizes, including at least one insurer with less than 1% of the market by premium volume;

(b) It shall include companies with varying loss ratios, including at least one insurer whose loss ratio for all automobile coverages combined is among the lowest 10% and one whose loss ratio is among the highest 10% of companies which write more than 2% of the market by premium volume; and (c) It shall include at least one insurer which writes motor vehicle insurance in the Commonwealth only, one interstate insurer, one insurer whose policyholders reside primarily in towns with high territorial relativities, and one primarily in towns with low territorial relativities.

The selection of specific companies comprising the representative group shall be changed from year to year so that substantially all companies writing motor vehicle insurance in the Commonwealth will, over any 6-year period, have been included in a representative group.

Servicing carrier, an insurer appointed pursuant to the Plan and Rules of Operation of CAR to issue and service motor vehicle insurance policies ceded to CAR;

Voluntary/ceded claims handling differential, differences in the manner in which insureds process claims of voluntary insureds versus claims of insureds under policies ceded to CAR as provided in M.G.L. c. 175, s. 113H.

§93.04. Filing requirements.

(1) Time of MARB filing. Unless the Presiding Officer prescribes a different filing schedule, the MARB shall file with the Division a Chapter 622 filing which conforms to the requirements of these standards at the time that insurers make their advisory filing pursuant to 211 CMR 77.00.

(2) Scope of MARB filing. The MARB's Chapter 622 filing shall address insurers' cost and expense containment programs in the following areas:

(a) bodyshop payments;

(b) voluntary/ceded claims handling differential;

(c) fraudulent claims;

(d) expenses; and

Added, 1987-2

(e) glass claims payments.

The Presiding Officer may, in his direction, limit the specific areas which the MARB filing must address in any particular year's hearing. In its filing, the MARB may present evidence of significant cost containment efforts in areas other than those designated in this section.

(3) Content of MARB filing. Unless otherwise ordered by the Presiding Officer, the MARB filing shall comply with all applicable provisions of 211 CMR 77.00. Except as limited by the Presiding Officer, for each of the specific cost and expense containment program areas identified in subsection (2) above, the MARB filing shall include a narrative description of insurers' cost containment programs, together with the direct testimony, data and exhibits which the MARB would like considered in the hearing to fix and establish motor vehicle insurance rates. With respect to the bodyshop payments issue, the fraudulent claims issue, and the glass claims payment issue the MARB narrative shall describe and document the activities of a representative group of insurers. The MARB shall identify the insurers comprising the representative group in the format set out in Attachment A.

In describing and documenting each cost and expense containment program, the MARB filing must provide at a minimum the following: the name and title of the person responsible for the program; the number of employees and non-employees involved; the length of time the program has been in effect; the form of the program (e.g., formal program based on written plan, manual, or rules; or informal programs or procedures); the coverages and types of losses affected by the program; and the methods for auditing, monitoring and evaluating the program and its results.

The MARB filing must also document, for each cost and expense containment program, the amounts expended on the program in the most recently completed year and budgeted for the current year and the succeeding year; and the savings realized in the most recently completed year and anticipated in the current year and the succeeding year, in dollar amount, percentage of loss payments, and in terms of the impact on insurance rates. The MARB filing must demonstrate that each cost or expense containment program results in genuine cost or expense containment and not simply cost or expense transfer.

(4) MARB Filing on Bodyshop Payments Issue. In addressing the

Added, 1987-2

bodyshop payments issue, the MARB's filing shall address, at a minimum, issues raised in the Decision on 1987 Rates, including the following:

(a) Parts costs - efforts insurers make to pay less than the full retail price for parts and to locate and, where appropriate, insist on the use of aftermarket parts and used rebuilt parts;

(b) Labor rates - efforts to determine whether labor rates are reasonable, to resist increases, or to lower rates;

(c) Labor times - efforts to determine whether labor times are reasonable and whether they reflect times actually spent on the repair;

(d) Bodyshop recommendations - to the extent permitted under the Auto Damage Appraisers Licensing Board regulations, as interpreted by the Massachusetts courts, efforts to suggest or recommend that insureds use specific bodyshops, and that insureds do not use bodyshops whose methods or equipment are inefficient or outdated or whose charges are excessive;

(e) Fraud - efforts to control fraud in the payment of bodyshops' or insureds' claims for repairs, towing or storage, or insureds' claims for reimbursement for total losses.

(f) Total losses - efforts to ensure that insurers are not declaring a car a total loss which prudent claims evaluation would have shown could have been repaired at less cost;

(g) Storage - efforts to ensure that storage times and charges are reasonable, or to reduce times or charges;

(h) Towing - efforts to ensure that towing charges are reasonable or to reduce charges; and

(i) General - efforts to ensure that bodyshops are not reimbursed for unauthorized repairs or charges, and efforts to provide formal training and continuing education for appraisers.

(5) MARB Filing on Voluntary/ceded Claims Handling Differential Issue. In addressing the voluntary/ceded claims handling differential issue, the MARB filing must demonstrate that ceded claims are processed with the same degree of diligence as are voluntary claims. The MARB filing must also specifically provide the following information:

(a) the identity of each servicing carrier whose internal systems or

Added, 1987-2

procedures enable persons handling claims to differentiate between ceded claims and voluntary claims;

(b) the identity of each servicing carrier which has different programs, procedures or personnel for handling ceded claims and voluntary claims, with complete documentation for each such servicing carrier describing the different programs, procedures and personnel responsibilities; and

(c) a comparison of claims which differ only in their status as ceded or voluntary claims.

For the purpose of this comparison, the MARB must evaluate a set of ceded claims and a set of voluntary claims, on the basis of criteria enumerated in the CAR "Tyler" audit, discussed in the Decision on 1987 Rates, including but not limited to, investigation and documentation in the following areas:

1. theft losses;

2. Personal Injury Protection and bodily injury claims;

3. salvage recoveries;

4. attempts to locate and use aftermarket parts;

5. storage charges;

6. appropriateness of labor charges; and

7. total losses.

The set of ceded claims must be randomly selected from the entire population of private passenger ceded claims made against all servicing carriers for the selected policy year. The sample size must be sufficiently large to be representative of the entire population of ceded claims.

The set of voluntary claims must be randomly selected from the entire population of private passenger voluntary claims made against all servicing carriers for the same policy year from which the ceded claims were selected. The sample size must be sufficiently large to be representative of the entire population of voluntary claims paid by the servicing carriers.

The selection techniques and sample sizes must be determined according to generally accepted statistical procedures, so that each set of claims is a statistically valid subset of the entire population from which

Added, 1987-2

each set was selected. The MARB filing shall explain in detail the specific methods by which each set of claims was selected.

(6) MARB filing on Fraudulent Claims Issue. In addressing the fraudulent claims issue, the MARB filing must address efforts insurers make to identify all fraudulent claims, including but not limited to:

(a) claims for non-existent incidents, damage or injury;

(b) claims for substituted or non-existent vehicles;

(c) claims for exaggerated damage or injury, such as inflated doctor's bills, repair shop bills, or wage statements;

(d) duplicate claims for the same incident, damage or injury; and

(e) claims for incidents which the claimant has arranged, such as theft, arson, or vandalism, in an effort to receive an insurance payment.

The MARB filing must also identify all efforts insurers make to implement internal and external programs and procedures to discourage or prevent the filing, processing and payment of fraudulent claims, including the efforts of each servicing carrier in the representative group to implement the anti-fraud program mandated by Section 113H of Chapter 175 of the General Laws, and the requirements of Chapter 44 of the Acts of 1987.

(7) MARB Filing on the Expenses Issue. In addressing the expenses issue, the MARB filing shall focus upon costs relating to allocated and unallocated claim adjustment expenses, general expenses, other acquisition expenses, and expense reimbursements to agents and brokers. With respect to these areas, the MARB filing shall address insurers' efforts to contain costs through the productive use of personnel, the use of computers and other methods of automation, and efforts to avoid duplication of the work of agents and payment of excessive salaries and other compensation.

(8) MARB Filing on the Glass Claims Payments Issue. In addressing the issue of glass claims payments, the MARB's filing shall document insurers efforts to reduce fraud connected with this coverage and to policy excessive pricing of parts and services. Specifically, the filing shall address:

(a) Fraud — efforts to control fraud in the payment of glass claims for work not done or damage intentionally caused by the insureds, in

Added, 1987-2

order to, among other things, obtain promotional give-aways such as free tanks of gas;

(b) Replacement glass costs — efforts insurers make to receive the maximum discount on replacement glass;

(c) Labor times — efforts to determine whether labor times are excessive and whether they accurately reflect time spent on the repairs; and

(d) Promotional give-aways — efforts insurers make to halt the practice of promotional give-aways such as free tanks of gas with windshield replacements covered by comprehensive insurance.

(9) Other Filings. Any other party to the hearing on motor vehicle insurance rates, including any statutory intervenor or the State Rating Bureau of the Division of Insurance, may file a response to the MARB filing submitted under this section, and may file any other information, documentation, written testimony, or hearing exhibits which are relevant or may assist the Commissioner in evaluating the adequacy of insurers' cost and expense containment programs. Unless the Presiding Officer directs otherwise, all submissions by other parties must be filed at the same time the other parties submit their filings pursuant to 211 CMR 77.00, and must comply with all relevant sections of 211 CMR 77.00.

§93.05. Determination of adequacy of programs.

(1) The Commissioner shall evaluate the adequacy of insurers' cost and expense containment programs based upon the MARB filing, any other Chapter 622 filings made and the evidence introduced at the hearing to fix and establish motor vehicle insurance rates.

(2) The MARB must demonstrate that insurers are making reasonable efforts to contain costs and expenses. The Commissioner shall evaluate insurers' programs in light of sound management practices, due diligence and the legal obligations of insurers to pay claims. In determining whether insurers' cost and expense containment efforts are adequate and reasonable, the Commissioner may consider alternative programs which exist elsewhere, or which he finds could reasonably be implemented.

(3) The MARB will not be required to show that every insurance company has the same cost and expense containment programs. It will

Added, 1987-2

be sufficient to show that the practices and programs of a representative group of insurers, as defined above, meet applicable standards.

§93.06. Adjustment of premium charges.

(1) In the event that the MARB fails to make the filing required by 211 CMR 93.04, that its filing is deficient, or that the Commissioner determines that insurers' cost and expense containment programs are inadequate, he may refuse to allow any increase in premium charges for affected coverages which insurers recommend in their filing pursuant to 211 CMR 77.00.

(2) The Commissioner may make such other adjustments in premium charges to reflect the adequacy or inadequacy of insurers cost and expense containment programs based on the evidence introduced during the hearing to fix and establish motor vehicle insurance rates as he determines to be appropriate.

§93.07. Severability.

If any section or portion of a section of this regulation is held invalid by a court either on its face or as applied, the remaining portions and sections of this regulation shall not be affected thereby.

Added, 1987-2

ATTACHMENT A

Name of Companies Selected to Comply With These 211 CMR 93.00 Requirements

Insurer with less than 1% of the market	_____
Insurer with loss ratio in lowest 10% of those companies writing more than 2% of the market by premium volume	_____
Insurer with loss ratio in the highest 10% of those companies writing more than 2% of the market by premium volume	_____
Insurer whose policyholders reside primarily in towns with high territorial relativities	_____
Insurer whose policyholders reside primarily in towns with low territorial relativities	_____

Added, 1987-2

ATTACHMENT A -- Cont.

Name of Company	% of Market by Premium Volume	Servicing/ Non-Servicing	Agency/ Direct Writer	Stock/ Mutual Company	Loss Ratio for All Coverages Combined	Interstate or Commonwealth Only

[Page 533 follows]

Added, 1987-2

Appendix F

Regulation 212 CMR 2.00

212 CMR 2.00 THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES

Section

2.01: Scope of Regulations

(1) Purpose and Applicability. The purpose of 212 CMR 2.00 is to promote the public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles. Any licensed appraiser, individual or corporate entity who employs licensed appraisers shall be bound by 212 CMR 2.00.

