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## **NY R 11 § 216.7**

### **(Reg. 64: 11th Amd.): Unfair Claims Settlement Practices and Claim Cost Control Measures; Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims**

This section is applicable to claims arising under motor vehicle collision and comprehensive coverages.

The provisions of this Part shall continue to be applicable to these claims, except to the extent that such provisions are inconsistent with the specific provisions of this section. The sections of this Part that do not apply at all to motor vehicle physical damage claims are sections 216.2(b)-(d), 216.6(c), (h), and 216.9.

(a) The following shall govern the construction of the terms used in this section:

(1) Agreed price shall mean the amount agreed to by the insurer and the insured, or their representatives, as the reasonable cost to repair damages to the motor vehicle resulting from the loss, without considering any deductible or other deductions.

(2) Designated representative (DR) shall mean an insured's broker of record or an insured's intended

repair shop designated by the insured to represent the insured shop in negotiations with the insurer in an attempt to settle claim. Such designated representative may legally act on the insured's behalf. If the designated representative is the insured's intended repair shop, such repair shop, if located within New York state, must be registered pursuant to the provisions of the Motor Vehicle Repair Shop Registration Act (Article 12-A, Vehicle and Traffic Law) and may only represent the insured in negotiation of the amount necessary to repair the insured's damaged vehicle. The designation form

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must contain the repairer's registration number.

(3) Motor vehicle shall have the meaning ascribed in section 311 of the Vehicle and Traffic Law.

(4) Substantially similar vehicle shall mean a vehicle of the same make, model, year and condition, including all major options of the insured vehicle. Mileage must not exceed that of the insured vehicle by more than 4,000 miles or 10 percent of the mileage on the vehicle at the date of loss, whichever is greater.

(5) Business day shall mean a day other than Saturday, Sunday or a New York state legal holiday.

(6) "Crash part" means a part of a motor vehicle, which:

(i) is made of sheet metal, plastic, fiberglass or similar material, including a door, fender, panel,

bumper, hood, floor or trunk lid, but not including windows or hubcaps; and

(ii) constitutes or provides support for the motor vehicle's exterior.

(7) "Original equipment manufacturer" or "OEM" means a motor vehicle manufacturer or distributor

that produces or markets, under its own name, crash parts for use in motor vehicles that it

manufactures or distributes under its own name.

(8) "Non-original equipment manufacturer" or "non-OEM" means a manufacturer or distributor

(including any entity supplying the required warranty other than a manufacturer) that produces or markets, under its own name, crash parts for use in motor vehicles that it does not manufacture or distribute.

(9) "Waste material" means material defined as a liquid toxic waste or liquid hazardous waste material

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under federal or New York state environmental laws or regulations.

(10) local market area shall mean a one hundred mile radius, limited to within the United States, of the place of principal garagement of the insured's motor vehicle.

(b) Adjustment of partial losses.

(1) If, upon notification of a loss, the insurer intends to exercise its right to inspect damages prior to repair, it shall have six business days following receipt of notice of claim to inspect the insured's damaged motor vehicle, which is available for inspection, during normal business hours at a place and time reasonably convenient to the insured. In addition, negotiations shall commence and a good faith offer of settlement, sufficient to repair the vehicle to its condition immediately prior to the loss, shall be made within the aforesaid six-day period to the designated representative and, it may also be made to the insured. If there is no designated representative, the offer shall be made to the insured within the six-day period.

(2) Before negotiating a loss with the insured's designated representative, the insurer must receive

written proof of such designation, properly executed and signed by the insured. The designated representative form shall be accepted by the insurer or its representative when it is offered by either the designated representative or the insured. Prior to negotiating a loss with a repair shop, the insurer shall ascertain the repair shop registration number and the currency of the registration. The insurer shall not knowingly negotiate a loss with an unregistered repair shop.

(3) The person inspecting the damaged vehicle on behalf of the insurer must be licensed or authorized, under article 21 of the Insurance Law, to negotiate the loss with the insured or the insured's

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designated representative. At the time of initial inspection, the person chosen by the insurer to inspect damages must attempt to enter into negotiations, involving the extent of damages, manner of repair and number of hours to repair the damaged vehicle, with the designated representative or, if no designated representative, the insured, in accordance with the following procedures:

(i) at the time of inspection, the insurer shall furnish a copy of its estimate, which at a minimum must indicate the extent of known damages and manner of repair; or

(ii) if the insurer utilizes electronic data processing equipment to generate its repair estimate the insurer shall furnish, at the time of inspection, its estimate or a copy of its worksheet which at a minimum must indicate the extent of known damages and manner of repair or, in the alternative, such insurer may hand-deliver to the insured's designated representative or, if no designated representative, the insured, no later than twenty-four hours following the inspection, a copy of the insurer's detailed written estimate of the cost of repairing the damages resulting from the loss, specifying all appropriate

deductions.

Within the aforesaid six-business-day period, the insured's designated representative or, if no designated representative, the insured shall, in all events receive from the insurer a copy of the insurer's detailed written estimate of the cost of repairing the damages resulting from the loss, specifying all appropriate deductions.

(4) The insurer's repair estimate shall include, as a separate line item, the reasonable cost for proper disposal of waste material generated by painting the motor vehicle or crash part, in the following

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manner (or using another method that is acceptable to the superintendent as functionally equivalent):

(i) the cost per paint hour shall be calculated by dividing the repair shop's annual disposal fees for such waste material, after adjusting for reclaiming or recycling by the repair shop, by the number of hours expended annually to paint vehicles;

(ii) the reasonable cost for proper disposal of the waste material shall be calculated by multiplying the number of hours estimated to paint the vehicle by the cost per paint hour;

(iii) presentation of the manifest and invoice documenting a repair shop's disposal and disposal cost for hazardous waste may be required by an insurer as a condition for this separate line itemization, and the failure of the repair shop to provide such documentation shall relieve the insurer from any consideration or inclusion of such disposal cost on an itemized basis within the repair estimate;

(iv) the reasonable cost shall not exceed the prevailing cost for such disposal in the geographic area of

such repair; and

(v) a new repair shop may use the prevailing cost for disposal of hazardous waste in its geographic area during its first year in business.

(5) If the insurer's repair estimate is based upon the use of any non-OEM crash part:

(i) the estimate shall specify the non-OEM or non-OEM supplier;

(ii) the insurer shall not, without consent of the insured or the insured's designated representative, specify non-OEM crash parts from more than three different suppliers for any one repair;

(iii) the crash part shall equal or exceed the comparable OEM crash part in terms of fit, form, finish,

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quality and performance;

(iv) the crash part must be warranted by the non-OEM at least to the extent and duration as the comparable OEM crash part;

(v) the insurer shall specify only certified crash parts, in regard to any part that has been duly certified by a qualified certifying entity acceptable to the superintendent;

(vi) if the crash part has not been certified by a qualified certifying entity acceptable to the superintendent, the non-OEM must issue a written warranty, for at least the period of the insured's ownership of the vehicle, that the crash part equals or exceeds the comparable OEM crash part in terms of fit, form, finish, quality and performance; and

(vii) the insurer shall cause the damaged vehicle to be restored to its pre-loss condition consistent with

the non-OEM warranty, at no additional cost to the insured and within a reasonable time, if the non-OEM fails to honor its warranty required in subparagraph (iv) or (vi) of this paragraph.

