



# Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

**STATEMENT OF  
THE MASSACHUSETTS INSURANCE FEDERATION  
TO THE AUTO DAMAGE APPRAISER LICENSING BOARD  
IN CONNECTION WITH THE REVIEW OF  
REGULATIONS 212 CMR 2.00**

May 4, 2016

The Massachusetts Insurance Federation (the “Federation”) submits this statement and accompanying documents to the Auto Damage Appraiser Licensing Board (the “ADALB” or the “Board”) in connection with the comprehensive review of the ADALB regulations, 212 CMR 2.00, being undertaken by the Board.

First, we want to introduce the Federation. The Federation is the leading advocate for the property/casualty industry in Massachusetts, consisting of 28 property and casualty insurance company members – 10 of whom are domiciled in the Commonwealth – and four national insurance trade associations who are associate members. Federation members write over 80% of the state’s private passenger automobile insurance premiums.

Secondly, we applaud the Board members for undertaking this comprehensive review of its regulations in conjunction with the Division of Insurance (the “Division”), pursuant to Governor Baker’s Executive Order No. 562 issued in March 2015. That Executive Order contains several important principles and requirements, which we assume will guide the Board in the process of reviewing its regulations. Several of those principles and requirements merit mention and emphasis:

- The costs of the regulation do not exceed the benefits that would result from it.
- Less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives.
- The regulation “does not unduly and adversely affect Massachusetts citizens . . . , or the competitive environment in Massachusetts.”

In addition, we note that the Executive Order also mandates that each agency “prepare in connection with any proposed, new regulation a business/competitiveness impact statement that will include a competitiveness review and assess disruptive economic impacts on . . . all potentially impacted entities, including . . . medium and large for profit enterprises.”



# Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

These principles and requirements are essential aspects of the regulatory review process that the Board is undertaking. We also note that they been the principles guiding the changes we are recommending in the ADALB regulations.

Enclosed with this statement is a proposed revision of those regulations. Our proposal contains two major, substantive changes and a variety of other ones that are designed to bring greater clarity to the appraisal regulations. The two major substantive changes we are proposing are the following:

- **Increase in the Threshold at Which an Appraiser Must be Assigned.** The dollar threshold in 212 CMR 204(1)(a) should be increased from its current level of \$1,500.00 to \$5,000.00. A significant increase in this threshold is long overdue and has been discussed by the Board in the past. This proposed increase to the claim value threshold at which an insurer may elect not to assign an appraiser to appraise the damaged motor vehicle is warranted based on the continuing increase in costs associated with the repair of damaged motor vehicles since the threshold was changed from \$500 to \$1,500 in 2008. The practical effect of these increased costs, in the absence of a similarly rising threshold, is that insurers are required to incur additional expense, expend additional resources and consumers experience a longer timeframe for the resolution of claims for which licensed appraisers have been assigned to appraise vehicles with relatively minor damage. The increase in this threshold further is supported by the amendment made to Section 57A of Chapter 6C of the General Laws in OUTSIDE SECTION 14 of the of the FY 2016 Budget, which increased the thresholds for what constitutes a “minor” and “major” at-fault accident claim (excluding deductible) to more than \$1,000 and more than \$5,000 respectively. To the extent the increased value of contemporary motor vehicles and the associated costs to repair such vehicles when they are damaged warrants an increase in these accident designations, it follows that the claim payment threshold at which an insurer may elect not to incur the expense for, and consumers need not wait additional time for, the completion of an appraisal by a licensed auto damage appraiser should similarly be increased. If the threshold in 212 CMR 2.04(1)(a) remains \$1,500 despite the amendment to M.G.L. 6C, § 57A, insurers will be required to assign appraisers to a large percentage of what now constitute “minor” accidents.