212 CMR 2.00 is intended to be read in conjunction with 211 CMR 133.00, *Standards for the Repair of Damaged Motor Vehicles.*

(2) Authority. 212 CMR 2.00 is promulgated under the authority granted to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1.

(3) The Board may from time to time issue Advisory Rulings and shall do so in compliance with M.G.L. c. 30A, § 8.

(4) Definitions

Appraisal - a written motor vehicle damage report as defined in M.G.L. c. 26, § 8G and in compliance with the provisions of M.G.L. c. 93A, c. 100A, c. 90, § 34R and c. 26, 8G.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Independent appraiser - means any appraiser other than a staff appraiser who makes appraisals under an assignment by an insurer or repair shop and shall include the owner or employee of a repair shop who makes appraisals under a contract with an insurer.

Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

Staff appraiser - means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her employer.

Supervisory appraisal - means an appraisal conducted by an insurance company or appraisal company supervisor solely for the purpose of evaluating the appraisal ability of one of his or her appraiser employees or for the purpose of providing on-the-job training of an appraiser employee.

2.02: Licensing Requirements and Standards for Appraisers

(1) Requirement That License Be Obtained and Displayed. No person in Massachusetts shall appraise or estimate damages to motor vehicles or otherwise present himself or herself as an appraiser unless he or she has first obtained a license from the Auto Damage Appraiser Licensing Board. This license shall be valid for one year or less and shall be renewed annually on July 1st. Any appraiser, while making an appraisal, shall carry his or her license and shall, upon request, display it to any person involved in the claim or to any representative of the Board.

(2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of a licensed appraiser. He or she shall complete an approved appraisal course or at the Board's discretion work experience may be substituted for said schooling.

(3) Application and Examination Fee for a License. Any applicant for a license shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. He or she shall submit this application and non-refundable fee of $100 to the Board. After an application is received and approved, the applicant shall be required to pass an examination given under the supervision of the Board. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further non-refundable fee of $50.00, shall be entitled to a reexamination after the expiration of six months from the date of the last examination. Any applicant failing to pass an examination shall be allowed to review his or her examination.

(4) Renewal of License. The Board shall mail to each licensed appraiser an application for renewal. Such application shall be completed and returned to the Board. Each application shall be accompanied by a renewal fee of $50.00. After verification of the facts stated on the renewal application, the Board shall issue a renewal license dated July first, and this license shall expire on the June thirtieth of the year following. Any licensed appraiser who fails to renew his or her license within 60 days after notification by the Board of his or her license expiration date, before again engaging in the practice of a licensed appraiser within the Commonwealth, shall be required to re-register, pay a penalty fee determined by the Board and any back license fees, or may be required by the Board to be reexamined and pay applicable fees.

(5) Procedure for Auto Damage Appraisals.

(a) All forms used for auto damage appraisals must be approved by the Board.

(b) All forms used are required to have an itemization of parts, labor and services necessary for repairs thereof. The prepared appraisal shall be sworn to under the penalties of perjury and shall include the appraiser's name, signature, license number, seal or stamp, employer, insurance company, repair shop registration number if applicable, fee charged, the date the vehicle was appraised and the name of the manual used (if any) in preparing the appraisal. The appraisal seal or stamp shall be of a design approved by the Board. All appraisals sent electronically need not include the appraiser's signature and his or her seal or stamp.

(6) Schedule of Appraisal Fees.

(a) The Board may consider the appraisal fees charged within the territories where said appraiser operates. Any appraiser shall establish his or her own fee schedule unless limited by the Board. Any appraiser must post his or her appraisal fee schedule in a conspicuous location at his or her work place. The Board may establish a maximum schedule of fees by territory, type of business or complexity of work. Fees charged in excess of maximums approved by the Board shall result in penalties as established by the Board.

(b) Fees paid by a claimant for an appraisal that was requested by the insurer are recoverable from the insurer. Fees for auto damage appraisals not requested by the insurer in first party claims are not recoverable from the insurer.

(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to appraise a damaged motor vehicle to accept, in connection with that appraisal, anything of value from any source other than the assignor of that appraisal.

Further, it shall be a conflict of interest for any appraiser employed by a repair shop to accept the assignment of an appraisal from an insurer unless that appraiser's employment contract prohibits the repair shop from repairing damaged motor vehicles that have been so appraised. In addition, it shall be a conflict of interest for any appraiser who owns or has an interest in a repair shop to have a vehicle repaired at that shop if that appraiser has appraised that vehicle at the request of an insurer.

It shall be a conflict of interest if any licensed appraiser operates a Drive-in Appraisal Service for an insurer at a repair shop.

(8) Revocation or Suspension of a License. The Board may revoke or suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of any motor vehicle damage report. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

(a) material misrepresentations knowingly or negligently made in an application for a license or for its renewal;

(b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;

(c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;

(d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;

(e) the refusal by any appraiser who owns or is employed by a repair shop to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, supervisory reinspection, or intensified appraisal.

(f) the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;

(g) knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist; and

(h) failure to comply with 212 CMR 2.00.

(9) Drive-in Claim and Appraisal Facilities. Drive-in claim and appraisal facilities shall possess the following equipment:

(a) Operating telephone service.
(b) A calculator.
(c) Current collision, paint and body cost estimating guide manuals or an automated system.
(d) An operating flash light.
(e) A tape measure of at least 30 feet.
(f) An operating camera and film.
(g) A fax machine or other device capable of transmitting data.

2.03: Duties of Insurers and Repairers

(1) Responsibilities for Actions of Appraisers. An insurer or repair shop shall be responsible for the actions of all of its appraisers whether staff or independent, and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser.

The Board may assess penalties against either the appraiser, the insurer, the repair shop or all three. In the event of default by the appraiser, the insurer or the repair shop may be responsible for penalties.

(2) Records and Analysis of Appraisals. Every insurer or repair shop appraiser shall retain for at least two years, copies of all records related to appraisals and inspection. Every insurer shall retain copies of all records including photographs in accordance with state law.

2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals

(1) Conduct of Appraisals.

(a) Assignment of an Appraiser. Upon receipt by an insurer or its agent of an oral or written claim for damage resulting from a motor vehicle accident, theft, or other incident for which an insurer may be liable, the insurer shall assign either a staff or an independent appraiser to appraise the damage. Assignment of an appraiser shall be made within two working days of the receipt of such claim. However, the insurer may exclude any claim for which the amount of loss, less any applicable deductible, is less than $500.00.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing motor vehicle damage appraisals. No staff or independent appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of an independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual. The provisions of 212 CMR 2.04(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.

(d) Requirement of Personal Inspection and Photographs. The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making the appraisal. As part of the inspection, the appraiser shall also photograph each of the damaged areas.

(e) Determination of Damage and Cost of Repairs. The appraiser shall specify all damage attributable to the accident, theft, or other incident in question and shall also specify any unrelated damage. If the appraiser determines that preliminary work or repairs would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work or repair with the approval of the claimant and shall complete the appraisal after that work has been done. The appraisers representing the insurance company and the registered repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs. The registered repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may also apply. Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as a licensed auto damage appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive.

The licensed auto damage appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.

The appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. The appraiser shall itemize the cost of all parts, labor, materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items. The rental cost of frame/unibody fixtures necessary to effectively repair a damaged vehicle shall be shown on the appraisal and shall not be considered overhead costs of the repair shop. With respect to refinishing materials, if the formula of dollars times hours does not adequately reflect the cost of a particular repair a published manual or other form of documentation shall be used. All appraisals written under 212 CMR 2.00 shall include the cost of replacing broken or damaged glass within the appraisal. When there is glass breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

If aftermarket parts are specified in any appraisal the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle.

The appraiser shall mail, fax or electronically transmit the completed appraisal within five working days of the assignment, or at the discretion of the repair shop, shall leave a signed copy of field notes, with the completed appraisal to be mailed or faxed within five working days of the assignment. The repair shop may also require a completed appraisal at the time the vehicle is viewed. If the repair shop requires a completed appraisal, then the repair shop shall make available desk space, phone facilities, calculator and necessary manuals. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary repairs, severe illness, failure of the parties other than the insurer to communicate or cooperate, or extreme weather conditions make timely inspection of the vehicle and completion of the appraisal impossible.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been inspected or appraised by a licensed appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(h) Supplemental Appraisals. If a registered repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The registered repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within three working days of the receipt of such request. The appraiser shall have the option to leave a completed copy of the supplemental appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the completed supplement to be mailed, faxed, electronically transmitted or hand delivered to the registered repair shop within one working day. The appraiser shall also give a copy of the completed supplement to the insurance company in a similar manner. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary repairs, severe illness, failure of the parties other than the insurer to communicate or cooperate, or extreme weather conditions make timely inspections of the vehicle and completion of the supplemental appraisal impossible.

(i) Completed Work Claim Form. If the insurance company does not have a direct payment plan or if the owner of the vehicle chooses not to accept payment under a direct payment plan then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer.

(2) Temporary Licensing. The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses.

2.05: Penalties

(1) Violations of M.G.L. c. 26, § 8G, and 212 CMR 2.00 may result in penalties including administrative costs, revocation or suspension of license or both. All administrative costs are subject to the discretion of the Board. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop.

An alleged violation of 212 CMR 2.00 by a licensed appraiser at the direction of an insurer may be reported to the Division of Insurance which may impose applicable penalties against such an insurer.

2.06: Severability

If any provision of 212 CMR 2.00 or its application to any person or circumstances is held invalid, such invalidity shall not affect the validity of other provisions or applications of 212 CMR 2.00

REGULATORY AUTHORITY

212 CMR 2.00: M.G.L. c. 26, § 8G.

Appendix G

Regulation 211 CMR 133.00 Standards for the Repair of Damage Motor Vehicles

211 CMR 133.00: STANDARDS FOR THE REPAIR OF DAMAGED MOTOR VEHICLES

Section

133.01: Purpose and Applicability

The purpose of 211 CMR 133.00 is to promote the public welfare and safety by establishing fair and uniform standards for the repair of damaged motor vehicles. 211 CMR 133.00 is promulgated to be read in conjunction with 212 CMR 2.00, *The Appraisal and Repair of Damaged Motor Vehicles*, as promulgated by the Auto Damage Appraiser Licensing Board. 211 CMR 133.00 shall apply to all motor vehicles insured in the Commonwealth and only when an insurer pays for the cost of repairs.

133.02: Authority

211 CMR 133.00 is promulgated pursuant to the authority granted to the Commissioner of Insurance by M.G.L. c. 175, §§ 3A, 4 and 113B, c. 90, § 34O, and c. 176D, § 11.

133.03: Definitions

Appraisal - a written motor vehicle damage report as defined in M.G.L. c. 26, § 8G and in compliance with the provisions of M.G.L. c. 93A, c. 100A, c. 90, § 34R, c. 26, § 8G and 212 CMR 2.00.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

133.04: Determination of Damage and Cost of Repair

(1) Appraisers shall specify that damaged parts be repaired rather than replaced unless: the part is damaged beyond repair, or the cost of repair exceeds the cost of replacement with a part of like kind and quality, or the operational safety of the vehicle might otherwise be impaired. When it is determined that a part must be replaced, a rebuilt, aftermarket or used part of like kind and quality, at the lowest possible price, shall be used in the appraisal unless:

(a) the operational safety of the vehicle might otherwise be impaired;

(b) reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful;

(c) a new part of like kind and quality is available at the same or lower cost; or

(d) the vehicle has been used no more than 15,000 miles unless the pre-accident condition warrants otherwise.

A part is of like kind and quality when it is of equal or better condition than the preaccident part.