(6) In determining whether a certifying entity is qualified and acceptable for purposes of paragraph (5)

of this subdivision, the superintendent shall consider the extent to which the entity:

(i) has adopted written standards containing conditions to be fulfilled by a manufacturer of crash parts;

(ii) tests, or contracts with an independent testing organization that tests, crash parts, using suitable equipment and techniques;

(iii) administers its certification program in a nondiscriminatory manner regarding any manufacturer or

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supplier of non-OEM crash parts;

(iv) provides a system to determine that certified non-OEM crash parts continue to conform with standards prescribed in subparagraph (5)(iii) of this subdivision and, failing to so conform, to decertify and advise crash part users of withdrawals of certification for any such part;

(v) provides mechanisms for quickly receiving inquiries and promptly resolving disputes that arise under the program in regard to consumers, insurers or repair shops;

(vi) provides a means of identifying each certified non-OEM crash part and provides a system of security that guards against misuse of the identification;

(vii) provides updated lists of certified non-OEM crash parts on at least a quarterly basis; and

(viii) provides the superintendent with an annual report, and such other reports as the superintendent may require, highlighting any significant developments, problems or changes relating to certification procedures or requirements.

(7) Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price with the insured or the insured's designated representative. If the insured's intended repair shop is not a designated representative of the insured, the insurer may also reach an agreement with that repair shop on the cost to repair the damaged vehicle, but that agreement shall not be binding upon the insured or the designated representative. Early in negotiations, the insurer must inform the insured's designated representative or, if there is no designated representative, the insured of all deductions that will be made from the agreed price. If an insurer shall require a proof of loss, its offer shall be communicated to the insured via a proof of loss. The insurer shall also communicate the offer

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to the designated representative.

(8) If the insurer fails to inspect the damaged motor vehicle during the aforementioned six-business-day period, it shall forfeit its right to inspect the damaged vehicle prior to repairs. Unless the insured or designated representative shall permit an inspection after the six-day period, negotiations shall be limited to labor and the price of parts and shall not, unless objective evidence to the contrary is provided by the insurer, involve disputes as to the existence of damage or the chosen manner of repair. For the above forfeiture-of-inspection provision to apply, the damaged vehicle must be available for inspection during normal business hours for the entire aforementioned six-business-day period.

(9) If a second inspection of the vehicle is required by the insurer in order to evaluate open items on the original estimate, or hidden damage discovered upon commencement of repairs, such inspection shall be performed within two business days following the date of notice of additional or hidden damage from either the insured or the DR. When repairs are sublet by the original repairer, thereby necessitating a reinspection at a location other than the original repairer's location, such reinspection must take place within four business days' notice, from either the insured or the DR, of additional or hidden damage. At the time of the subsequent inspection, the insurer shall furnish a copy of the insurer's detailed written estimate of the cost of repairing the damages resulting from the loss, specifying all appropriate deductions.

(10) If upon notification of a loss, the insurer, because of the minor amount of the loss as reported by the insured, requests an estimate of repairs from the insured in lieu of a physical inspection, such a request must be made within three business days of the notice of claim. The insured must receive notification that, upon receipt of the estimate, the insurer may for good reasons (e.g., estimate far

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exceeded original advice to insurer) elect to inspect the vehicle. Such inspection must be made within four business days following the receipt of the estimate at the claim processing office of the insurer. Such inspection shall be subject to the provisions of this section, except that the six business-day forfeiture-of-inspection period specified in paragraph (8) of this subdivision shall become applicable after the four business days. A good faith offer of settlement, sufficient to repair the vehicle to its condition immediately prior to the loss, must be made to the designated representative and, it may also be made to the insured within three business days of the receipt of the inspection and/or estimate. If there is no designated representative, the offer shall be made to the insured within the three-day

period. If the insurer does not perform its own physical inspection, it is nevertheless bound by all the applicable requirements of this Part.

(11) Deductions for betterment and/or depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and/or depreciation shall be limited to the lesser of:

(i) an amount equal to the proportion that the expired life of the part, to be repaired or replaced, bears to the normal useful life of that part; or

(ii) the amount by which the resale value of the motor vehicle is increased by the repair or replacement. Calculations for betterment, depreciation and normal useful life must be included in the insurer's claim file.

(12) Deductions for previous damage or prior condition of the motor vehicle must be measurable, discernible, itemized and specified as to dollar amount, and such deductions must be detailed in the

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claim file. Such deductions shall be limited to the amount by which the resale value of the motor vehicle is increased by the elimination of the previous damage or the correction of prior condition.

(13) Estimates of repairs prepared by insurers or their representatives shall contain the following information at a minimum: identity of policyholder and/or owner/claimant; owner/claimant's address and telephone number; identity of insurer, including name, address, license number and telephone number of adjuster; year, make, model, body style, mileage, VIN, license number, color and condition of the damaged vehicle. The estimate must also contain the claim number, the date of accident and the

date the vehicle was inspected. Each item of damage must be detailed as to the paint, parts and labor hours it will require to repair that particular item. If the appraisal is made at a repair shop, the registration number of the shop must be included on the estimate form.

(14)(i) If after negotiations an agreed price cannot be reached, the insurer must furnish the insured with a prescribed Notice of Rights letter (NYS APD 1), contained in section 216.12 of this Part. The requirement of this subparagraph shall not be applicable to a claim solely involving window glass.

(ii) The insurer must furnish the insured or the designated representative, at the express request of either, with the name and address of a New York state registered motor vehicle repairer, properly equipped to complete the repairs on the damaged motor vehicle (back-up shop), at a location reasonably convenient to the insured, who will repair the damaged motor vehicle at the insurer's estimated cost of repair. A location reasonably convenient to the insured shall mean: in Nassau, Suffolk and Westchester counties and cities with 100,000 or more population, 10 miles -- and in all other areas of the state 25 miles -- from the place where the motor vehicle is principally garaged; or the location of the insured's repair facility. This mileage limitation shall not apply when a repair facility properly

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equipped to complete the repairs is not available within the above geographical area. In such a case a properly equipped facility must be selected at a location as close as possible to the above definition of reasonably convenient to the insured. The insurer must furnish the insured, upon request, with a statement from the back-up shop that it will repair the vehicle in a manner consistent with the insurer's estimate for the amount estimated by the insurer to repair the damaged vehicle.