- **Expressly Allow the Use Video and/or Digital Images.** The regulatory requirement that an appraiser “personally inspect” a damaged motor vehicle in order to conduct an appraisal of that vehicle dates back at least to 1996. Given the significant technological advances since that time in photography and videography, an appraiser’s review of and reliance on video or digital images of a damaged motor vehicle, as recorded or taken by another person, along with appropriate documentation of that video or those digital images, is a reasonable substitute for that appraiser being



## Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

physically present for the review of the damaged vehicle. Moreover, these improved technologies are increasingly more available and affordable. In updating the requirement that an appraiser physically appear to view a damaged motor vehicle, appraisals will be completed more quickly, which will translate to the more expeditious resolution of claims. Moreover, the wide availability of quality video and photographic technology means that these more expeditious claim resolutions will not come at the cost of lower quality appraisals. This is not only a benefit to insurers in the form of reduced costs, but of significant benefit to consumers, who will have their claims resolved more quickly, without sacrificing quality service. This change also makes the regulations consistent with what the Division of Insurance (the "Division") has permitted for a number of companies' Direct Payment Plans. We note that the Board has previously recognized the appropriateness of the use of such digital or video images with documentation in Advisory Ruling 2014-01. While that ruling was rescinded in 2015, the rescission will not affect the continued use of video or digital imaging by the insurers that have received approval of amended Direct Payment Plans that incorporate that technology. We urge the Board to resume recognition of this necessary technological advance.

In all, the two principal changes we are proposing, along with the others contained in our revision of the regulations, will improve efficiency of the appraisal process. Moreover, they will, consistent with Executive Order No. 562, benefit Massachusetts drivers and improve the auto insurance competitive environment (including the appraisal and repair process) in Massachusetts.

The Federation looks forward to working with the Board to developing revisions to its regulations that will be beneficial to all the affected parties -- drivers, insurers, repair shops, as well as appraisers.

Respectfully submitted,

John P. Murphy  
Executive Director

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

**212 CMR 2.00: THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES**

Section

2.01: Scope of Regulations

2.02: Licensing Requirements and Standards for Appraisers

2.03: Duties of Insurers and Repairers

2.04: Procedures for the Conduct of Appraisers and Intensified Appraisals

2.05: Penalties

2.06: Severability

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. If the provisions of this regulation and the provisions of 211 CMR 133.00 conflict or are inconsistent, the provisions of 211 CMR 133.00 shall govern and the provisions of this regulation shall not apply. 212 CMR 2.00 is also to be read in conjunction with 211 CMR 123.00, Direct Payment of Motor Vehicle Collision and Comprehensive Coverage Claims and Referral Repair Shop Programs. If the provisions of this regulation and the provisions of 211 CMR 123.00 conflict or are inconsistent, the provisions of 211 CMR 123.00 shall govern and the provisions of this regulation shall not apply.

The regulations have no provision regarding when the provisions of the ADALB conflict with or are inconsistent with those under 212 CMR 133.00. The statement that 212 CMR, "is intended to be read in conjunction with 211 CMR 133.00" provides no legal guidance and no coordination between the two regulatory schemes. The above addition remedies the possibility for inconsistent regulations. Similar recognition and deference has been added for the Division of Insurance Direct Payment Plan regulation, 211 CMR 123.00.

(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.

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

(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~~ that term is used in M.G.L. c. 26, § 8G and in compliance with the provisions of M.G.L. e. 93A, c. 100A, c. 90, § 34R, and c. 26, § 8G, prepared by an insurance company appraiser or repair shop appraiser licensed by the Board.

The term “motor vehicle damage report “ is used throughout M.G.L. c. 26, § 8G but is not defined in the statute despite the suggestion in the definition of “Appraisal”. Therefore the suggestion that it is defined is removed. Chapter 93A regulates unfair business practices for all businesses and has no specific applicability to appraisals or appraisers and therefore its reference has been removed.

Appraiser or licensed appraiser- means ~~any person~~ an insurance company appraiser or a repair shop appraiser licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and ~~determine~~ estimate the cost of parts and labor required to repair the motor vehicle damage.

The statute and regulations use the term “estimate” in a number of places. Therefore, in this definition, the word “determine” is replaced with “estimate”.

Board – means the Auto Damage Appraiser Licensing Board established by M.G.L. c. 26, § 8G.

The current regulations do not use “Board” as a defined term. The addition of this term to the definitions allows the removal throughout the regulations of the term Auto Damage Appraiser Licensing Board.

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.~~

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

Inspection or Inspect – means an appraisal conducted by a licensed appraiser in person, or via review of quality video or digital images with documentation.