133.04: continued

(2) When an insurance company specifies the use of used, rebuilt, or aftermarket parts, the source and specific part(s) must be indicated on the appraisal. If the repairer uses the source and specified part(s) indicated on the appraisal and these parts are later determined by both parties to be unfit for use in the repair, the insurance company shall be responsible for the costs of restoring the parts to usable condition. If both parties agree that a specified part is unfit and must be replaced, the insurer shall be responsible for replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree. As to such costs, nothing in 211 CMR 133.00 shall preclude an insurer from exercising any available rights of recovery against the supplier.

133.05: Determination of Values

(1) Actual Cash Value: Whenever the appraised cost of repair plus the probable salvage value may be reasonably expected to exceed the actual cash value of the vehicle, the insurer shall determine the vehicle's actual cash value. This determination shall be based on a consideration of all the following factors:

(a) the retail book value for a motor vehicle of like kind and quality, but for the damage incurred;

(b) the price paid for the vehicle plus the value of prior improvements to the motor vehicle at the time of the accident, less appropriate depreciation;

(c) the decrease in value of the motor vehicle resulting from prior unrelated damage which is detected by the appraiser; and

(d) the actual cost of purchase of an available motor vehicle of like kind and quality but for the damage sustained.

(2) Salvage Value: Whenever the appraised cost of repair plus the probable salvage may be reasonably expected to exceed the actual cash value, a staff or independent appraiser licensed pursuant to 212 CMR 2.00 shall complete a total loss report on a form that has been filed with the Division of Insurance. If the claimant retains title to the vehicle, the appraiser shall obtain bids from two geographically convenient licensed salvage companies. The average of the two bids shall be used as the salvage value. The appraiser shall provide to the claimant the names and addresses of the potential salvage buyers, the amount of each salvage estimate used by the appraiser in computing the salvage value, and the expiration dates of offers, if any, made by potential salvage buyers.

133.06: Option for Contract Repair

(1) With respect to a claim presented under either Limited Collision, Collision or Comprehensive Coverage, if the insurer deems a motor vehicle a total loss, the claimant may, with the consent of the insurer, enter into an agreement to have the vehicle repaired by any registered repair shop for the contracted cost of repair if:

(a) the insurer allows the claimant to retain possession and ownership of the vehicle; and

(b) the claimant obtains a salvage title for said vehicle in compliance with M.G.L. c. 90D.

(2) Under such an agreement, the insurer shall not be required under any circumstance to pay more than the actual cash value less the actual salvage value as determined under 211 CMR 133.05. There shall be no supplements paid by the insurer under this agreement. The claimant or the repair shop and not the insurer shall be responsible for any charges that may exceed the agreed contract price. The insurer shall make no payments to the registered repair shop until it receives a completed work claim form and the vehicle has been reinspected by the insurer.

(3) Nothing in 211 CMR 133.06 shall be construed to conflict with, or alter, the duties and rights of an insurer under M.G.L. c. 175, § 113S. Nothing in 211 CMR 133.06 shall restrict the right of an insurer to take title to a vehicle that the insurer has deemed a total loss.

133.07: Intensified Appraisals

An insurer shall have licensed appraisers conduct intensified appraisals of at least 25% of all damaged motor vehicles for which the appraised cost of repair is less than $4,000.00 and at least 75% of all damaged vehicles for which the appraised cost of repair is more than $4,000.00 for Collision, Limited Collision and Comprehensive claims.

The appraiser shall determine whether the repairs were made in accordance with the initial appraisal and any supplements. The information compiled during the intensified appraisal shall be set forth on a form acceptable to the Auto Damage Appraiser Licensing Board and the Division of Insurance. A copy of an intensified appraisal shall be given to the insurer, and, upon request, to the person making the repairs or the claimant.

133.08: Penalties

A violation of any provision of 211 CMR 133.00 shall be considered to be an unfair or deceptive act or practice, in violation of M.G.L. c. 176D.

An alleged violation of 211 CMR 133.00 by a licensed auto damage appraiser may be reported to and penalized by the Auto Damage Appraisers Licensing Board in accordance with its governing statute and 212 CMR.

Nothing herein shall be deemed to preclude the claimant or policyholder, the Commissioner, the Attorney General or the Director of the Division of Standards from pursuing any other remedy or penalty provided by law including any remedy provided under M.G.L. c. 93A or M.G.L. c. 100A.

An insurer or repair shop shall be responsible for the actions of all of its appraisers whether staff or independent, and shall be subject to the applicable penalties under law for any violation of 211 CMR 133.00 or 212 CMR 2.00.

133.09: Severability

If any provision contained herein is found to be unconstitutional or invalid by a Court of competent jurisdiction, the validity of the remaining provisions will not be so affected.

REGULATORY AUTHORITY

211 CMR 133.00: M.G.L. c. 90, § 340; c. 175, §§ 3A, 4 and 113B; c. 176D, § 11.

Appendix H

Regulation 211 CMR 94.00

211 CMR 94.00: MANDATORY PRE-INSURANCE INSPECTION OF PRIVATE PASSENGER MOTOR VEHICLES.

SECTION:

94.01: Authority

211 CMR 94.00 is issued pursuant to the authority granted the Commissioner of Insurance by M.G.L. c. 175, s. 113S.

94.02: Scope and Purpose

The purpose of the regulation is to establish standards and procedures for the inspections of certain used cars prior to the issuance by insurers of physical damage insurance coverages. This regulation applies to all private passenger motor vehicles insured in the Commonwealth unless specifically exempted or waived under 211 CMR 94.00.

94.03: Definitions

As used in this regulation, the following words will have the meanings indicated:

Applicant means the named insured, as defined in the Standard Massachusetts Motor Vehicle Insurance Policy or an applicant for a motor vehicle liability policy or bond.

Authorized representative means any person or legal entity, other than the applicant, authorized by an insurer to conduct pre-insurance inspections pursuant to this regulation and may include an employee of the insurer, or a producer or inspection service.

Book of business means all motor vehicle insurance written by one producer with one insurer.

Certificate of Mailing means a notice by regular mail with a certificate of mailing endorsed by the United States Postal Service.

Commissioner means the Commissioner of Insurance appointed under the provisions of M.G.L. c. 26, s. 6, or his or her designee.

Division means the Division of Insurance within the Department of Banking and Insurance.

Existing Customer means an applicant for a motor vehicle liability policy or bond who has been insured for three (3) years or longer, without interruption, under a motor vehicle liability policy or policies which include(s) physical damage coverage, issued by the insurer to which the application is submitted. An existing customer shall include any applicant involuntarily transferred to another insurer due to the applicant's original insurer's withdrawal from the Commonwealth, if the applicant otherwise qualifies under this regulation.

Inspection service means any person or legal entity, other than the applicant, designed and operated to perform inspections required by this regulation and which is approved by the insurer. In determining whether to approve an inspection service an insurer may take into consideration the service's professionalism, efficiency and cost effectiveness.

Insurer means any insurance company authorized to write motor vehicle insurance in the Commonwealth.

Motor vehicle liability policy or bond means an insurance policy or bond as defined in M.G.L. c. 90, ss. 34A, 34O, and M.G.L. c. 175.

Nonowned motor vehicle means a private passenger motor vehicle in the possession of the applicant or being operated by the applicant which is neither owned by nor furnished for the regular use of either the applicant or any relative (as defined in the policy) other than a temporary substitute motor vehicle, as defined below.

Physical damage coverage means the optional coverages in a motor vehicle liability policy or bond for collision or limited collision and/or fire and theft or so-called comprehensive coverages as defined in M.G.L. c. 90, s. 34(O) and M.G.L. c. 175, s. 113O.

Private passenger motor vehicle means any owned or leased four-wheeled motor vehicles including, but not limited to, sedans, coupes, hatchbacks, station wagons, jeep-type vehicles, pick-up trucks, panel trucks, delivery sedans and vans, except vehicles which have a gross weight in excess of 8,000 pounds.

Producer means an agent or broker licensed pursuant to M.G.L. c. 175, ss. 163 or 166, to write property and casualty insurance in the Commonwealth, including a representative producer as defined by the rules for the Commonwealth Automobile Reinsurers established pursuant to M.G.L. c. 175, s. 113H.

Temporary substitute motor vehicle means any private passenger motor vehicle not owned by the applicant, which is used by the applicant, with the permission of the owner, as a temporary substitute due to breakdown, repair, servicing, loss or destruction of the applicant's own motor vehicle.

94.04: Mandatory Inspection Requirements

(1) No motor vehicle liability policy or endorsement insuring a private passenger motor vehicle for physical damage coverage, shall be issued or renewed in the Commonwealth unless the insurer has inspected the motor vehicle in accordance with this regulation.

(2) Physical damage coverage shall not be effective on an additional or replacement motor vehicle under an existing policy, unless otherwise exempted, until the insurer has inspected the motor vehicle in accordance with this regulation.

94.05: Exemptions to Inspection Requirement

(1) The requirement of an inspection shall not apply to the following:
(a) a new, unused motor vehicle from a franchised automobile dealership where the insurer is provided with either: a copy of the bill of sale which contains a full description of the motor vehicle including all options and accessories; or a copy of the RMV Form 1 provided by the Registry of Motor Vehicles, which establishes the transfer of ownership from the dealer to the customer and a copy of the window sticker or the dealer invoice showing the itemized options and equipment in addition to the total retail price of the vehicle. The physical damage coverage on such new, unused motor vehicle shall not be suspended during the term of the policy due to the applicant's failure to provide the required documents. Payment of a claim, however, shall be conditioned upon the receipt by the insurer of such documents and no physical damage loss occurring after the effective date of the coverage

94.05: continued

shall be payable until the documents are provided to the insurer. If the above documents are not submitted by the applicant at least sixty (60) days prior to the applicant's annual renewal date, the insurer, upon renewal of the physical damage coverage, must require an inspection as set forth in this regulation:

(b) the applicant is an existing customer;

(c) the motor vehicle is already insured for such physical damage coverages with the insurer by the applicant;

(d) an inspection is waived by the insurer pursuant to 211 CMR 94.06;

(e) a temporary substitute motor vehicle;

(f) a motor vehicle which is leased for less than six months, provided the insurer receives the lease or rental agreement containing a description of the leased motor vehicle including its condition. Payment of a physical damage claim shall be conditioned upon receipt of the lease or rental agreement;

(g) when requiring an inspection would cause a serious hardship to the insurer or the applicant and such hardship is documented in the applicant's policy record; or

(h) when the insurer has no inspection facility or authorized representative either in the city or town in which the motor vehicle is principally garaged or within five (5) miles of said city or town.

(2) An insurer shall indicate in the applicant's policy record the reason a vehicle is being exempted from the inspection requirement under this regulation.

(3) An insurer may require an inspection of a motor vehicle otherwise exempt pursuant to 211 CMR 94.05(1) provided that the decision to inspect such motor vehicle is reasonable and supported by objective facts. The decision to require such an inspection shall not be based on the age, race, sex, or marital status of the applicant or the customary operators of the vehicle, the principal place of garaging, or the fact that the policy has been ceded to the residual market mechanism. A written record of the reasons for requiring an inspection, pursuant to this subsection shall be placed in the applicant's policy record.