(15) If the insured's motor vehicle is repaired at a repair shop recommended by the insurer, for a sum

estimated by the insurer as the reasonable cost to repair the vehicle, the insurer:

(i) shall select a repair shop that issues written guarantees that any work performed in repairing

damaged motor vehicles meets generally accepted standards for safe and proper repairs;

(ii) shall cause the damaged vehicle to be restored to its condition prior to the loss, at no additional

cost to the insured and within a reasonable time, if the repair shop it recommended does not repair the

damaged motor vehicle in accordance with generally accepted standards for safe and proper repair;

and

(iii) shall retain in its claim file a signed section 2610 of the Insurance Law Disclosure Statement (NYS

APD 1-a), contained in section 216.12 of this Part, or other written documentation that the insured

requested recommendation of a repair facility. If the insured has verbally requested a recommendation

of a repair facility prior to the issuance of the prescribed Notice of Rights form, the requirement for

written proof of referral shall be satisfied by a notation in the claim file as to the date of such request

and the identity of the person to whom such request was made. The requirement of this subparagraph

shall not be applicable to a claim solely involving window glass.

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(16) Salvage vehicle branding. (i) This paragraph shall be applicable to claims involving vehicles that

are eight model years or newer on the date of the loss.

(ii) If the insurer determines that the cost to repair a damaged vehicle exceeds seventy-five percent of

the vehicle's actual cash value and if the insurer does not take possession of the vehicle for disposition

as salvage, the insurer shall require the vehicle owner to provide the title to the insurer. The insurer

may withhold the entire claim payment, but must withhold at least fifty percent of its claim payment, after application of any deductible, until receipt of the title. The vehicle owner shall be advised by the insurer that the title is being requested in order to comply with subdivision (c) of Section 20.20 of the Regulations of the Commissioner of Motor Vehicles and that the title will be branded as "REBUILT SALVAGE" and will be returned to the owner by the Department of Motor Vehicles.

(iii) As soon as reasonably practicable, but no later than ten business days after receipt of the title from the vehicle owner, the insurer shall forward the title to the New York State Department of Motor Vehicles, Title Bureau, Empire State Plaza, Albany, NY 12228.

(iv) For the purpose of determining the vehicle's actual cash value pursuant to this paragraph, an insurer shall use the methods prescribed in subparagraph (c)(1)(i) or (iii) of this section; the value of repair parts shall be determined by using the current published retail cost of the original equipment manufacturer parts or the actual retail cost of the repair parts included on the insurer's repair estimate; and the labor cost shall be computed based upon hourly labor rate and time allocations that are consistent with the insurer's repair estimates in the community where the repairs are performed.

(17) The insurer must mail or hand-deliver its payment to the insured or the designated representative

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Within five business days after the insured has accepted the insurer's offer, or three business days after the receipt of a completed proof of loss.

(18) The insured shall have the right to receive the proceeds of any settlement in accordance with policy provisions. However, if the insured agrees and this agreement is documented in the claim file,

the insurer may make the check or draft payable to the insured and the lienholder and/or the insured's designated repairer. An insurer may not condition payment of a loss upon repair of the automobile or receipt of a completed Certification of Automobile Repairs.

(19) The following additional standards shall be applicable to the settlement of private passenger automobile physical damage claims:

(i) Subsequent to payment of the claim, the insurer, in accordance with the provisions of section 3411

(i) of the Insurance Law, may request that the automobile be made available for inspection, whether or not the automobile is repaired. The inspection shall be conducted at a time and place reasonably convenient to the insured. The inspection report shall be retained in the insurer's claim file.

(ii) An insurer shall request submission of a Certification of Automobile Repairs (NYS APD 2) as contained in section 216.12 of this Part, signed and certified by the insured and the automobile repairer, under penalties of perjury, stating whether all items allowed by the insurer have been repaired and, if not, that repairs were made in accordance with the repairer's invoice. This form together with a postage-paid return envelope, shall be given to the insured or the insured's designated representative by the insurer during the course of negotiation of the settlement amount.

(iii) The provisions of section 3411(i) of the Insurance Law, with respect to certification and repair invoices, do not apply where the amount of damage to the insured automobile is less than the

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deductible applicable to the policy.

(20) Pursuant to the requirements of section 3411(1) of the Insurance Law, whenever an insurer

discovers any evidence of overcharging, improper repairs or adjustments, or any other wrongdoing by a motor vehicle repair shop, including its failure to permit an inspection of the repaired automobile, to sign the Certification of Automobile Repairs or to provide the insured with an itemized invoice, such evidence shall be forwarded, within 30 days, to:

New York State Department of Motor Vehicles

Division of Vehicle Safety

Governor Nelson A. Rockefeller

Empire State Plaza

Albany, New York 12228

The insurer shall thereafter cooperate fully with the Department of Motor Vehicles in its investigation.

(c) Adjustment of total losses.

(1) If the insurer elects to make a cash settlement, its minimum offer, subject to applicable deductions, must be one of the following:

(i) The average of the retail values for a substantially similar vehicle as listed in two valuation manuals current at the date of loss and approved by this Department. Manuals approved for use are -- The Redbook, published by National Market Reports Inc., and The N.A.D.A. Official Used Car Guide,

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published by the National Automobile Dealers Used Car Guide Company. The use of other manuals may be approved by this Department upon demonstration of need and suitability. If it is evident that an

option has not been considered in either or both of the above valuation manuals, the insurer shall consider the value, if any, of such option in arriving at the vehicle's value and shall utilize the best available method to value such option. The insurer may deduct documented, reasonable dealer preparation charges, up to \$100, from the average of the retail values. The insurer shall provide to the insured, no later than the date of payment of the claim, a detailed copy of its calculation of the insured vehicle's total loss value, including the valuation of options which are not considered in the base price of the vehicle.

(ii) A quotation for a substantially similar vehicle, obtained by the insurer from a qualified dealer located reasonably convenient to the insured. A reasonable location shall be within 25 miles of the place of principal garagement of the motor vehicle. The substantially similar available vehicle must remain available for purchase by the insured for a period of three calendar days subsequent to receipt of notice of its availability by the insured, and the insured must be able to purchase the substantially similar vehicle at the quoted dealer for the insurer's cash offer plus applicable deductions. The insurer must maintain in its claim file the dealer's name and location, the vehicle identification number, the dealer stock number, the mileage and the major options for the substantially similar vehicle which was the basis of its quote. The notice to the insured of the availability of a substantially similar vehicle must be sent by certified mail, return receipt requested, or be a sound-recorded conversation reflecting the date of notice. The three calendar days commence on the date the insured acknowledges receipt of notice. The insured need not purchase the vehicle used as the basis of the insurer's quotation, since

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the quotation merely serves as a basis for the insurer's offer. The foregoing period is satisfied at the

point an insured physically verifies the existence of the substantially similar available vehicle used as the basis of the insurer's quotation. Should the insurer's research of substantially similar vehicles determine that the retail values contained in the valuation manuals, prescribed in subparagraph (i) of this paragraph, are inadequate to purchase a substantially similar vehicle, the insurer's offer should be the amount determined by such research.