The addition of this defined term is designed to provide greater clarity in a number of areas of the regulations where the undefined term “personal inspection” is used. The newly defined term “inspection” is used in place of “personal inspection”. As explained more fully below in connection with the proposed revision of 212 CMR 204(1)(d), the term “inspection” should encompass and specifically permit review of quality video or digital images with documentation, in recognition of the technological advances since the term “personal inspection” was originally inserted into the regulations. This revision will also make the regulations consistent with what the Division of Insurance has permitted for a number of companies’ Direct Pay Plans.

Insurance company appraiser - means any licensed appraiser conducting appraisals on behalf of an insurance company. The term, “insurance company appraiser” shall include not only licensed appraisers employed by an insurer but shall also include other licensed appraisers retained by an insurer to conduct appraisals on its behalf.

The definition and the term, “independent appraiser” appears six times within the regulations. The deletion of this term and the substitution of the simple terms, appraiser, insurance company appraiser, and repair shop appraiser would make the respective duties of the parties clearer and less subject to interpretation (e.g. when “appraiser” is used without attribution to the right to disassemble a vehicle with the consent of the claimant. 212 CMR 204(e)). Since the regulations only relate to appraisers for insurance companies or repair shops, the additional definition of “independent appraiser” does not add any clarity to the regulations.

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.

Repair shop – means a motor vehicle repair shop duly and currently registered pursuant to the requirements of M.G.L. c. 100A.

The addition of the defined term “repair shop” as one registered under c. 100A is designed to make the regulations consistent with the requirement of that statute that shops be registered and that insurers can only deal with registered shops.

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

Repair shop appraiser - means a licensed appraiser conducting appraisals on behalf of a motor vehicle repair shop duly registered pursuant to M.G.L. c. 100A. The term "repair shop appraiser" shall include not only licensed appraisers employed by a repair shop but shall also include other licensed appraisers retained by a repair shop to conduct appraisals on its behalf.

~~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.~~

Supervisory appraisal - means an appraisal conducted by an insurance company appraiser in conjunction with an insurance company appraiser who holds a supervisory position over the insurance company appraiser conducting the appraisal. A supervisory appraisal may be conducted for any purpose including, but not limited to, evaluating the appraisal ability of persons under the supervisor's control or direction, for the purpose of providing on-the-job training of an appraiser under the supervisor's supervision or where the assigned insurance company appraiser has requested supervisory assistance with regard to the appraisal because of the nature of the damage.

The term "supervisory appraisal" only appears as a definition and does not appear in the regulations in any other place. The undefined term "supervisory reinspection" appears in Subsection 2.04(8)(e) but has no definition. This rewrite broadens the definitions gives the insurance companies a broader mandate to allow supervisory personnel to attend appraisals where their presence is warranted by the conduct of the repair shop or the nature of the damage.

Supervisory reinspection – means a reinspection conducted by an insurance company appraiser in conjunction with an insurance company appraiser who holds a supervisory position over the insurance company appraiser conducting the reinspection. A supervisory reinspection may be conducted for any purpose including, but not limited to, evaluating the reinspection ability of persons under the supervisor's control or direction, for the purpose of providing on-the-job training of an appraiser under the supervisor's supervision or where the assigned insurance company appraiser has requested supervisory assistance for the reinspection because of the nature of the repairs be reinspected.

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

The term "supervisory reinspection" appears in Subsection 2.04(8)(e) but does not appear in the regulations' definition section. The above definition gives the insurance companies the same right to allow supervisory personnel to attend reinspections where their presence is warranted by the conduct of the repair shop or the nature of the damage as for supervisory appraisals.

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 licensed 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 been engaged in the business of conducting appraisals for at least three months or assisted in the preparation of appraisals for at least three months under the close supervision of a licensed appraiser ~~someone engaged in the business of conducting appraisals~~. He or she shall complete an approved appraisal course or at the Board's discretion work experience may be substituted for said schooling.

This change would allow appraisers from other states to be automatically eligible for licensing in Massachusetts, thereby alleviating some of the temporary license issues during emergencies and would allow trainees who have worked with an appraiser, even if not specific to Massachusetts, to be eligible. The term "licensed appraiser" is not used in this context because not all states have license requirements. Instead the term "engaged in the business of conducting an appraisal" is used, which is used in Connecticut to allow appraisers from other states to automatically receive a license.

(3) Application and Examination Fee for a License.