94.06: Waiver of Inspection

(1) An insurer may waive an inspection under any of the following circumstances:

(a) for policies issued or renewed during calendar year 1989, all 1979 and older model year vehicles. For policies issued or renewed during each calendar year thereafter, the applicable model year shall be moved forward by one year. For example: in 1989 an insurer must inspect 1980 and newer model year vehicles and in 1990 an insurer must inspect 1981 and newer model year vehicles. An insurer may elect to inspect specified vehicles included within this waiver. Such exceptions to this optional waiver must be based on underwriting criteria uniformly applied;

(b) where a nonowned motor vehicle is insured under a policy providing physical damage coverage issued by an insurer which has inspected such motor vehicle in accordance with the provisions of this regulation;

(c) where the insured motor vehicle is insured under a commercially-rated policy which insures a fleet of five or more motor vehicles owned by the same person or legal entity;

(d) where a producer is transferring a book of business from one insurer to another; or

(e) when an individual applicant's coverage is being transferred by an independent insurance agent to a new insurer and said agent provides the new insurer with a copy of the inspection report completed on behalf of the previous insurer, provided the independent agent represents both insurers, and the insured vehicle was physically inspected by the previous insurer. However, if the new insurer does not receive a copy of the inspection report 60 days prior to the first annual renewal date, the insurer must, upon renewal of the physical damage insurance, require an inspection as set forth in this regulation.

(2) Any decision to waive or not to waive an inspection pursuant to this

94.06: continued

regulation, shall not be based on the age, race, sex, or marital status of the applicant or the customary operators of the vehicle, the principal place of garaging, or the fact that a policy has been ceded to the residual market mechanism.

(3) An insurer shall indicate in the applicant's policy record the reason a waiver has been granted.

94.07: Deferral of Inspection

(1) An insurer may defer an inspection for seven calendar days (not including legal holidays) following the effective date of coverage, on new business and on additional or replacement vehicles to an existing policy, if an inspection at the time of the request for coverage would create a serious inconvenience for the applicant.

(2) (a) When an inspection is deferred pursuant to section (1) above or (4) below, an insurer, through its producer, shall either:

1. immediately obtain the prescribed acknowledgment (Form D) signed by the applicant if the applicant has applied for coverage in person; or
2. immediately confirm physical damage coverage and remind the applicant of the inspection requirement on a prescribed notice letter (Form B) if the applicant has applied for coverage either by mail or by phone.

(b) In addition to the notice requirements of 211 CMR 94.07(2)(a), the insurer, through its producer, shall furnish the applicant, at the time coverage is effected, with a list of inspection sites where the inspection can be conducted. The location of an inspection site or sites and the consequences of the applicant's failure to obtain a timely inspection shall be furnished immediately to the applicant either in person, if the applicant has applied for coverage in person, or by telephone, if the applicant has applied for coverage by phone. Documentation of such notice, including the name of the person giving the notice and the identity of the site(s) provided must be contained in the applicant's policy record.

(3) Producers must use the prescribed NOTICE OF MANDATORY PRE-INSURANCE INSPECTION REQUIREMENT letter (Form B) or the prescribed ACKNOWLEDGMENT OF REQUIREMENT FOR PRE-INSURANCE INSPECTION letter (Form D) (see 211 CMR 94.16 of this regulation) and immediately send a copy to the insurer. A copy of the confirmation letter addressed to the applicant, and Certificate of Mailing thereof, or the completed acknowledgment letter shall be retained by the producer in the applicant's policy record. In the case of a so-called courtesy transfer, the producer confirming coverage shall be responsible for the immediate notification to the applicant pursuant to 211 CMR 94.07(2)(a)1. above, unless the application for coverage is submitted by a person other than the applicant. In such cases, the producer of record shall remain responsible for notification pursuant to 211 CMR 94.07(2)(a)2. and 94.07(2)(b). The producer confirming coverage shall immediately forward a copy of the acknowledgment (Form D) to the producer of record who shall then be responsible for forwarding a copy to the insurer as required by this subsection.

(4) If the insurer is required, pursuant M.G.L. c. 175, s. 113H, to provide physical damage coverage at the option of the applicant, it shall provide, upon an applicant's request for such physical damage coverage, immediate coverage and may defer the inspection for the seven calendar days (not including legal holidays) following the effective date of coverage.

(5) Any decision to defer or not to defer an inspection pursuant to this regulation shall not be based on the age, race, sex, or marital status of the applicant or the customary operators of the vehicle, the principal place of garaging, or the fact that a policy has been ceded to the residual market mechanism.

94.08: Standards and Procedures for Inspections

(1) Inspections required or permitted pursuant to this regulation shall be made by a designated authorized representative of the insurer at a time and place reasonably convenient to the applicant. A reasonably convenient time shall include, in addition to customary business hours, sufficient early morning, evening and weekend hours. A reasonably convenient place shall not be more than five (5) miles from the city or town where the motor vehicle is principally garaged.

(2) (a) Any inspection authorization forms issued by the insurer to the applicant, for presentation to the authorized representative, shall not contain the Vehicle Identification Number (VIN) of the vehicle to be inspected.

(b) The inspection shall:

1. be recorded on the prescribed MOTOR VEHICLE PRE-INSURANCE INSPECTION REPORT (Form A) (See 211 CMR 94.16);
2. include two color photographs of the motor vehicle, taken as directed on the inspection report, which shall be attached to the report;
3. include a close-up color photograph (using a special camera attachment if necessary) showing the Vehicle Identification Number (VIN) located on the Environmental Protection Agency/Federal Certification Label (EPA) sticker affixed to the driver's side door jamb. The photograph must be of sufficient clarity that the information contained on the EPA sticker and the VIN is legible. If the EPA sticker is damaged, faded, missing or otherwise not legible, a photograph of the EPA sticker or of the area of the door jamb where the sticker is normally located, is still required.

(c) The authorized representative may take additional photographs showing any damaged areas, which shall also be attached to the report.

(d) The original report and photographs shall be immediately sent to the insurer who shall retain the report and photographs in the applicant's policy record for three years from the date of the inspection, except as provided by 211 CMR 94.08(6)(d). The authorized representative shall also provide a copy of the report, without photographs, to the applicant at the time of the inspection.

(3) The insurer shall maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. The list must include the names, addresses and business phone numbers of all authorized representatives and the insurer shall make such list accessible to the Division upon request.

(4) There shall be no charge either directly or indirectly to the applicant in connection with an inspection, except that such charge may be considered in accordance with M.G.L. c. 175, s. 113B or other applicable laws.

(5) The competency and trustworthiness of the authorized representative in the conduct of the inspections provided for in this regulation shall be the responsibility of the insurer.

(6) An insurer shall utilize authorized representatives who shall:

(a) verify the accuracy, completeness and signature of the inspector for each inspection report in writing;

(b) maintain a control system on such inspection reports including the use of sequentially numbered reports;

(c) retain and supply to an insurer, upon request, a copy of any inspection report which was completed within three years of the date of inspection.

(d) provide an optional service, on an additional fee basis, to insurers whereby the original inspection reports and photographs are retained by the authorized representative who shall maintain such original inspection reports and photographs in a manner so as to facilitate rapid retrieval for a period of at least three years from the date of inspection. A copy of the inspection report shall be provided to the insurer. The authorized representative shall, upon the request of the insurer, mail or deliver the original inspection report and photographs to the insurer within two (2) business days of such request.

94.08: continued

(7) (a) The inspection report and photographs shall be used by the insurer to document previous damage, prior condition, options and mileage of the motor vehicle on physical damage claims whenever:

1. the appraisal indicates prior damage;
2. the vehicle is a total loss or unrecovered theft; or
3. the damage exceeds $1,000.

(b) A copy of the inspection report and photographs must be utilized, and made a part of the insurer's claim file, in the settlement of all total loss claims. The inspection report must be made a part of the claim file regardless of whether or not the payment is reduced based on the information contained therein. Such inspection report must come from the applicant's policy record.

94.09: Standards for Suspension of Physical Damage Coverages

(1) If the inspection is not conducted prior to the expiration of the seven calendar days deferral period specified in 211 CMR 94.07(1), motor vehicle physical damage coverage on the motor vehicle shall be suspended at 12:01 a.m. of the day following the seventh calendar day, and such suspension shall continue until the inspection is effected. The insurer must inspect the motor vehicle and reinstate physical damage coverage (effective at the time of the inspection) if the applicant thereafter requests an inspection. The applicant's ability to reinstate the physical damage coverage upon inspection, however, shall lapse if the insurer has already made the pro-rata premium adjustment pursuant 211 CMR 94.09(2). Thereafter a reinstatement shall only be effective upon inspection and payment by the applicant to the insurer of the adjusted premium for the physical damage coverage in full or in accordance with the insurer's normal payment plan, at the insurer's option.

(2) Whenever physical damage coverage is suspended, the insurer shall, between the 21st and 30th calendar day after the effective date of the coverage, mail to the applicant, the producer of record, and any lienholders a prescribed NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE (Form C) (See 211 CMR 94.16). The insurer shall complete a certificate of mailing of the suspension to the applicant and shall retain the certificate and and a copy of the suspension in the applicant's policy record. Whenever there is a suspension of physical damage coverage for more than 10 days, the insurer shall make a pro-rata premium adjustment (return premium or credit) which shall be mailed to the applicant no later than 45 days after the effective date of the suspension.

(3) If the motor vehicle is not inspected pursuant to this regulation due to the fault of the insurer, or if its producer fails to give the verbal or telephone notice required by 211 CMR 94.07(2) of this regulation or mail or deliver the NOTICE OF MANDATORY PRE-INSURANCE INSPECTION REQUIREMENT (Form B) or obtain the ACKNOWLEDGMENT OF REQUIREMENTS FOR PRE-INSURANCE INSPECTION (Form D) as set forth in 211 CMR 94.07(2) of this regulation, physical damage coverage on the motor vehicle shall not lapse. The failure of the insurer to act promptly does not relieve it of its obligation to inspect. An insurer's failure, however, to comply with the provisions of 211 CMR 94.09(2) does not restore physical damage coverage, but shall subject the insurer to a penalty pursuant to 211 CMR 94.12.

94.10: Inspection Services

(1) Inspection services shall maintain a record of the name, address and signature of all persons authorized by such inspection service to perform inspections, prior to that person performing any inspections pursuant to this regulation. Such record shall be made available to the Division upon request.

(2) An inspection service must be approved by the insurer for which it will be conducting inspections. In determining whether to approve an inspection service an insurer may take into consideration the service's professionalism, efficiency and cost effectiveness.

94.11: Conflicts of Interest

An authorized representative shall not be deemed trustworthy if there exists any conflict of interest which may prevent him or her from conducting a thorough and accurate inspection. It shall be a conflict of interest for an authorized representative to accept, in connection with an inspection, anything of value from any source other than the insurer.

94.12: Enforcement

(1) A violation of any provision of this regulation by an insurer shall be deemed a violation under the statute or regulation under which such insurer is licensed and shall be sufficient grounds, after hearing, for the imposition of fines as prescribed in the licensing statute or regulation. Any such violation shall be considered an unfair and deceptive act or practice in violation of M.G.L. c. 176D.

(2) A violation of any provision of this regulation by an authorized representative shall be deemed a violation under the statute or regulation under which such authorized representative is licensed and shall be sufficient grounds, after hearing, for the suspension or revocation such license and for the imposition of fines as prescribed in the licensing statute or regulation. Any such violation shall also be considered an unfair and deceptive act or practice in violation of M.G.L. c. 176D.

(3) The competency and trustworthiness of all authorized representatives in the conduct of the inspections provided by this regulation shall be the responsibility of the insurer.

(4) Nothing contained in this regulation shall be deemed to preclude the applicant, the Commissioner or the Attorney General from pursuing any other remedy or penalty provided by law for a violation of this regulation, including any remedy provided under M.G.L. c. 93A or M.G.L. c. 176D.

94.13: Records and Audits

(1) Insurers shall maintain records as to the costs and savings related to this regulation and shall make such records available to the Division upon request.

(2) Insurers shall be responsible for the monthly auditing of inspection reports received from their authorized representatives and shall provide such authorized representatives, excluding producers, with monthly status reports indicating the total number of reports received including the number of incomplete or incorrect reports received.

94.14: Effective Date

This regulation shall become effective on March 1, 1989.