(iii) A quotation obtained from a computerized database, approved by the superintendent, that produces statistically valid fair market values for a substantially similar vehicle, within the local market area that meets all the following minimum criteria:

(a) it shall produce values for at least eighty-five percent of all makes and models of private passenger automobiles, as defined in section 67.1(a) of this Title, for the last fifteen model years, and shall take into account the values of all major options for such vehicles;

(b) it shall rely upon values derived from licensed dealers, which have minimum sales of one hundred motor vehicles per year in the local market area for all vehicles of seven model years or less of age, and be based upon the physical inventory of vehicles sold within the ninety days prior to the loss and vehicles which are available; and

(c) it shall monitor the average retail price of private passenger automobiles when there is insufficient data or inventory available from licensed dealers to ensure statistically valid local market area values.

(iv) If the method used in subparagraph (i), (ii) or (iii) of this paragraph would result in a settlement offer greater than the purchase price plus the cost of substantiated improvements paid by the insured

for a vehicle purchased within the 180 calendar days prior to date of loss, the insurer's offer of settlement may be limited to the purchase price, plus the cost of any substantiated improvements, less the deductible. This method of settlement shall not be applicable to motor vehicles acquired by the insured through a private sale or as a gift. A private sale is one in which the seller does not engage in the sale of motor vehicles as an occupation.

(v) If it is not possible to value the damaged motor vehicle by using an alternative method as described in subparagraph (i), (ii), (iii) or (iv) of this paragraph, the insurer shall determine the retail value by the best available method and shall explain to the insured how its offer was calculated.

(2) If the insurer elects to replace the vehicle, the replacement vehicle must be an immediately available, substantially similar vehicle that is both furnished and paid for by the insurer, subject to the deductible if any.

(3) A private passenger automobile of the current model year means a current model year automobile that has not been superseded in the marketplace by an officially introduced succeeding model, or an automobile of the previous model year purchased new within 90 days prior to the date of loss. If the insured vehicle is a private passenger automobile of the current model year, the insurer shall pay to the insured the reasonable purchase price to the insured on the date of loss of a new identical vehicle, less any applicable deductible and an allowance for depreciation in accordance with the schedule below, except where the utilization of this method of settlement would result in a lower claim payment as compared with the utilization of the methods described in subparagraphs (1)(i), (ii) and (iii) of this subdivision.

Purchase Price	Depreciation Per Mile
Up to \$10,000	\$.15
\$10,001 to \$15,000	.20
\$15,001 to \$20,000	.25
\$20,001 to \$25,000	.30
\$25,001 to \$30,000	.37
\$30,001 to \$35,000	.45
More than \$35,000	.53

(4) Right of Recourse. If, within thirty-five calendar days after mailing of the claim payment, the insured notifies the insurer in writing that the insured cannot purchase a comparable vehicle for the market value, as determined under the provisions of subparagraph (1) (i), (ii), (iii) or (v) or paragraph (3) of this subdivision, the insurer shall reopen its claim file and shall offer, in its discretion and subject to applicable deductions, one of the following options to the insured:

(i) the insurer shall identify and offer for settlement an amount sufficient to purchase a substantially similar vehicle, as provided in subparagraph (1)(ii) of this subdivision; or

(ii) the insurer shall pay the insured the difference between the amount of its claim payment and the cost of a substantially similar vehicle, as provided in subparagraph (1)(ii) of this subdivision, located by the insured, or the insurer, upon consent of the insured, may purchase that vehicle for the insured.

(5) The insurer shall not be required to take action under paragraph (4) of this subdivision if its documentation to the insured at the time of its final offer included written notification of the availability of a substantially similar vehicle, as provided in subparagraph (1)(ii) of this subdivision, which shall have been available for at least three calendar days subsequent to the insured's receipt of that offer.

The documentation shall include the vehicle identification number, the stock number or order number.

(6) If the insurer in the process of adjusting a total loss makes a deduction for the salvage value of the insured vehicle, the insurer must furnish the insured upon the insured's request with the name and address of a licensed or certified salvage dealer or dismantler who will purchase the salvage for the amount deducted with no additional charges to the insured by the salvage dealer or dismantler.

(7) All applicable provisions of subdivision (b) of this section ("adjustment of partial losses") also shall apply to the adjustment of total losses, except that the insurer shall be allowed an additional five business days to comply with the requirements of paragraph (1) of subdivision (b) of this section. In the case of an unrecovered theft loss, except as provided in section 216.8 of this Part, the insurer shall make its offer for the total loss no later than the 25th calendar day following the notice of loss, if the insured has provided all information that has been requested by the insurer that is necessary to value the claim. If the insured has not provided such information by the 25th calendar day following the notice of loss, the insurer shall make its offer no later than the 5th business day following receipt of such information.

(8) This subdivision does not prohibit an insurer from issuing a stated value policy insuring against

physical damage, where the amount of damages to be paid in the event of a total loss is a specified

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dollar amount.

(9) The superintendent shall review the operation and efficacy of the total loss provisions of this subdivision at least every five years.

(d) Unreasonable delay.

(1) Unless clear justification exists, no more than 20 percent of a representative sample of the physical damage claims selected by Insurance Department examiners at any office or offices of the insurer shall have a payment period in excess of 30 calendar days. A payment period is the period between the date of receipt of notice of loss by the insurer and:

(i) the date the settlement check is mailed; or

(ii) the date on which the damaged motor vehicle is replaced by the insurer.

If an insurer is in violation of this overall standard, then each such claim in excess of 30 calendar days may be treated as a separate violation.

(2) If any element of a physical damage claim remains unresolved more than 30 calendar days from the date of receipt of notice by the insurer, the insurer shall provide the insured with a written explanation of the specific reasons for delay in the claim settlement. Unless the matter is in litigation an updated letter of explanation shall be sent every 30 calendar days thereafter until all elements of the claim are either honored or rejected.

(3) Any letter of explanation or rejection of any element of a claim shall contain the identity and claims

processing address of the insurer, the insured's policy number, the claim number and the following

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statement, prominently set out:

"Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either on its website at [www.ins.state.ny.us/complhow.htm](http://www.ins.state.ny.us/complhow.htm) or you may write to or visit the Consumer Services Bureau, New York State Insurance Department, at 25 Beaver Street, New York, N.Y. 10004; One Commerce Plaza, Albany, New York 12257; 200 Old Country Road, Suite 340, Mineola, NY 11501; or Walter Mahoney Office Building, 65 Court Street, Buffalo, New York 14202."