(a) 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

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

under the supervision of the Board. The examination shall be offered at least once a month. The Board shall waive the examination requirement for an applicant from another state who holds an equivalent license. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further nonrefundable 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.

This change ensures that Part II of the written appraisal portion of the exam is conducted on a regular basis. In addition, the examination requirement would be waived for appraisers with equivalent licenses from other states.

(b) Any applicant for an emergency license resulting from a declared emergency, declared disaster or an insurer declared catastrophe loss, as provided in 212 CMR 2.04(3)(a)-(d), shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. The insurer requesting the emergency license shall also sign the emergency application attesting to the need for the emergency license and that the term of the emergency licensee is ninety days. The insurer on whose behalf the emergency licensee will appraise shall submit the application and non-refundable fee of \$100 to the Board.

This addition ties in with the later provisions found in 2.04(2) and 2.04(3) relating to temporary licenses and the additional subsections added in that section providing for automatic emergency licensing.

(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

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

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 a repair shop 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 has violated any provision of 212 CMR 2.02, or 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 appraisal. All written complaints against a licensed appraiser shall be heard, and final dispositions shall be concluded, within sixty (60) days from receipt by the Board. 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;

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

- (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.~~
- ~~(e)~~ ~~(f)~~ the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;
- ~~(f)~~ ~~(g)~~ knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist; ~~and~~
- ~~(g)~~ conducting audio recording without the consent of the person being recorded;  
and
- (h) failure to comply with 212 CMR 2.00

The provision under 2.04(8) "revocation of suspension of a license" has a number of provisions that "may" result in the board revoking a license. It would seem to be better that some of these provisions – such as the refusal to allow access by a repair shop to the damaged vehicle – should be affirmative requirements as to what the person should do rather than as presently drafted as simply grounds for revoking the licenses.

- (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.
  - (h) Wireless Internet connectivity for the purpose of electronic transfer of data.

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

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~~ an insurance company appraiser to appraise the damage. Assignment of an appraiser shall be made within two business 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 ~~\$1,500.00~~ \$5,000.00.

This proposed increase to the claim value threshold at which an insurer may elect not to assign an appraiser to appraise the damaged motor vehicle is warranted based on the continuing increase in costs associated with the repair of damaged motor vehicles since the threshold was changed from \$500 to \$1,500 in 2008. The practical effect of these increased costs, in the absence of a similarly rising threshold, is that insurers are required incur additional expense, expend additional resources and consumers experience a longer timeframe for the resolution of claims for which licensed appraisers have been assigned to appraise vehicles with relatively minor damage. The increase in this threshold further is supported by the amendment made to Section 57A of Chapter 6C of the General Laws in OUTSIDE SECTION 14 of the of the FY 2016 Budget, which increased the thresholds for what constitutes a "minor" and "major" at-fault accident claim (excluding deductible) to more than \$1,000 and more than \$5,000 respectively. To the extent the increased value of contemporary motor vehicles and the associated costs to repair such vehicles when they are damaged warrants an increase in

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

these accident designations, it follows that the claim payment threshold at which an insurer may elect not to incur the expense for, and consumers need not wait additional time for, the completion of an appraisal by a licensed auto damage appraiser should similarly be increased. If the threshold in 212 CMR 2.04(1)(a) remains \$1,500 despite the amendment to M.G.L. 6C, § 57A, insurers will be required to assign appraisers to a large percentage of what now constitute “minor” accidents.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more ~~licensed repair shop~~ appraisers in their employment for the purpose of preparing motor vehicle damage appraisals. For the purpose of negotiation, the repair shop appraiser must be present at the time of the inspection by the insurance company appraiser, if any. No ~~staff or independent~~ insurance company 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~~ insurance company appraiser, insurer, representative of insurer, or employer of an ~~independent~~ insurance company 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. The appraiser’s review of quality video or digital images of the damaged motor vehicle recorded or taken by another person, with documentation, shall satisfy the requirements of this subsection 2.04(1)(d).