94.15: Severability

If any section or portion of a section of this regulation or its application to any person, entity or circumstance is held invalid by any court, the remainder of this regulation or the applicability of such provision to other persons, entities or circumstances shall not be effected thereby.

94.16: Forms

Sample forms for Motor Vehicle Pre-Insurance Inspection Report (Form A), Notice of Mandatory Pre-Insurance Inspection Requirement (Form B), Notice of Suspension of Physical Damage Coverage (Form C) and Acknowledgment of Requirement for Pre-Insurance Inspection (Form D) as referred to in this regulations are available from:

Division of Insurance - Legal Section
280 Friend Street
Boston, MA 02114

NON-TEXT PAGE

REGULATORY AUTHORITY

211 CMR 94.00: M.G.L. c. 175, s. 113S.

FORM B

(COMPANY LETTERHEAD)

NOTICE OF MANDATORY PRE-INSURANCE INSPECTION REQUIREMENT
(This is not a safety inspection)

IMMEDIATE ACTION REQUIRED TO AVOID LOSS OF INSURANCE COVERAGE

_____
(Date of mailing)

Name of Insured: _____
Address: _____
_____
_____

EFFECTIVE DATE OF COVERAGE: _____
(Date)

INSPECTION MUST BE COMPLETED BY: _____
(Date)

POLICY #: _____

Dear Policyholder,

This will confirm coverage for FIRE AND THEFT/ COMPREHENSIVE _____; COLLISION _____;LIMITED COLLISION _____; on your

1. _____, _____, _____.
2. _____, _____, _____.
3. _____, _____, _____.

YEAR MAKE MODEL

Please disregard this notice if you have already had your car inspected.

This notice will also serve as a reminder that the above described car(s) must be inspected by the date indicated above, or your physical damage coverages will be suspended effective 12:01 A.M. on _____.
(Date)

If you have your car inspected after the above deadline your coverage will only be restored after your car has been inspected and the adjusted premium due for the coverages listed above has been paid. You will have no coverage for any physical damage loss that occurs during the suspension period.

FOR FURTHER INFORMATION PLEASE CALL:

_____
Name and phone no. of Company Representative

Very truly yours,

_____

cc: INSURANCE COMPANY
PRODUCER OF RECORD

FORM C

(COMPANY LETTERHEAD)

NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE

YOU ARE NO LONGER INSURED FOR PHYSICAL DAMAGE TO YOUR CAR

(Date of Mailing)

Name of Insured: _____

Address: _____

_____

_____

RE: Policy #: _____

Dear Policyholder:

The vehicle(s) listed below is (are) no longer covered for FIRE AND THEFT/COMPREHENSIVE _____; COLLISION _____; OR LIMITED COLLISION:

1. _____, _____, _____
2. _____, _____, _____
3. _____, _____, _____

YEAR MAKE MODEL

DATE COVERAGE WAS REQUESTED _____

DATE COVERAGE WAS SUSPENDED _____

The physical damage coverage(s) indicated above, has (have) been suspended on the vehicle(s) described, effective 12:01 a.m. on the suspension date. Such coverage has been suspended due to your failure to comply with the Mandatory Physical Damage Pre-Insurance Inspection Regulation (211 CMR 94.00), as required by Massachusetts General Law Chapter 175, Section 113S.

If your coverage has been suspended for more than ten (10) days, you will receive a premium adjustment (return premium or credit) for the suspended coverage(s) within forty-five (45) days from the date of suspension.

The coverage(s) will be restored when you have your vehicle(s) inspected and the adjusted premium due for such coverage(s) has been paid.

_____

INSURER REPRESENTATIVE

_____

PHONE NUMBER

cc: PRODUCER OF RECORD
LIENHOLDER

FORM A

INSURANCE COMPANY LETTERHEAD
OR
INSPECTION SERVICE LETTERHEAD

L NUMBER _____

SITE I.D. # _____

DATE OF INSPECTION	TIME OF INSPECTION AM PM	INSURANCE COMPANY NAME	INSURED'S POLICY NUMBER	NUMBER OF PHOTOS

INSURED'S NAME	INSURED'S ADDRESS	TEL. NO.

INSPECTOR'S NAME	INSPECTION SITE NAME & ADDRESS	TEL. NO.

	STYLE		COLOR	INTERIOR	
YEAR: _____	___ 2 DR	___ STG WGN	MAJOR _____	___ CLOTH	___ LEATHER
MAKE: _____	___ 4 DR	___ VAN	MINOR _____	___ VINYL	___ COLOR
MODEL: _____	___ CPE	___ HTCHBK			

ODOMETER READING	PRINCIPAL PLACE OF GARAGING	VEHICLE IDENTIFICATION NUMBER (NOT FROM REGISTRATION FORM)	LICENSE PLATE NO. & STATE
		/ / / / / / / / / / / / / / / / /	

V.I.N. location: _____

ACCESSORIES & OPTIONAL EQUIPMENT
(COMPLETE FOR ALL VEHICLES INCLUDING VANS)

[ ] AIR CONDITIONER
[ ] MANUAL TRANSMISSION
[ ]3 SPD [ ]4 SPD [ ]5 SPD
[ ] AUTOMATIC TRANSMISSION
[ ] OVERDRIVE
[ ] AM RADIO
[ ] AM/FM RADIO [ ] STEREO
[ ] CASSETTE PLAYER
BRAND _____
BUILT IN [ ] YES [ ] NO
[ ] COMPACT DISC PLAYER
BRAND _____
BUILT IN [ ] YES [ ] NO
[ ] CAR PHONE
BRAND _____
BUILT IN [ ] YES [ ] NO
[ ] CAR PHONE ANTENNA
[ ] CAR PHONE TRANSMITTER
[ ] C.B. RADIO
BRAND _____
BUILT IN [ ] YES [ ] NO
[ ] EIGHT TRACK PLAYER
BRAND _____
BUILT IN [ ] YES [ ] NO
[ ] EQ AMPLIFIER
BRAND _____
BUILT IN [ ] YES [ ] NO

[ ] CRUISE CONTROL
[ ] REAR DEFROSTER
[ ] REAR WIPER
[ ] TILT WHEEL
[ ] TINTED GLASS
[ ] POWER STEERING
[ ] POWER BRAKES
[ ] POWER WINDOWS
[ ] POWER LOCKS
[ ] POWER ANTENNA
[ ] VINYL TOP/ROOF
[ ] T-TOP ROOF
[ ] SUNROOF
FACTORY INSTALLED
[ ] YES [ ] NO
TYPE _____
[ ] SPECIAL ROOF
TYPE _____
[ ] BUCKET SEATS
[ ] SPECIAL WHEELS
[ ] SPECIAL TIRES
TYPE _____
[ ] SPECIAL HUB CAPS
[ ] RADAR DETECTOR
BRAND _____

[ ] ANTI THEFT DEVICE
TYPE _____
[ ] CAR ALARM
BRAND _____
[ ] HIGH MOUNTED BRAKE LIGHT
[ ] ROOF RACK
[ ] SPARE TIRE (OUTSIDE MOUNT)
[ ] CARPETING
[ ] INSTRUMENTATION
TYPE _____
_____
_____
[ ] SPECIAL MIRRORS
TYPE _____
[ ] TRAILER HITCH
[ ] AUTO RECOVERY SYSTEM
TYPE _____
[ ] SPECIAL CUSTOM OPTIONS
OR ADDITIONS (LIST)
_____
_____
_____
_____
_____
_____
_____

PHOTOGRAPHS OF VEHICLE (MUST BE COLOR PHOTOS)

ATTACH AT LEAST TWO (2) COLOR PHOTOGRAPHS OF THE AUTOMOBILE TAKEN FROM THE ANGLES SHOWN ON THE DIAGRAMS TO THE RIGHT. ALSO ATTACH A CLOSE-UP PHOTO OF THE E.P.A. STICKER (INCLUDING THE V.I.N.) FROM THE DRIVER'S SIDE DOOR JAMB.

Front and Passenger Side

Rear and Driver Side

PHYSICAL CONDITION OF VEHICLE

(CHECK DAMAGED AREAS OR AREAS IN POOR CONDITION AND DESCRIBE BELOW)

DAMAGED/RUSTED			DAMAGED	
[ ]	[ ]	FRONT BUMPER	[ ]	WINDSHIELD
[ ]	[ ]	LEFT FRONT FENDER	[ ]	LEFT FRONT SIDE GLASS
[ ]	[ ]	LEFT FRONT DOOR	[ ]	RIGHT FRONT SIDE GLASS
[ ]	[ ]	LEFT REAR DOOR	[ ]	LEFT REAR SIDE GLASS
[ ]	[ ]	LEFT REAR QUARTER PANEL	[ ]	RIGHT REAR SIDE GLASS
[ ]	[ ]	REAR BUMPER	[ ]	REAR WINDOW
[ ]	[ ]	REAR DOOR/TRUNK LID	[ ]	REARVIEW MIRROR
[ ]	[ ]	RIGHT REAR QUARTER PANEL	[ ]	WHEEL COVERS
[ ]	[ ]	RIGHT REAR DOOR	[ ]	WORN/TORN OR SOILED INTERIOR
[ ]	[ ]	RIGHT FRONT DOOR	[ ]	OTHER DAMAGE OR RUST (LIST)
[ ]	[ ]	RIGHT FRONT FENDER		
[ ]	[ ]	HOOD PANEL		
[ ]	[ ]	ROOF PANEL		
[ ]	[ ]	GRILL		

_____

_____

_____

_____

[ ] CHECK HERE IF NO EXISTING DAMAGE, RUST OR MISSING PARTS

_____

BE EXISTING DAMAGES OR RUST:

_____

T ANY MISSING PARTS:

_____

CRIBE ANY ALTERATIONS FROM FACTORY DESIGN:

_____

ABOVE IS A TRUE STATEMENT OF ANY EXISTING DAMAGE, RUST, OR MISSING PARTS AS OF THE E OF THIS INSPECTION. I CERTIFY THAT THIS INSPECTION REPORT IS TRUE AND COMPLETE AND I HAVE SEEN AND PHOTOGRAPHED THE VEHICLE IDENTIFIED ABOVE.

E: _____ INSPECTOR'S SIGNATURE: _____

E & ADDRESS OF PERSON SENTING VEHICLE FOR INSPECTION | SIGNATURE | RELATIONSHIP TO INSURED

_____

FORM D

(COMPANY LETTERHEAD)

ACKNOWLEDGMENT OF REQUIREMENT FOR PRE-INSURANCE INSPECTION
(This is not a safety inspection)

NAME OF INSURED
OR APPLICANT:_____
ADDRESS: _____
_____
_____

EFFECTIVE DATE
OF COVERAGE:_____
(Date)
INSPECTION MUST BE
COMPLETED BY:_____
(Date)

VEHICLE(S) TO BE INSPECTED

	YEAR	MAKE	MODEL
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

BY MY SIGNATURE BELOW I CERTIFY THAT I HAVE BEEN INFORMED THAT MY VEHICLE(S) WHICH IS (ARE) BEING INSURED FOR FIRE AND THEFT/COMPREHENSIVE AND/OR COLLISION OR LIMITED COLLISION COVERAGE MUST BE INSPECTED BY A REPRESENTATIVE OF THE INSURER. THIS INSPECTION MUST BE COMPLETED WITHIN SEVEN (7) CALENDAR DAYS (NOT INCLUDING LEGAL HOLIDAYS) AFTER THE EFFECTIVE DATE OF COVERAGE, AND IN NO EVENT LATER THAN THE DATE SHOWN ABOVE TO AVOID A SUSPENSION IN COVERAGE.