(e) Repair estimates. If an insurer requires that its insured obtain an estimate or estimates of vehicle damage, the reasonable cost, if any, of such estimates shall be borne by the insurer.

(f) Loss of use. In the event of the theft of the entire vehicle, it shall be the duty of the insurer at the time of notification of loss to advise the insured of his right under the policy to be reimbursed for transportation expenses. Such notification must be confirmed in writing immediately after receipt of notice of theft. All conditions and benefits related to this coverage as stated in the policy must be contained in the notification to the insured.

(g) Subrogation agreements.

(1) Where an insured has received payment under a physical damage coverage that is subject to a deductible, the insured shall share, pro rata, with the insurer any net recovery received by the insurer

from third parties. Within 30 calendar days of such recovery the insurer must mail or hand-deliver to the insured its payment for the insured's pro rata share of the recovery.

(2) Net recovery shall be the total recovery less the insurer's allocated loss adjustment expenses

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attributable to such recovery. The formula for computing net recovery and the insured's share of recovery of the deductible may be stated as follows:

(i) TOTAL RECOVERY - ALLOCATED LOSS ADJUSTMENT EXPENSES = NET RECOVERY

(ii) DEDUCTIBLE/ TOTAL LOSS X NET RECOVERY = INSURED'S SHARE OF NET RECOVERY

Application of Formula: Assume a loss of \$500 subject to a \$100 deductible with \$50 in allocated loss adjustment expenses:

(a) If there is full recovery of \$500: computation of net recovery:  $\$500 - \$50 = \$450$

computation of insured's share of recovery:  $\$100/\$500 \times \$450 = \$90$

(b) If there is a partial recovery of \$300: computation of net recovery:  $\$300 - \$50 = \$250$

computation of insured's share of recovery:  $\$100/\$500 \times \$250 = \$50$

(3) Unless the insurer returns its insured's full deductible, it shall attempt to effect full recovery in clear liability cases and shall not enter into any intercompany agreements that provide for the acceptance of lesser amounts on a formula basis.

(4) If an insurer has paid a physical damage claim that is subject to a deductible and it has elected to pursue its subrogation claim, the insurer shall promptly attempt to effect recovery. If a dispute arises

between two or more insurers regarding the subrogation recovery, and the insurers are unable to resolve it, the insurer seeking recovery shall submit the dispute to binding arbitration or a court action shall be commenced no later than 180 calendar days following the payment of the claim to its insured.

(5) If an insurer has paid a physical damage claim that is subject to a deductible and it is pursuing its

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subrogation claim, the insurer shall notify its insured in writing of the status of its claim 120 calendar days after the date of the claim payment to its insured. An updated status letter shall be sent every 120 calendar days thereafter until the claim is either honored or rejected.

(6) If an insurer has paid a physical damage claim that is subject to a deductible and it elects not to pursue its subrogation claim where the possibility of recovery exists, the insurer shall so notify its insured in writing within 60 calendar days after it has paid the claim, except that the notification shall be given at least 30 days prior to the running of any applicable statute of limitations or period required for notice of claim. If an insurer does not notify its insured within the time periods prescribed above and the statute of limitations or period required for notice of claim has expired, the insurer shall forthwith remit to its insured the full amount of the insured's deductible.

(h) Referral of insured to the "at fault" party. There shall be no attempt to discourage an insured from filing a physical damage claim nor shall an insurer encourage its insured to assert a claim against a third party in lieu of filing a physical damage claim under the insured's policy.

Revised 9-3-99; Revised 3-5-03; Revised 6-18-03

## COMMENTS/CRITICISMS CONTAINED IN MARKET CONDUCT EXAMS:

- (c)(7) Respondent...violated the following provisions of the Insurance Law and/or Department

Regulations...Section 216.7(c)(7) of Department Regulation 64 [11 NYCRR 216.7(c)(7)], which states

that in the case of an unrecovered theft loss, the insurer shall make a good faith offer of settlement

within 25 calendar days following the notice of loss and in the case of all other total loss situations, the

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insurer shall make a good faith offer of settlement within 11 calendar days following the notice of loss...

~{3/04; 5/04}

- (f) Respondent...violated the following provisions of the Insurance Law and/or Department

Regulations...Section 216.7(f) of department Regulation 64 [11 NYCRR 216.7(f)], which states that a

rental letter must be sent to the insured immediately, but no more than 2 business days after notice of

claim... ~{2/04; 2/04; 5/04}

- (b)(3) Respondent...admits that...it violated the following provisions of the Insurance Law and/or

Department Regulations...Section 216.7(b)(3) of Department Regulation 64 [11 NYCRR 216.7(b)(3)],

which states that the insurer must provide a detailed written estimate specifying all appropriate

deductions which must be received by the insured's designated representative... ~{3/04}

- (b)(1) - Respondent...admits that...it violated the following provisions of the Insurance Law and/or

Department Regulations...Section 216.7(b)(1) of Department Regulation 64 [11 NYCRR 216.7(b)(1)],

which states that after notification of a loss, the insurer will have six business days to make an

inspection of the vehicle and make a good faith offer of settlement... ~{3/04}

- (d)(2) Respondent...admits that...it violated the following provisions of the Insurance Law and/or

Department Regulations...Section 216.7(d)(2) of Department Regulation 64 [11 NYCRR 216.7(d)(2)],

which states that is a claim remains outstanding more than 30 calendar days subsequent to the claimant's notice of loss, the insurer shall send a written explanation of the specific reasons for the delay in claims settlement every 30 calendar days... ~{3/04}

- 216.7(f) Insurer to notify the Insured about their reimbursement rights for transportation expenses. ~{8/99; 9/00; 1/01; 6/01; 8/01}

- 216.7(c)(7) Failing to make a good faith offer of settlement within 25 calendar days on a total

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unrecovered theft or 11 business days for other total losses. ~{10/00; 8/01}

- 216.7(d)(2) Failing to send out every 30 days a letter of explanation for claims that were outstanding for more than 30 days. ~{10/00; 8/01}

- 216.7(b)(18)(ii) Requires that a certificate of repair form should be sent to the insured or the designated representative during the course of the negotiation. ~{9/00; 1/01; 8/01}

- 216.7(b)(19)(ii) A Certificate of Repair Form must be given to the insured or the insured's designated representative during negotiations. ~{6/01; 7/01}

- 216.7(b)(12) Deductions for previous damage or prior condition must be measurable, discernible, itemized and specific as to dollar amount and must be detailed in the claim file. ~{9/00; 10/00; 7/01}

- 216.7(b)(3) Requires that a detailed written estimate specifying all appropriate deductions be received by the insured or the designated representative no later than 24 hours following the inspection of the vehicle. ~{11/99; 9/00; 3/01; 6/01}