The regulatory requirement that an appraiser “personally inspect” a damaged motor vehicle in order to conduct an appraisal of that vehicle dates back at least to 1996. Given the significant technological advances since that time in photography and videography, an appraiser’s review of and reliance on video or digital images of a damaged motor vehicle, as recorded or taken by another person, along with appropriate documentation of that video or those digital images, is a reasonable substitute for that appraiser being physically present for the review of the damaged vehicle. Moreover, these improved technologies are increasingly more available and affordable. In updating the requirement that an appraiser physically appear to view a damaged motor

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

vehicle, appraisals will be completed more quickly, which will translate to the more expeditious resolution of claims. Further, the wide availability of quality video and photographic technology means that these more expeditious claim resolutions will not come at the cost of lower quality appraisals. This is not only a benefit to insurers in the form of reduced costs, but of significant benefit to consumers, who will have their claims resolved more quickly, without sacrificing quality service. This change also makes the regulations consistent with what the Division of Insurance has permitted for a number of companies' Direct Pay Plans.

(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 insurance company appraiser determines independently, or after the repair shop appraiser has furnished the insurance company appraiser an appraisal itemizing the cost of all parts, labor, and materials for the proposed preliminary work, repair, or partial disassembly that the repair shop appraiser believes will significantly improve the accuracy of the insurance company appraiser's appraisal, 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 An insurance company appraisers representing the insurance company and the a repair shop appraiser representing registered a 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 appraisers must prepare an appraisal or supplemental appraisal for the purpose of negotiation and provide a copy to the insurance company appraisers before the time of inspection. The repair shop appraiser must be present at the time of the inspection by the insurance company appraiser, if any. 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.~~

This subpart of section 2.04(e) states that "the registered repair shop must prepare an appraisal for the purpose of negotiation." It would seem that only a licensed appraiser should prepare that appraisal since repair shops, unless operated as sole proprietorships, cannot legally hold appraiser licenses.

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

The addition of the language, "and must provide a copy to the insurance company appraisers upon request before the negotiation" results from the practice of certain repair shops refusing to produce supplemental appraisals on the basis that the regulations do not require them to do so. This seems an oversight in the present regulations. This additional sentence corrects that problem by requiring the repair shop to send with the supplement request the appraisal that the regulations presently require them to prepare but not share with the insurance company appraisers.

If, ~~while in the performance of his or her duties as a licensed auto damage appraiser~~ in the conduct of an appraisal, an insurance company appraiser or a repair shop 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 ~~insurance company~~ appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. The insurance company appraiser shall also 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 paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by a ~~registered~~ repair shop or ~~licensed~~ repair shop appraiser, then a published manual or other documentation shall be used unless otherwise negotiated between the parties. 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.

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

The insurance company appraiser shall mail, fax or electronically transmit the completed appraisal within five business 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 business 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 appraiser shall complete a supplemental appraisal prior to the repair shop making the request. The repair shop shall send a copy of the repair shop's supplemental appraisal to the insurance company with the request for the supplemental appraisal. If the insurer accepts the repair shop's supplemental appraisal for the additional damaged parts or damage discovered within two business days by fax or other electronic communication means, including, but not limited to, email, the insurer need not assign an appraiser to personally inspect the damaged vehicle. If the insurer has not accepted the repair shop's supplemental appraisal within two business days, The the insurer shall assign an appraiser who shall personally inspect the damaged vehicle within three~~

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

business days of the receipt of such request. The insurance company 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 business day. The repair shop appraiser shall also give a copy of the completed supplement to the insurance company appraiser 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.

This change combines the provisions (h) "supplemental appraisals" with the section (i) expedited supplemental appraisals. The two procedures seem to duplicate and make more complicated the possibility of having supplemental appraisals simply resolved by the company paying the appraisal. As presently written the repair shop has the option of agreeing to submitting its appraisal or requiring the company to send out an appraiser. In some cases, according to appraisers for carriers, the repair shops use this as a method of requiring the appraiser to trek to the repair shop for almost no reason except harassment. By combining these provisions and making the repair shop send a copy of their proposed supplementary appraisal and giving the company the right to elect to pay it or negotiate it – still subject to the 2-day requirement of conducting an appraisal – would seem to expedite and clarify the procedures between the two parties that often are at loggerheads.