I UNDERSTAND THAT FAILURE TO SUBMIT TO THE REQUIRED INSPECTION(S) WILL RESULT IN THE SUSPENSION (LOSSES WILL NOT BE COVERED) OF THE PHYSICAL DAMAGE COVERAGES (FIRE AND THEFT/COMPREHENSIVE, COLLISION, LIMITED COLLISION) AS OF 12:01 A.M. OF THE DAY FOLLOWING THE DATE BY WHICH THE INSPECTION MUST BE COMPLETED, AS SHOWN ABOVE.

I UNDERSTAND THAT IF COVERAGE IS SUSPENDED IT WILL BE RESTORED ONLY AFTER THE INSPECTION HAS BEEN COMPLETED AND THE ADJUSTED PREMIUM DUE FOR SUCH COVERAGE(S) HAS BEEN PAID.

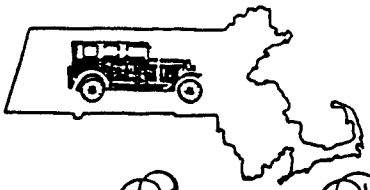
SIGNATURE OF INSURED
OR APPLICANT :_____ _____
(Date)

SIGNATURE OF PRODUCER
OR INSURANCE COMPANY
REPRESENTATIVE:_____ _____
(Date)

NAME, ADDRESS & TELEPHONE NUMBER
OF PRODUCER OR INSURANCE REPRESENTATIVE
COMPLETING THIS FORM:_____
_____
_____

INSURED/APPLICANT MUST RECEIVE A COMPLETED COPY OF THIS FORM

cc: INSURANCE COMPANY
PRODUCER OF RECORD



Commonwealth Automobile Reinsurers
100 Summer Street, Boston, Massachusetts 02110
(617) 338-4000 (617) 338-5422 (Telefax)

RAYMOND M. LaFONTAINE
President

MICHAEL J. TROVATO
Executive Vice President
and Treasurer

October 4, 1989

The Honorable Timothy H. Gailey
Commissioner of Insurance
Commonwealth of Massachusetts
Division of Insurance
280 Friend Street
Boston, MA 02114

Dear Commissioner Gailey:

The Governing Committee, at its meeting of September 15, 1989, approved the attached system of measurements and penalties applicable to the PERFORMANCE STANDARDS FOR THE HANDLING AND PAYMENT OF CLAIMS BY SERVICING CARRIERS. Pursuant to the provisions of Section 41 and 44 of Chapter 273 of the Acts of 1988, we are submitting this material for your consideration.

Cordially,

Raymond M. LaFontaine
President

RML/jsc

bc Michael J. Trovato, Executive Vice President & Treasurer
Robert Tyler, Vice President - Claims
Joseph J. Maher, Vice President & General Counsel
Dana Jewell, Vice President - Administration
James H. Burns, Chairman, Claims Advisory Committee
Fran N. Delage, Chairman, Claims Advisory Reform Subcommittee
Governing Committee
Claims Advisory Committee
Dr. Richard Derrig, MARB

Appendix I

Salvage Title Law, Chapter 90D, Section 20 (a..e)

§ 20A. Application for salvage title; procedure

(a) The application for the salvage title shall be made by the owner to the registrar on such form or forms as the registrar shall prescribe and shall be accompanied by: (1) a properly assigned certificate of title; (2) any other information and documents the registrar may reasonably require to establish ownership of the vehicle and the existence or nonexistence of a lien; and (3) the required fee.

(b) The registrar shall file each application for salvage title received and maintain adequate record thereof and, when satisfied as to its genuineness and regularity, shall issue a salvage title. The salvage title shall serve as proof of ownership and shall contain the name and address of the owner, a description of the vehicle, a salvage certificate serial number and any other data the registrar prescribes.

Added by St.1988, c. 273, § 29. Amended by St.1990, c. 150, § 281.

Historical and Statutory Notes

St.1988, c. 273, § 29, an emergency act, was approved Nov. 5, 1988, and by § 77 made effective Jan. 1, 1989.

St.1990, c. 150, § 281, approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990, in par. (b), in the first sentence, deleted "within two registry business days following the date of application," preceding "issue a salvage title".

§ 20B. Exceptions to salvage title requirement

No salvage title need be obtained for: (1) a vehicle owned by the United States unless it is registered in accordance with the provisions of chapter ninety; (2) a vehicle moved solely by animal power; (3) an implement of husbandry; (4) special mobile equipment; (5) trailers; (6) passenger vehicles

ten or more years old; or (7) manufactured homes as defined in section thirty-two Q of chapter one hundred and forty.

Added by St.1988, c. 273, § 29. Amended by St.1989, c. 341, § 62; St.1991, c. 481, § 11.

Historical and Statutory Notes

St.1988, c. 273, § 29, an emergency act, was approved Nov. 5, 1988, and by § 77 made effective Jan. 1, 1989.

St.1989, c. 341, § 62, an emergency act, approved Aug. 15, 1989, substituted "No" for "(a) No".

St.1991, c. 481, § 11, approved Dec. 31, 1991, in cl. (7), substituted "manufactured" for "mobile".

§ 20C. Transfer of interest in vehicle with issued salvage title

(a) If an owner of a vehicle for which a salvage title has been issued under this chapter transfers his interest therein, he shall execute the assignment to the transferee on the space provided therefor on the salvage title or on such other form as the registrar shall prescribe and cause the title and assignment to be delivered to the transferee at the time of delivery of the vehicle.

(b) Except for dealers licensed under the provisions of section fifty-nine of chapter one hundred and forty, the transferee of a vehicle for which a salvage title has been issued under this chapter or under the laws, of another state shall, within ten days after receiving delivery of the total loss salvage vehicle, apply for a new salvage title on the form prescribed by the registrar. The application shall be accompanied by the properly executed salvage title, required fee and any other information and documents the registrar may reasonably require to establish ownership of the vehicle.

(c) If a dealer, licensed under the provisions of section fifty-nine of chapter one hundred and forty, is a transferee of a vehicle for which a salvage title has been issued, he need not apply for a new salvage title but, upon transferring the vehicle, shall execute the assignment to the transferee in the space provided for such dealer assignments on the title on such form as the registrar prescribes and cause the title and assignment to be delivered to the transferee.

(d) Any transferor of a vehicle for which a salvage title has been issued under this chapter shall fully and fairly disclose that fact to any transferee for value. The secretary of consumer affairs and business regulation may by regulation provide for the timing, form and content of such disclosure.

(e) The registrar may issue a salvage title for any motor vehicle which is transferred into the commonwealth and which was previously covered by a similar title from any other state.

(f) The owner of any vehicle which would qualify as a "total loss salvage vehicle" under section one of chapter ninety D which is transferred into the commonwealth but was not covered by a similar title from another state shall apply for a salvage title from the registrar.

Added by St.1988, c. 273, § 29.

Historical and Statutory Notes

St.1988, c. 273, § 29, an emergency act, was approved Nov. 5, 1988, and by § 77 made effective Jan. 1, 1989.

§ 20D. Reconstruction or restoration of total loss salvage motor vehicle

(a) Any owner who reconstructs or restores a total loss salvage motor vehicle to its operating condition which existed prior to the event which caused a salvage title to issue under this chapter or the laws of another state, or who recovers a total loss salvage motor vehicle if stolen, shall make application to the registrar for a certificate of title and an inspection of the vehicle prior to registration or sale of said vehicle. Each application for title and inspection shall be accompanied by the following:

(1) the outstanding salvage title previously issued for the salvage vehicle;

(2) bills of sale evidencing acquisition of all major component parts used to restore the vehicle, listing the manufacturer's vehicle identification number of the vehicle from which the parts were removed, if such part contained or should contain the manufacturer's vehicle identification number;

(3) the owner shall also provide a sworn affidavit in the form prescribed by the registrar which states that: (i) the identification numbers of the restored vehicle and its parts have not been removed, destroyed, falsified, altered or defaced; (ii) the salvage title document attached to the application has not been forged, falsified, altered or counterfeited; (iii) all information contained on the application and its attachments is true and correct to the knowledge of the owner; and

(4) the required inspection fee.

The inspection shall include an examination of the vehicle and its major component parts to determine that the vehicle's identification number or its parts have not been removed, falsified, altered, defaced, destroyed or tampered with, that the vehicle information contained in the application and supporting documents is true and correct, and that there is no indication that the vehicle or any of its parts are stolen. Said inspection shall be conducted by a person designated by the registrar. Such inspection is not for the purpose of checking road-worthiness or the safety condition of the vehicle. No liability shall be imposed upon the registrar of motor vehicles or upon the commonwealth or its agents or employees which may result from, or be connected with, any act or omission related to said inspection.

(b) Upon satisfactory inspection results, and receipt of all required documents and fees, the registrar shall issue a new certificate of title in the name of the owner which shall contain the notation "reconstructed", or if the vehicle was a stolen vehicle which was subsequently recovered in an undamaged condition, said certificate shall contain the notation "recovered theft vehicle".

Added by St.1988, c. 273, § 29. Amended by St.1990, c. 150, § 282.

Historical and Statutory Notes

St.1988, c. 273, § 29, an emergency act, was approved Nov. 5, 1988, and by § 77 made effective Jan. 1, 1989.

St.1990, c. 150, § 282, approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990, in par. (a), in the second paragraph, in the second sentence, substituted "designated by the registrar" for "appointed under the provisions of section twenty-nine of chapter ninety".

Cross References

Insurance coverage for motor vehicle with issued salvage certificate, see c. 175, § 113S.

§ 20E. Cancellation of certificate upon junking or scrapping of vehicle

(a) Any person who takes possession of a motor vehicle for the purpose of junking or scrapping shall within ten days after receipt of delivery, cause the certificate of title, salvage title or any other document required by the registrar as proof of ownership, to be surrendered to the registrar for cancellation. Said person shall maintain an adequate record of said cancellation which shall contain the name and address of the owner, a complete description of the vehicle including the vehicle identification number.

(b) The registrar shall maintain an adequate record of said cancellation, which shall contain the name and address of the owner, a complete description of the vehicle including the vehicle identification number. The vehicle identification number shall remain attached to said vehicle upon destruction.

(c) A motor vehicle for which the certificate of title, salvage title or any other document required by the registrar as proof of ownership, which has been surrendered for cancellation under this section shall not be titled under this chapter or registered to operate under chapter ninety.

Added by St.1988, c. 273, § 29.

Historical and Statutory Notes

St.1988, c. 273, § 29, an emergency act, was approved Nov. 5, 1988, and by § 77 made effective Jan. 1, 1989.

Appendix J

M.G.L. Chapter 175 § 24D
ICPIP

M.G.L. - Chapter 175, Section 24D GENERAL LAWS OF MASSACHUSETTS

CHAPTER 175. INSURANCE.

Chapter 175: Section 24D. Lump sum insurance payments; exchange of claimant information between IV-D agency and insurance companies; withholding of past-due child support subject to lien.

Section 24D. (a) Prior to making any nonrecurring payment equal to or in excess of $500 to a claimant under a contract of insurance, every company authorized to issue policies of insurance pursuant to chapter 175 shall exchange information with the IV-D agency, as set forth in chapter 119A, to ascertain whether such claimant owes past due child support to the commonwealth or to an individual to whom the IV-D agency is providing services, and is subject to a child support lien pursuant to section 6 of said chapter 119A. To determine whether a claimant owes past due child support, the company shall either provide the IV-D agency with information about the claimant, or examine information made available by the IV-D agency and updated not more than once a month. If the company elects to provide the IV-D agency with information about such claimant, the company shall provide to the IV-D agency, no less than ten business days prior to making payment to such claimant, the claimant's name, address, date of birth and social security number as appearing in the company's file, and such other information appearing in the company's file as the commissioner of revenue may require by regulation in consultation with the commissioner of insurance. The company shall use a method and format prescribed by the commissioner of revenue. If the company is unable to use a method and format prescribed by the commissioner of revenue, such company shall cooperate with the IV-D agency to identify another method or format, including submission of written materials. If the company elects to examine information made available by the IV-D agency and such claimant owes past due child support and is subject to a lien, the company shall notify the IV-D agency, no less than ten business days prior to making payment to such claimant, of the claimant's name, address, date of birth and social security number as appearing in the company's file, and such other information appearing in the company's file as the commissioner of revenue may require by regulation in consultation with the commissioner of insurance, using a method and format prescribed by the commissioner of revenue. The company may remit to the IV-D agency the full amount of the lien or the full amount otherwise payable to the claimant at the time that it so notifies the IV-D agency at any time prior to making payment to the claimant, without regard to the ten business day period. If, at any time prior to payment, the IV-D agency notifies the company of its child support lien against such claimant by giving the company a notice of levy pursuant to section 6 of said chapter 119A, the company shall withhold from the payment the amount of past due support as set forth in the notice of levy and shall provide such amount to the IV-D agency for disbursement to the obligee. The child support lien shall encumber the right of the claimant to payment under the policy and the company shall disburse to the claimant only that portion of the payment, if any, remaining after the child support lien has been satisfied.