- 216.7(b)(9) If a second inspection of the vehicle is required by the insurer in order to evaluate open items on the original estimate, or hidden damage discovered upon the commencement of repairs, such

inspection shall be performed within two business days following the date of notice of additional or

hidden damage from either the insured or the designated representative. ~{8/99; 6/01}

- 216.7(b)(1) Requires that a damaged vehicle be inspected and a good faith offer made within six

business days following receipt of notice of claim. ~{11/99; 6/01}

- 216.7(f) Requires that insureds must be sent a rental letter immediately, but no more than two

business days following notice of claim. ~{3/01}

- 216.7(c)(1)(v) States that if it is not possible to value the damaged vehicle by using the method in 11

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NYCRR 216.7(c)(1)(i) or (ii) or (iii) or (iv) the insurer may determine the retail value by using the best

available method. ~{1/01}

- 216.7(c)(1)(i) Correct Red Book and NADA valuation manual figures be used in calculating the value

of stolen or totaled vehicle and that the insurer provide the insured with a detailed copy of its

calculation of the insured vehicle's total loss value. ~{11/99; 1/01}

- 216.7(c)(1)(iii) The insurer may utilize computerized database to value a vehicle, including in its

valuation, added options and/or prior damage. ~{9/00}

- 216.7(b)(17) The insured shall have the right to receive the proceeds of any settlement in accordance

with the policy provisions. ~{11/99}

- 216.7(b)(16) requires the insurer to mail or hand deliver its payment to the insured or the designated

representative within five business days after the insured has accepted the insurer's offer, or three

business days after the receipt of a completed proof of loss. ~{08/99}

- 216.7(d)(2) If a claim remains outstanding for more than 30 days, a letter of explanation should be

sent every 30 days thereafter until all elements of the claim are either honored or rejected.

- 216.7(c)(1)(i) Requires that correct Red Book and NADA Valuation Manual figures be used in calculating the value of a totaled or stolen vehicle.

- 216.7(c)(1)(ii) Insurer may value a stolen or totaled vehicle by the use of a quote for a similar vehicle, obtained from a qualified dealer located reasonably convenient to the insured.

- 216.7(b)(10) A request for an estimate in lieu of physical inspection must be made within 3 business days after notice of loss and an offer must be made within 3 business days of receipt of inspection and/or estimate.

- 216.7(b)(11) Deductions for betterment shall be limited to the amount by which the resale value of

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the motor vehicle is increased by the repair. In addition, calculations for betterment and normal useful life must be in the claim file.

- 216.7(b)(11) Deductions for betterment and/or depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle.

- 216.7(b)(13) Estimate of repairs prepared by insurers or their representatives shall contain specific information.

- 216.7(b)(14) The insured shall have the right to receive the proceeds of any settlement in accordance with policy provisions.

- 216.7(b)(14)(i) If no agreed price can be reached, the insurer must furnish the insured with a prescribed Notice of Rights letter.

- 216.7(c)(3) In valuing a private passenger automobile of the current model year, the insurer shall pay the reasonable purchase price on the date of loss of a new identical vehicle, less any applicable

deductible and an allowance for depreciation in accordance with the prescribed schedule.

- 216.7(b)(3) Damaged vehicle must be inspected by a licensed adjuster who at the time of the initial inspection must enter into negotiations involving the extent of damages, manner and number of hours to repair with the insured or Designated Representative. Detailed written estimate specifying all appropriate deductions must be received by insured or Designated Representative.

- 216.7(f) Insured must be notified at the time of notification of loss of their reimbursement rights for transportation expenses. Such notification must be confirmed in writing immediately after receipt of notice of claim.

- 216.7(g)(1) Within 30 days of recovery, the insurer shall share pro rata with the insured any net

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recovery received from third parties.

- 216.7(g)(1) Within 30 calendar days of any recoveries subject to a deductible received by the insurer from third parties, the insurer must mail to the insured its payment for the insured's pro-rata share of the recovery.

- 216.7(g)(4) The insurer seeking subrogation recovery shall submit any unresolved disputes to binding arbitration or court action shall commence no later than 180 calendar days from (original text used of) payment of the claim to the insured.

- 216.7(g)(5) If an insurer has paid a physical damage claim subject to a deductible and is pursuing its subrogation claim, the insurer shall notify its insured of the status of the claim 120 days after the date of the claim payment to its insured.

- 216.7(g)(5) The insurer shall notify its insured in writing of the status of its subrogation claim 120 calendar days after the date of the claim payment.

- 216.7(c)(1)(iii) If the loss occurs within 180 days of purchase, settlement may be limited to purchase price plus improvements.

- 216.7(c)(1)(iv) Where a loss occurred within 180 days of the purchase of the vehicle, the Respondent failed to limit the settlement to the purchase price plus the cost of any substantiated improvements.

## USER NOTES

### A REGULATOR'S VIEW:

PROVISIONS APPLICABLE TO MOTOR VEHICLE (Private Passenger Automobile & Commercial Auto -

Physical Damage) COLLISION AND COMPREHENSIVE CLAIMS REQUIREMENTS ARE AS FOLLOWS:

Key Definitions:

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Agreed price - means the amount agreed to by the insurer and the insured as the reasonable cost to repair damages to the vehicle without the deductible or other deductions.

Designated representative (DR) - means an insured broker or repair shop. If the repair shop is located in New York it must be licensed and its registration number must appear on the estimate.

Substantially similar vehicle - means a vehicle of the same make, model year and condition, including all major options of the insured vehicle. Mileage must not exceed that of the insured vehicle by more than 4000 miles or 10% of the mileage on the vehicle date of loss, whichever is greater.

OEM - means a motor vehicle manufacturer or markets that produces under its own name, crash parts for use in motor vehicles that it manufactures or markets under its own name.

Non-OEM - means a manufacturer that produces or markets under its own name, crash parts for use in motor vehicles that it does not manufacture or distributes.

Market Conduct Examiners will verify the appropriate documentation in the claim file which substantiates compliance with the following:

#### ADJUSTMENT OF PARTIAL LOSSES - (1st Party)

Adjustment of partial losses - Insurer has 6 business days following receipt of notice of claim to inspect the insured's damaged motor vehicle. Negotiations shall commence with the insured's designated representative or the insured, and a good faith offer of settlement must be made in the 6 day period.

Written proof of the insured's designated representative confirmed by the insured in writing must be

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obtained before a loss may be negotiated.

The person inspecting the damaged vehicle on behalf of the insurer must be a licensed adjuster in

compliance with Article 21 of the NYIL and must follow the procedures indicated below:

A copy of the detailed written estimate must be furnished to the insured, his/her representative, and/or the body shop at the time it is prepared.