(i) Expedited Supplemental Appraisals. If an insurer, a repair shop and the claimant agree to utilize an expedited supplemental appraisal process, an insurer shall not be required to assign an appraiser to ~~personally~~ inspect the damaged vehicle. In such event, the repair shop shall fax or electronically submit to the insurer a request for a supplemental appraisal allowance in the form of an itemized supplemental appraisal of the additional cost to complete the repair of the damaged vehicle, prepared by a licensed appraiser employed by the repair shop, together with such supporting information and documentation as may be agreed upon between the insurer and the repair shop. The insurer shall then be required to fax or electronically submit to the repair shop within two business days its decision as to whether it accepts the requested supplemental appraisal allowance. Within this same period, a licensed appraiser representing the insurer and a licensed appraiser representing the repair shop may attempt

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

to agree upon any differences. In the event that an insurer does not accept the repair shop's request for the supplemental appraisal allowance, or if the insurer fails to respond to the repair shop within two business days, the insurer and the repair shop shall be obligated to proceed in accordance with 212 CMR 2.04(1)(h), and within the time limits set forth in such provision. ~~In such event, the date of the initial request for a supplemental appraisal allowance shall be the starting date for when the insurer must assign an appraiser to personally inspect the damaged vehicle.~~

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) 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.

(k) Reasonable Access for Purpose of Appraisal. Repair shop appraisers who have custody or control, as an owner, officer or employee of a repair shop, of a customer's vehicle shall allow and shall not refuse to allow an insurance company appraiser reasonable access to the damaged vehicle so that the insurance company appraiser can make an appraisal, supervisory appraisal, supervisory reinspection or intensified appraisal.

This above provision is the same provision that appeared in § 2.02(8)(e) as a ground for which the Board could revoke or suspend a license. We are recommending that it be taken out as a specific grounds for revocation and, instead, make it an affirmative obligation. The insertion here shows how this provision will better serve as an affirmative regulation rather than as an action that might result in a sanction by the Board. A violation of this provision could still serve as a basis for revoking or suspending a license because a violation of the regulations is a sufficient ground for a revocation or suspension as provided in § 2.02(8)(h). The present placement of this

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

provision in the section on revocation and suspension of licenses allows certain repair shops to create barriers to access to the vehicle without actually refusing access completely. This results in higher expenses and more pressure on insurance company appraisers because appraisal slowdowns caused by the repair shops often make the time spent on appraisals at these repair shops exorbitant and thereby results in the appraiser not having adequate time for assignments scheduled at other repair shops. This seems to be a pattern at some body shops.

(2) Temporary Licensing. The Board may grant at its discretion ~~either an emergency or a temporary license to any qualified individual for good cause shown 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.

The change to the temporary license provision results from the addition of the following section for emergency licensing on automatic basis. This section now relates solely to a situation where an out-of-state appraiser may have good cause to conduct an appraisal in Massachusetts.

(3) Licensing for Declared Emergencies, Disasters, and Catastrophe Losses

(a) In the event of a federal, state, county, or municipal declared emergency, declared disaster or an insurer declared catastrophe loss, an insurer in need of temporary additional appraisers shall notify the Board, via an application for temporary emergency appraiser licenses for each individual, who has not less than three-year's experience as a motor vehicle damage appraiser in a state other than Massachusetts, to act as an emergency insurance company appraiser on behalf of the insurer for a period not to exceed ninety-days.

(b) Upon receipt by the Board of the completed application for temporary emergency appraiser licenses and the required fees, the Board shall issue, without hearing, temporary emergency appraiser licenses to the qualified individuals to appraise damage to motor vehicles arising from the declared catastrophe.

(c) A temporary emergency appraiser's license shall remain in force for a period not to exceed ninety (90) days, unless extended by the Board; provided, however, that the Board may terminate a temporary emergency appraiser's license at any time upon seventy-two hours' notice.

(d) Any person licensed as a temporary emergency appraiser must comply with all laws of this state in the same manner as if he or she had been issued a full appraiser's

**MASSACHUSETTS INSURANCE FEDERATION  
PROPOSED CHANGES IN ADALB REGULATIONS  
SUBMITTED AT THE MAY 4, 2016 MEETING**

license and both he or she and the insurer for which the appraiser is working are responsible in the same manner as they would be if the appraiser was a fully licensed appraiser.

This addition proposes to allow insurance companies to obtain more or less automatic emergency licensing for out-of-state appraisers in case of CAT losses. The past procedure of the Board has required a meeting of the Board and substantial delays in temporary licenses being issued.

2.05: Penalties

(+) 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.