For the purposes of this section, the word "claimant" shall mean an individual who brings a claim against an insured under a liability insurance policy or the liability coverage portion of a multiperil policy, or a beneficiary under a life insurance policy.

(b) This section shall not apply to that portion of a claim resulting in payments on behalf of the claimant issued to a third party where there is documentation showing that the third party has provided or agreed to provide the claimant with a benefit or service related to the claim including, but not limited to, the services of an attorney or a medical doctor, or to any portion of a claim based on damage to or a loss of real property. The commissioner of

revenue, in consultation with the commissioner of insurance, shall promulgate regulations setting forth procedures for making payment to the IV-D agency when a third party has either provided or agreed to provide goods or services to the claimant, and the insurance company cannot reasonably determine the remaining amount payable to the claimant.

(c) The provisions of the Employee Retirement Income Security Act limiting, for contracts of insurance, the amounts which may be assigned or attached in order to satisfy child support obligations shall apply to the provisions of this section.

(d) Pursuant to regulations issued by the commissioner of revenue in consultation with the commissioner of insurance, a company that knowingly fails to accurately exchange information regarding a claim to which this section applies shall be subject to a penalty assessed by the IV-D agency. A company that fails or refuses to surrender property subject to a child support lien to the IV-D agency shall be liable as provided in paragraph (7) of subsection (b) of section 6 of said chapter 119A. A company that makes a payment to the IV-D agency pursuant to this section and an insured individual on whose behalf the company makes a payment shall be immune from any obligation or liability to the claimant or other interested party arising from the payment, notwithstanding the provisions of this chapter or any other law.

(e) Information provided by the IV-D agency to a company under this section may only be used for the purpose of assisting the IV-D agency in collecting past due child support. Any individual or company who uses such information for any other purpose shall be liable in a civil action to the IV-D agency in the amount of $1,000 for each violation.

(f) An individual making a claim governed by this section shall provide his current address, date of birth and social security number to the insurance company, upon the request of the company. Such company may inform the claimant that such request is being made in accordance with this section for the purpose of assisting the IV-D agency in enforcing child support liens arising pursuant to section 6 of chapter 119A. Any such individual who refuses to provide the information required by this section shall not receive payment on the claim, and the company that declines payment on this basis shall be exempt from suit and immune from liability under this chapter or any other chapter or in any common law action in law or equity.

(g) In the event of a state of emergency declared by the governor or the president of the United States, the commissioner of insurance may temporarily suspend the application of this section to claims made due to the conditions resulting in such state of emergency.

Appendix K

CAR Claim Department File Review Process

Appendix K - C.A.R. Claim Department File Review Process

Rule 10 of the C.A.R. Rules of Operation requires that: "The Governing Committee, or it's Vice President, Claims, shall establish and supervise procedures for the review of claim practices of Servicing Carriers". To achieve this, C.A.R. conducts annual claim reviews to evaluate the effectiveness of the cost containment measures employed by its Servicing Carriers. The review process consists of three phases: file selection, file review, and analysis and presentation of results.

File Selection

The files to be reviewed are selected from the monthly accounting shipments that are submitted to C.A.R. by the Servicing Carriers. These shipments identify claim transactions during that period. Claims against both ceded and voluntary policies are selected. A typical audit consists of 80-120 claim files, with one-third involving bodily injury claims, one-third involving collision claims, and one-third involving comprehensive claims. The claims are chosen for one or more of the following reasons:

1. Size
2. Carrier's past performance
3. Investigation of suspected problem areas
4. Amount is such that the claim would be routine and be reflective of routine handling by a Carrier.

File Review and Summarization

As each physical damage claim file is reviewed by an examiner, a "Physical Damage Quality Claim File Review Worksheet" is completed. The worksheet is designed to provide the reader with dates, time lags, and information that is used in evaluating the handling of the particular file. When all the files have been reviewed, the information from the worksheets are combined and the examiners look for trends to determine if a company is handling the various aspects of these claims in a proper manner.

Injury files are reviewed using the "PIP/BI Claim Review Worksheets". Due to the variety of circumstances and claim handling techniques that may be required, these files are discussed in a separate section of the Summary of Review and are frequently addressed individually, although trends are sought by the examiners in this area as well.

Analysis and Presentation

A Summary of Review is presented to the Servicing Carrier at the conclusion of the review. Included in the summary are results of the review in the following areas:

1. **Time Lags**
   This now includes the average length of time between the date of loss and first receipt by the carrier, the average number of days to assign an appraisal, the average length of time to appraise the vehicle once the assignment has been made, and the time to transmit the appraisal..

2. **Photographs**
   Do the appraisers take clear photographs that fully show the area of damage?

3. **Appraisals**
   Are repair times reasonable when viewed in conjunction with the photographs? Are deductions taken for items involving overlap and included operations?

4. **Frame Damage**
   This damage should be documented as this is not visible and overallowances are quite common.

5. **Reinspections**
   Is the carrier conducting a sufficient number of reinspections? Are the reinspections getting results? Are the repairs documented with good quality photographs?

6. **Subrogation**
   Is the carrier taking the necessary action when subrogation is appropriate?

7. **Like Kind and Quality parts**
   Are the appraisers locating like kind and quality parts for vehicles with more than 15,000 miles? Aftermarket parts? In cases where these parts are not available, do the appraisers sufficiently document their attempts to locate them?

8. **Total Losses**
   Is the maximum salvage recovery realized? Are the vehicles actually total losses? How was the actual cash value established?

9. **Storage Charges**
   Were the vehicles moved as soon as practical? If not, were explanations included in the files?

10. **Documentation**
    Were the reasons for payment supported by the necessary appraisals, bills, reports, etc.?

11. Comprehensive Losses

Did the theft and/or fire claims contain the necessary reports? Were the loss facts adequately investigated? Were receipts supporting improvements included? Was NATB notified? Does the company provide its adjusters with procedures for effectively handling these claims?

12. Reimbursement Requests

Payments made in error or not made in compliance with Massachusetts laws should be reimbursed to C.A.R..

13. Bodily Injury/Personal Injury Protection

Are the claims supervised? Is the necessary documentation in the files? Are independent medical examinations conducted when warranted? Is liability clearly established? Is there an explanation as to how a settlement was reached? Is the Department of Revenue contacted to verify that there are no liens outstanding for child support?

These heading are those most common to the Summary of Review, although others may appear as results dictate. A cover letter accompanies each Summary of Review, providing emphasis when needed to the findings of the examiners. In all cases a written response from the Servicing Carrier is requested.

Physical Damage Claim File Review Worksheet

Company	Company Name	Examiner	Date Examined	Policy ID	Claim ID	Reported By

Insured Name	Loss Date	Loss Notice	Calendar Days to receipt of loss

Loss Type	RCF	CWCF	CWCF Receipt Date	Ceded	Commercial

Assignment of Appraisal		Appraisal Completed	
Appraisal Received		Total Loss?	
Salvage Pickup		Disposition	
Date Paid		Amount Paid	
Supplement Amount		Repair Form Received	
Drive In?			

Performance Standards

Business Days Before The Appraisal Was Assigned		
Business Days Before Appraisal Was Transmitted		
Business Days Before Payment Was Issued: With RCF	CWCF	
Total Amount of Damages Paid		
Reinspection Completed	The Preinspection Code	
Is the Preinspection Standard Met?		

Further Commentary

Coverage Verified		Total Loss Documentation	
Prior Claim Check Made		Title Obtained Properly	
Vehicle Identification		Subrogation Recognized	
Year	Make	Car Rental Charges	
Model	Mileage	Tow Charges	
Appraisal Items		Storage	
Photographs		Number of Days in Storage	
Overlap Eliminated		Storage Charges Per Diem	
LKQ Parts		Total Storage Charges	
Aftermarket Parts		Distinguished as Ceded	
Parts Discount		Payments Documented	
Labor Rate		Charges to C.A.R. Proper	
Frame Damage Cost			

Comprehensive Claims Checklist

Police Theft Report	N.I.C.B. Notified Promptly
Police Recovery Report	Investigation Established Loss
Official Fire Report	Receipts For Betterment Secured

Reimbursements

Requested Amount	Requested Amount Reason

Claim ID

Additional Comments and Notes

PIP Claim File Review Worksheet

Company	Company Number	Examiner	Date Examined
Insured Name		Policy Number	Claim ID

Ceded Commercial Personal Loss Date Loss Notice Reported By

Calendar Days-Receipt of Loss: Business Days - Uninjured Insured:

	Notice of Injury	Date Contacted	Form Mailed	Meds	Wages
Insured					
Clmnt 1					
Clmnt 2					
Clmnt 3					

Performance Standards

	Insured	Claimant #1	Claimant #2	Claimant #3
Business Days Before Injured Party Contacted:				
Business Days Before PIP Form Mailed:				
Adverse carrier notified of tort eligibility?				

	Insured	Claimant #1	Claimant #2	Claimant #3
Is there adequate medical documentation?				
Was an independent medical exam performed?				
If so, what date was the IME performed?				
Was a medical bill/peer review done?				
Benefits coordinated with health carrier?				
Verification obtained if no carrier?				

Was liability explained? Comparative negligence considered?

Subrogation recognized? Subrogation pursued?

Reimbursements

Requested amount: Reason:

Investigation

Is special handling warranted?

What type is warranted?	SIU	IME	MBR	Other
What type was the file referred for?	SIU	IME	MBR	Other

How much savings resulted from the special handling?

Claim ID

Additional Comments and Notes

BI Claim File Review Sheet

Company:	**Company #:**	**Examiner:**	**Date Examined**	
Insured:		**Ceded:**	**Commercial:**	
Claim ID:	**Policy ID**	**Loss Date:**	**Reported By:**	
Loss Type:	**Loss Notice:**	**Calendar Days:**	**#Erro**	**Coverage Limit:**

Date the insured was contacted:

	Claimant #1	**Claimant #2**	**Claimant #3**
Injury notice date:			
Date contacted:			
CIB Inquiry Completed?			

Was liability explained? **DOR** **Comparative negligence considered?**

Settlement clearly documented? **Joint tortfeasor?**

Name	**Date Settled**	**Settlement amount**	**Coverage type**
Claimant #1			
Claimant #2			
Claimant #3			

BI Fraud Indicators

P.R. lists no injuries	**Claimant not listed on P.R.**
No Police report	**Damage minor for injuries**
Damages do not match	**Vehicle unavailable**
Scene does not match	**Excessive treatment for injury**
Soft tissue/long recovery	**Index shows claim history**
Medical bills altered	**Wage loss unsubstantiated**
Signatures do not match	**Frequent lawyer/doctor combo**
Claimants have similar ailments	**Conflicting # of passengers**
Multiple SSN's, DL's, and aliases	**Claimants have priors together**
Phantom vehicle or taxi	**Discrepancies in seating**
P.O. Box given as address	**Effective date close to loss**
Kinetics do not make sense	**Claimants differ on loss facts**
Gaps in medical treatment	**No ER/ or not timely**
Acord lists no injuries	**Not reported by insured/operator**

Investigation Notes

Is special handling warranted?