If the insurer uses EDP equipment to generate its repair estimate, the insurer must furnish at the time of inspection its estimate or a copy of the worksheet which indicates the extent of known damages and manner of repair or within 24 hours hand deliver to the DR or the insured, if no DR exists, a detailed written estimate of cost of repairing the vehicle specifying all appropriate deductions. The department

will permit the insurer to provide the insured, his or her DR, or the producer if requested to do so by the insured, a copy of the original estimate or a facsimile.

In all cases within six business days the insurer must furnish the insured or the designated representative a detailed written estimate of the cost of repairs.

The insurer's repair estimate shall include:

-The cost per paint hour must be determined by dividing the repair shop's annual disposal fees for such waste material, after adjusting for recycling by the repair shop, by the number of hours expended annually to paint vehicles. See § 216.7 (b)(4) for details regarding disposal requirements.

-The reasonable cost for proper disposal of the waste material shall be calculated by multiplying the number of hours estimated to paint the vehicle by the cost per paint hour.

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-Presentation of the manifest and invoice documenting a repair shop's disposal and disposal cost for hazardous waste may be required by an insurer as a condition for this separate line itemization and the failure of the repair shop to provide such documentation shall relieve an insurer from any consideration or inclusion of such disposal cost on an itemized basis within the repair estimate.

-The reasonable cost shall not exceed the prevailing cost for disposal of hazardous waste in its geographic area during its first year in business.

If the repair estimate is based on the use of non-OEM the following requirements specified in § 216.7

(b)(5)(i) through (vii), § 216.7 (b)(6)(i) through (viii) must be complied with.

§ 216.7 (b)(8). If the insurer fails to inspect a damaged motor vehicle in 6 business days it loses its right to inspect the damaged vehicle unless the insured or the designated representative permit it. At this point, only labor and the price of parts are subject to negotiation, not the manner of repair nor the existence of damage, unless there is objective evidence to the contrary provided by the insurer.

§ 216.7 (b)(9). If a second inspection is required by the insurer to evaluate open items or hidden damage, such inspection must be performed within 2 business days of notice from the DR or the insured.

§ 216.7 (b)(10). If the insurer elects to waive its right of inspection and requests an estimate of repairs from the insured in lieu of a physical inspection, such a request must be made within 3 business days of the notice of claim. See remainder of this section for additional details.

§ 216.7 (b)(11). Deductions for betterment or depreciation are permitted only for parts normally subject to repair and replacement and shall be limited to the lesser of:

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-An amount equal to the proportion that the expired life of the part to be repaired or replaced, bears to the normal useful life of that part;

-The amount by which the resale value of the motor vehicle is increased by the repair or the replacement. All calculations for betterment, depreciation and normal useful life must be included in the insurer's claim file.

§ 216.7 (b)(12). Deductions for previous damage or prior condition must be measurable, discernible,

itemized and specified to dollar amount and detailed in the claim file.

§ 216.7 (b)(13). Estimates of repairs prepared by insurers or their representatives shall contain the

following information at a minimum:

-Identity of the policyholder and/or owner/claimant

-Owner/claimant's address and telephone number

-Identity of the insurer to include the name, address, license #, and telephone # of the adjuster.

-Vehicle year, make, model VIN, body style, color, condition of the damaged vehicle.

-Claim #, date of loss, date inspected.

-Each item of damage must be detailed as to the paint, parts and labor hours it will require to repair

that particular item.

-If the appraisal is made at a repair shop, the registration number of the shop must be included on the

estimate form.

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It should be emphasized that Market Conduct Examiners will focus their review of this regulation on

documentation in the claim file which supports compliance with the following sections:

§ 216.7 (b)(14) (i). If an agreed price cannot be reached, then the insurer must furnish the insured

with a prescribed "Notice of Rights" letter on form (NYS-APD1).

§ 216.7 (b)(14) (ii). The insured or the designated representative must provide the insured with the

name and address of a New York State registered motor vehicle repairer (back up shop) at a reasonably convenient location who will repair the vehicle at the insurer's estimated cost to repair the vehicle.

§ 216.7 (b)(15) Examiners will verify that insurers which recommend a particular repair shop also ensure that the repairer provides a written guarantee of work performed. Insurers must also ensure that the damaged vehicle is restored to its pre-loss condition. Insurers must retain the required disclosure form in their files.

§ 216.7 (b)(16) Examiners will confirm that insurers comply with the requirement to see that the insured obtains a salvage title for vehicles which are 8 model years old or less and are declared a total loss.

§ 216.7 (b)(17) An insurer must pay the claim within 3 days of receipt of the proof of loss or 5 days after the insured accepts an offer. Note that the Department does not consider the direct assignment of payment to a glass repairer to be subject to the timeframe requirements of this section.

§ 216.7 (b)(18) An insurer is permitted to make a check/draft payable to the insured alone or to the

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insured and the lienholder or the designated repairer as long as the insurer's claim file documents the agreement between the insured and the repairer or lienholder to have the check made payable to both parties.

§216.7 (b)(19) (ii) A Certificate of Repairs Form (NYS APD 2) must be given to the insured during negotiations for repair of the vehicle.

Market Conduct Examiners will verify in their review of the estimate in an insurer's claim file, that if a certain crash part(s) that has not been certified by the CAPA, (Certified Auto Parts Association), that the parts manufacturer or distributor provides a warranty to the insured that equals or exceeds that of the comparable OEM (original equipment manufacturer) crash part.

ADJUSTMENT OF TOTAL LOSSES:

1. § 216.7 (c)(1). Total losses must be adjusted as follows if the insurer elects to make a cash settlement:

(i) An offer may be based upon the use of the average of the Redbook and the NADA Guide values minus documented dealer prep charges up to \$75, [\$100 as of 11/8/96]. A copy of the calculation must be provided to the insured no later than the date of payment of the claim.

(ii) A quotation from a dealer within 25 miles of the insured's place of principal garaging of a substantially similar vehicle. The substantially similar vehicle must remain available for purchase for three days subsequent to receipt of notice of its availability by the insured.

(iii) A quotation obtained from a computerized database, approved by the Superintendent, that

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produces statistically valid fair market values for a substantially similar vehicle within the local market area (per §216.7(a) 11/8/95) a 100 mile radius limited to within the US.).

(iv) If the methods listed above result in a settlement offer greater than the purchase price plus the cost of substantiated improvement paid the insured, etc., the insurer's offer may be limited to the

purchase price, plus the cost of improvements, less the deductible.

(v) If it is not possible to use the methods described above then the insurer shall determine the retail value by the best available method and document and describe it to the insured.

2. § 216.7 (c)(2). Total losses must be adjusted as follows if the insurer elects to replace the vehicle:

The vehicle must be immediately available, substantially similar, and both furnished and paid for by the insurer, subject to any deductible.

3. § 216.7 (c)(3). Verify that the definition of an automobile of the current model year meets the

specification in this section of the regulation along with the allowable/prescribed depreciation

schedule. Verify that the insurer pays the reasonable purchase price on the date of loss on a new

identical vehicle, less the deductible and an allowance for depreciation per the prescribed schedule of depreciation.

4. § 216.7 (c)(4). All salvage deductions made must be furnished to the insured upon his request,

along with the name and address of the salvage dealer who will purchase the salvage for the amount

deducted with no additional charges being required.

5. § 216.7 (c)(5). Examiners will verify that if an insurer has advised an insured that a substantially

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similar vehicle was available for at least three calendar days, this offer must be documented in the

claim file and verifiable by Examiners if they decide to investigate the authenticity of the insurer's offer

of a similar vehicle.

6. § 217.7(c)(6) Salvage value. Examiners will verify that insurers provide the insured with the name and address of the salvage dealer used who buys the salvage from the insurer from the amount deducted from the claim.

7. § 216.7 (7) Total loss settlements. Examiners will verify that insurer's provide a good faith offer of settlement in 25 calendar days for unrecovered thefts and 11 business days for other total losses.

8. § 216.7 (d)(1) If more than 20% of a sample of the physical damage claims selected by DOI examiners at any office(s) have a payment period in excess of 30 calendar days then each claim in excess of the 30 day requirement is treated as a separate violation. A payment period is the time between the date of receipt of notice of loss by the insurer and; (1) the date the settlement check is mailed, or (2) the date on which the damaged motor vehicle is replaced by the insurer. The DOI expects insurer's to try to reach 100% in compliance, but recognizes that legitimate reasons exists that make 100% compliance unattainable. As long as the claim file is documented with a legitimate reason for the delay, an insurer probably would not be cited for a violation.

9. § 216.7(d)(2). If any element of a physical damage claim remains unresolved for more than 30 calendar days from the date of receipt of notice by the insurer, the insurer shall provide the insured with a written explanation of the specific reasons for the delay. An updated letter of explanation shall be sent every 30 calendar days thereafter until all elements of the claim are resolved.

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10. § 216.7 (d)(3). Any letter of explanation or rejection must contain the identity and claims processing address of the insurer, the insured's policy number, the claim number and the "REQUIRED

STATEMENT" contained in this section of the regulation.

11. § 216.7 (f). Loss of Use. In the event of the theft of the vehicle, the insurer at the time of notification must advise the insured of his right under the policy to be reimbursed for transportation expenses. Such notification must be confirmed in writing immediately after receipt of notice of theft. A rental letter must be sent within 2 business days after notice of claim.

12. § 216.7 (g). Subrogation requirements. Examiners will verify that insurers provide insureds with their pro-rata share of all physical damage deductible proceeds recovered from 3rd parties as follows:

(1) Verify that insureds are paid their pro-rata deductible amount within 30 days after the insurer receives the 3rd party amount.

(2) Verify that deductible recoveries are made to insureds in accordance with the following formula:

$$\text{Total Recovery} - \text{Allocated Loss Adjustment Expense} = \text{Net Recovery}$$

$$\text{Deductible} \div \text{Total Loss} \times \text{Net Recovery} = \text{Insured portion of the recovery}$$

Insurers are required to claim full recovery of the insureds' deductibles and are not permitted to make agreements that would provide their insureds with less than full recovery.

13. §216.7(g)(4) If the insurer is seeking subrogation recovery, court action or binding arbitration shall be commenced no later than 180 calendar days following the payment to the insured.

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14. §216.7(g)(5) Written notification must be provided to the insured within 120 days after payment

of a claim if the insurer is seeking to recover subrogation on a physical damage claim which is subject to a deductible. Thereafter, until the claim is honored or rejected, the insurer shall send an updated status letter to the insured every 120 days.

Note, Adjustment of total losses, §216.7 (c) applies to motorcycles except for (c)(3), which specifically applies, to automobiles. However, if the other methods of valuation are not a viable option, the insurer can use the depreciation schedule contained in (c)(3).

## LINE(S) OF BUSINESS:

Commercial Automobile

Personal Automobile

## DETAILS:

After-Market Parts

Betterment

Consumer/Claimant Information

Deductions/Additions

Delay Letter

Estimate

Loss of Use

Misrepresentation/Concealment

Motorcycle

Offer and Acceptance

Partial Settlement

Physical Damage

Pre-Inspection

Proof of Loss

Requirements

Salvage

Steering

Subrogation

Time Frames

Title Branding

Total Losses

Unfair & Deceptive Acts

Unfair Claims Practices Act

## NAIC STANDARDS:

Claim Standard # 1 - Initial Company Contact Within Approved Timeframes

Claim Standard # 2 - Conducting Timely Claim Investigations

Claim Standard # 3 - Resolving Claims in a Timely Manner

Claim Standard # 5 - Adequate Documentation & Retention of Claim Files & Fraud Warning Statements

Claim Standard # 6 - Claim Handling in Compliance with State Requirements and Policy Provisions

Claim Standard # 8 - Timely/Accurate Deductible Reimbursement to Insureds

Claim Standard # 9 - Use of Appropriate Claims Forms Based on Type of Policy & Fraud Warning

Statements

Claim Standard # 11 - Proper Handling of Denied/No-Payment Claims and Reporting Suspicious Claims

Claim Standard # 12 - Proper Cancellation of Benefit Checks and Drafts

Claim Standard # 13 - Claim Handling Does Not Result in Litigation

## EASY AUDIT QUESTIONS:

CLAIMS - 01. Are claims paid promptly?

CLAIMS - 03. Does the company provide delay letters in accordance with the state's requirements?

CLAIMS - 06. Does the company complete its investigation promptly and thoroughly?

CLAIMS - 07. Are materials in the claim file properly date-stamped in order to preserve the chronological order of the file? Are claim files documented in accordance with a state's requirements?

CLAIMS - 08. Are claim payments calculated correctly?

CLAIMS - 09. Are payments for total losses calculated correctly?

CLAIMS - 10. Do adjusters properly identify, disclose and explain all applicable coverages to the claimant?

CLAIMS - 11. Does the company follow the state's requirements for the use and notification of use of after-market parts?

CLAIMS - 12. Are all deductions from or additions to the settlement measurable, itemized and documented?

CLAIMS - 14. Are claims denied in accordance with a state's requirements and policy provisions?

CLAIMS - 15. Does the company comply with all applicable subrogation provisions?

CLAIMS - 16. Does the company comply with all applicable requirements for the handling of salvage and branding of titles?

CLAIMS - 20. Does the company steer insureds and claimants for vehicle repairs in violation of a state's laws?

CLAIMS - 22. Are the company's adjusters or independent adjusters licensed and appointed, if required?

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