What type is warranted? **SIU** **IME** **MBR** **Other**

What type was the file referred for? **SIU** **IME** **MBR** **Other**

How much savings resulted from the special handling?

Claim ID:

Additional Comments and Notes

Appendix L

SIU File Review Process

Appendix L - C.A.R. S.I.U. File Review Process

The C.A.R. Special Investigative Unit exists under the authority of Article III of the Plan of Operation and is charged with monitoring the efforts of the Servicing Carriers to control fraud. They conduct an annual evaluation of each Servicing Carrier's Special Investigative Unit including a review of fire and theft claims and injury claims from the DCD to examine the operation and quality of investigations.

File Selection and Review

Approximately fifty fire and theft claims are selected from the monthly accounting shipments and S.I.U. Physical Damage Savings Log. These files are reviewed to examine the effectiveness of the Carrier's screening and referral process to the S.I.U., the ability of the staff to recognize potentially fraudulent claims and the quality of the S.I.U. investigations. In addition, C.A.R. reviews a selection of files from the DCD database involving Special Investigation to determine the accuracy of S.I.U. savings reported to C.A.R. and the Detail Claim Database.

Analysis and Presentation

A Summary of Review is presented to each Servicing Carrier at the conclusion of the review. The Summary includes an analysis of the fraud screening and referral process, the time lags for settlement, referral, and resolution of investigated cases, and the accuracy of the savings reported to C.A.R. and the DCD.

1. **Composition of the Unit**
   Identifies members of the unit and their training, experience, and duties.

2. **Operation of the Unit**
   Describes the referral procedures, reporting requirements, supervisory practices and records kept.

3. **Quality of Work**
   Discusses the results of the file review, both from the selection of comprehensive claims and the files investigated by the S.I.U involving all types of losses. Case comments are included for reference where departures from the Standards are noted.

4. **Conclusions and Recommendations**
   Evaluates the adequacy of staffing, experience of staff, screening effectiveness, quality of investigations, accuracy of reported savings, and compliance with the Standards and reporting requirements. The review concludes with a general statement of whether the S.I.U. is acceptable.

SIU Comprehensive Screening

Company:	Reviewed By:	Date Reviewed:	Claim#:	Policy#:	Effective Date:
Date of loss:	Date Reported:	Vehicle Purchase:	Reported By: Insured	Agent	
Name:	#Error	Lic #	D.O.B.		

Performance Standards

Inconsistencies or discrepancies noted?	Screening process evident in file?
Standard met for contacting involved parties?	Suspicious claim referred to SIU
If unresolved, was file referred to SIU?	If settled, was decision documented?

Special Investigation

Was more detailed investigation done?	CAR SIU standards consulted?
Time from date of report to SIU referral:	Time from referral to decision on settlement:

Claim Handling

Vehicle year	Make	Model	VIN

Stolen/Recovered motor vehicle report?		Official Fire report?	NICB notified?
Preinspection done?	Police recovery report?		Investigation established losses?
Betterment receipts secured?	Date Paid	Amount Paid	CIS accessed?

Fraud Indicators

Numerous repairs before theft	Recovered by insured or friend
Steering column undamaged	Insured wants salvage
History of prior losses	Insured slow in claim processing
Unusually low purchase price	Coverage recently added
Loss within 1month of incep/exp	Loss prior to registration
Behind on loan	Unemployed
Claims conscious	PO Box given as address
High value extras for vehicle	Cleanly stripped
Totally burned	VIN does not match

SIU Comprehensive Screening

Comments

SIU Log Review Worksheet

Company: **Claim#:** **Policy#:** **Effective Date:** **Date of loss:** **Date Reported:**

Insured: #Error

Type of loss?

PIP? **BI?** **Collision?** **Fire?** **Theft?** **Property Damage?**

What type of investigation caused this claim to be placed on the DCD log?

SIU? **IME?** **Engine Oil analysis?** **Ignition analysis?**

Medical bill review? **Other**

Date referred

Reason referred to SIU

How was the quality of the investigation?

What is the basis for your finding?

SIU Log Review Worksheet

Who was the investigator?

Who referred the file to the investigator?

How long to make a decision on payment?

Was reservation of rights letter sent?

Was one needed?

Do the savings claimed match your figure?

Savings claimed?

If not, amount of discrepancy?

Were savings reported correctly?

Is there a threat of 93A action?

Comments?

DCD Log Review Worksheet

Company: **Claim#:** **Policy#:** **Effective Date:** **Date of loss:** **Date Reported:**

Insured: #Error

Type of loss?

PIP? **BI?** **Collision?** **Fire?** **Theft?** **Property Damage?**

What type of investigation caused this claim to be placed on the DCD log?

SIU? **IME?** **Engine Oil analysis?** **Ignition analysis?**

Medical bill review? **Other**

Date referred

Reason referred to SIU

How was the quality of the investigation?

What is the basis for your finding?

DCD Log Review Worksheet

Who was the investigator?

Who referred the file to the investigator?

How long to make a decision on payment?

Was reservation of rights letter sent?

Was one needed?

Do the savings claimed match your figure?

Savings claimed?

If not, amount of discrepancy?

Were savings reported correctly?

Is there a threat of 93A action?

Comments?

Appendix M

Questionnaire

Appendix M - Questionnaire

Performance Standards for the Handling and Payment Of Claims by Servicing Carriers

Chapter 273 of the Acts of 1988, Sections 41 and 44, requires Commonwealth Automobile Reinsurers (C.A.R.) to establish Performance Standards designed to contain costs, ensure prompt customer service and payment of legitimate claims, and resist inflated, fraudulent, and unwarranted claims.

The Performance Standards which C.A.R. has developed require Servicing Carriers to establish various plans and programs. In many instances, this may only require formalizing and/or enhancing current practices and procedures. In other instances, detailed plans and programs will need to be developed by the Servicing Carriers to comply with the Standards.

The original questionnaire was completed by Servicing Carriers in 1990. The information is updated periodically by Servicing Carriers.

Penalties will be assessed for non-compliance with the Performance Standards in accordance with the explanation and schedule.

Questionnaire

Company Code _____

I. Auto Body Payments

A. Service Times

1. Do you have procedures designed to ensure prompt settlements of warranted physical damage claims?

YES _____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your procedures?

_____

_____

_____

_____

_____

_____

_____

2. Do you have procedures established to permit prompt inspection of damage and payment of auto physical damage claims?

YES _____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your procedures?

_____

_____

_____

_____

_____

_____

_____

B. Direct Payment Plan

1. Do you have a Direct Payment Plan?

YES _____ NO _____

If yes, effective date of plan _____

If no, target date for plan _____

C. Parts Cost

1. Do you have procedures to obtain discounts and pay less than full retail price for parts?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your procedures?

_____

_____

_____

_____

_____

_____

D. Labor Rates and Times

1. Do you have a plan designed to:
   a. Seek the most competitive labor rates?
   b. Resist rate increases and reduce labor rates?
   c. Verify labor repair and replacement times with industry recognized sources?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

What labor rate are you paying on referral shop business?

What labor rate are you paying on non referral shop business?

E. Total Loss Payments

1. How do you determine whether a pre-insurance inspection was completed on a vehicle?

How do you comply with the requirements that pre-insurance inspection reports are reviewed and placed in the claim file on all total losses?

F. Towing and Storage

1. Do you have a plan to:
   a. Enforce towing and storage rates and conditions as regulated?
   b. Resist and reduce non-regulated charges if they are unreasonable?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

_____

_____

_____

_____

G. *Appraisal of Damage and Reinspections*

1. Do you have guidelines for appraisers to ensure quality appraisals, screening for suspicious claims, and compliance with existing regulations?

YES_____ NO _____

2. Do you have a plan for continuing education of staff appraisers, including fraud awareness?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

_____

_____

_____

_____

3. Do you have a plan that provides for periodic evaluation of the quality and accuracy of independent appraisers?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

_____

_____

_____

_____

4. Do you have a procedure to ensure that reinspections are completed on 75% of all repaired vehicles with damage over $4,000 and 25% with damage under $4,000, whether paid under a Direct Payment Plan or not?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your procedure?

_____

_____

_____

_____

_____

_____

_____

H. 1. Do you have a procedure to report any repair shop that is in violation of any section of Chapter 100A to the Division of Standards, Office of Consumer Affairs and Business Regulation, One Ashburton Place, Boston, MA 02108?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

_____

_____

_____

_____

I. 1. Do you have procedures established to comply with the claim requirements of the mandatory preinspection program, Regulation 211 CMR 94.00?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your procedures?

_____

_____

_____

_____

_____

_____

_____

II. Fraud – Auto Physical Damage and Property Damage Claims

B. Fraud Handling

1. Briefly describe the operation of your Special Investigative Unit. Include staff level and number, types of cases handled, screening process, and procedures for referrals to the S.I.U..

_____

_____

_____

What internal measurements and controls do you maintain to determine the effectiveness of your programs?

What internal measurements and controls do you maintain to determine the effectiveness of your handling of suspicious physical damage claims?

B. Fraud Handling

1. ~~Briefly describe your process for referring suspicious bodily injury claims~~ for special investigation.

C. Fraud Training

1. Do you have a plan that provides for on-going training of fraud awareness and the identification of suspicious claims?

YES NO

2. Do you have a plan for training special investigators in the investigation and handling of suspected fraudulent claims?

Does your Special Investigative Unit handle bodily injury claims?

YES _____ NO _____

YES _____ NO _____

If no, explain the number and level of staff to whom suspicious bodily injury claims are referred.

III. Fraud – Bodily Injury Claims

A. Normal Claims Handling

1. Damage disputed cases – cases in suit

a. Do you have a Litigation Management Program?

YES _____ NO _____

b. Do you have an Alternative Dispute Resolution Program?

YES _____ NO _____

2. Do you have a plan designed to deal with claims involving exaggerated damages or injuries which includes a strategy for concluding those cases at a reasonable amount?

YES _____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

_____

_____

_____

_____

IV. No Fault PIP Benefits Handling

C. Medical Management

1. Do you have a plan which determines whether medical treatment and expenses are reasonable, necessary, and related to the auto accident?

YES_____ NO _____

2. Does your plan include consideration of Independent Medical Exams, Medical Bill Reviews, use of Preferred Provider Organizations, Managed Care Programs, and/or Expert Medical Systems?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

_____

_____

_____

V. Glass

1. Do you have a plan that effects prompt repair or replacement of damaged or broken glass at a fair and competitive cost?

   YES _____ NO _____

2. Do you have a plan to screen all glass bills and obtain reasonable discounts of market price lists and labor costs?

   YES _____ NO _____

3. Do you have a plan to address fraudulent glass claims including inspection or reinspection of a representative sampling of all glass losses?

   YES _____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your plan?

_____

_____

_____

_____

_____

_____

_____

VI. Voluntary/Ceded Claim Handling Differential

1. Is there any difference in claim handling between policies insured voluntarily and those ceded to C.A.R., with the exception of statistical coding?

   YES _____ NO _____

VII. Expenses

1. Do you have a program which establishes guidelines that control claim adjustment expenses?

YES _____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your procedures?

_____

_____

_____

_____

_____

_____

_____

2. Do you have a program which establishes guidelines for controlling legal defense costs, including an alternative dispute resolution program?

YES_____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your program?

_____

_____

_____

_____

_____

_____

_____

3. Do you have a program that requires adjusters to review vendors' bills for accuracy and deduct unauthorized services?

YES _____ NO _____

What internal measurements and controls do you maintain to determine the effectiveness of your program?