

## Assessment of Public Comments for the Fifth Amendment to 11 NYCRR 67 (Insurance Regulation 79)

The Department received comments from 11 interested parties in response to its publication of the proposed Fifth Amendment to 11 NYCRR 67 (Insurance Regulation 79) in the New York State Register. The Department received comments from the following entities:

Property/casualty insurers;

Trade associations comprised of New York State automobile insurers;

An insurance agency;

Trade associations comprised of insurance agents in New York State;

A member of the New York State Assembly; and

A motor vehicle inspection company.

Summaries of the comments on the proposal and the Department's responses thereto are as follows:

### **General comments**

The motor vehicle inspection company strongly supports this proposed rule and asserts that pre-insurance physical damage inspections should remain mandatory because those inspections continue to serve as a valuable tool in combating systemic vehicle thefts by organized stolen car rings. One insurance agent trade association supports the Department's proposed changes to the regulation, and suggests additional changes for consideration.

However, insurers and another agent trade association generally do not support any statute or regulation establishing mandatory underwriting inspection requirements because of advances in technology to combat automobile insurance fraud and theft, and even question the need for the mandatory photo inspection of motor vehicles, contending that national databases such as CARFAX® and the National Insurance Crime Bureau store vehicle identification numbers and motor vehicle claims information that can be used to determine whether a motor vehicle to be insured actually exists and whether it has any previous physical damage. However,

Insurance Law § 3411 requires that an insurer conduct an inspection of an automobile prior to issuing coverage for physical damage and Insurance Regulation 79 implements that statutory mandate. Moreover, the Department disagrees that there is no need for the mandatory inspection of motor vehicles; rather, the regulation is a necessary tool to aid in combating insurance fraud and abuse and organized automobile theft rings in the state. The Department recognizes, however, that in light of advances in technology to combat automobile physical damage insurance fraud, certain provisions of the current rule have become obsolete or unduly burdensome to insurers and insureds. The proposed rule modifies those provisions without compromising the proven effectiveness of photo inspections of motor vehicles in reducing fraud and abuse. Comments on specific parts of the proposed rule are discussed below.

### **Proposed 11 NYCRR 67.1 (“Definitions”)**

#### **Comment**

One insurer trade association recommended that the definition of “private passenger automobile” in § 67.1(a) be amended to exclude private passenger vehicles primarily used for commercial purposes or that are insured under commercial vehicle policies because fraud involving those vehicles is “highly uncommon.” Alternatively, the association recommended that all references to “private passenger” be removed from the regulation because the term implies that the rule may not apply to commercial vehicles. The association also asserted that applying the Vehicle and Traffic Law definition to “farm vehicle” may be confusing because insurers and agents may not be able to determine which vehicles fall within that definition, and suggested that “farm vehicle” should be defined as “a vehicle predominantly used for farm purposes.”

#### **Department’s Response**

The Department is not persuaded that there is an insignificant amount of fraud relating to vehicles insured under commercial vehicle policies, and the association has proffered no evidence that this is the case.

The regulation uses the term “private passenger” automobile because that is the term used in § 3411. The Department also believes that the definitions of “private passenger” and “farm vehicle” in the regulation and the VTL are clear and unambiguous.

**Comments**

One insurer recommended that 11 NYCRR § 67.1(g) be clarified to address whether a licensed repair shop’s or an authorized representative’s visual inspection, along with photographs from an insured satisfy the inspection requirement for out-of-state vehicles. The insurer suggested waiving the inspection requirement for out-of-state vehicles or permitting only a visual inspection. The insurer also recommended that § 67.1(j) be amended to permit an insurer to manually reproduce an inspection report rather than have to produce an exact copy of the report as the provision requires, because “systems limitations” may not permit the reproduction of exact copies.

Another insurer suggested that the rule be clarified to not require insurers to use a particular motor vehicle inspection service, and that an insurer be permitted to designate an agent or staff member in the agent’s office to conduct inspections.

**Department’s Responses**

11 NYCRR § 67.1(g) was amended to eliminate the licensing or registration requirement for motor vehicle inspection companies because the Department performs no such licensing or registration. The proposed rule only requires that the individual or entity selected to perform motor vehicle inspections be “properly qualified” to do so, and does not require an insurer to use any particular motor vehicle inspection service.

The Department is not persuaded by the insurer’s claim that it is more difficult to reproduce an exact copy of an inspection report, given today’s advances in technology, than it is to manually copy information from an inspection report.

**Proposed 11 NYCRR 67.2 (“Mandatory inspection requirements for private passenger automobiles”)**

**Comment**

One insurer asserted that this provision could have an adverse impact on consumers by delaying new coverage or amending existing coverage until a vehicle is inspected. According to the insurer, such a delay also could have “adverse consequences under the state’s “financial responsibility laws for those making a legitimate request for insurance,” and the insurer suggested that more waivers of the mandatory inspection requirement would minimize those consequences. The insurer also questioned whether this provision would adversely impact the practice that when a vehicle is added as a replacement for a covered vehicle or a new vehicle, coverage under an existing policy is extended for a brief period until a new policy is issued.

**Department’s Response**

The Department does not find the insurer’s comments compelling enough to warrant additional waivers of the mandatory inspection requirement. With respect to the “brief” extension of coverage to a replacement or new vehicle to be added to an existing policy, § 67.4(i)(1) provides a limited exception to § 67.2 whereby an insurer may extend coverage to a replacement vehicle for five calendar days from the date the insured acquired the replacement vehicle. Lastly, since the inspection requirements do not impact liability insurance coverage, the Department does not understand how they could have adverse consequences under state financial responsibility laws.

**Comment**

One insurer trade association sought clarification regarding § 67.2 and its relationship to § 67.4(i)(1), particularly with respect to the notice that an insured is required to provide its insurer when it obtains a new vehicle, and regarding why § 67.4(i)(1) only applies to replacement vehicles and not additional vehicles.

## **Department's Response**

The proposed regulation is clear that the notice requirement in § 67.4 shall commence at the conclusion of the five-calendar-day period with regard to the limited exception.

11 NYCRR 67.4(i)(1) provides a limited exception to the mandatory inspection requirement set forth in § 67.2 when the named insured acquires an automobile that replaces an automobile currently insured on the policy and has yet to inform the insurer of the acquisition of the replacement vehicle. This limited exception exists in the current regulation and the only change being made is the duration of the automatic extension of coverage. The Department has approved policy form filings that provide such automatic extension of coverage to a replacement vehicle.

## **Proposed 11 NYCRR 67.3 (“Waiver of the mandatory inspection requirement”)**

### **Comments**

One insurer proffered several comments regarding this provision. The insurer recommended (1) that the waiver be applied to vehicles more than four years old rather than at least seven years old, as proposed in the rule; (2) that the current requirement that the age of the vehicle be calculated as the model year of the vehicle as of January 1 remain unchanged, rather than having the age be calculated as of the effective date of the coverage as the Department proposed, because that proposal would result in unduly burdensome costs to the insurer; (3) that the waiver be applied to six months of continuous coverage, just as in New Jersey, which has amended its waiver provision, rather than to two years as the Department proposed; (4) that the requirement that an insured must agree to the transfer of coverage in order to comply with the waiver be eliminated because this requirement is “unnecessary” to the inspection process; (5) that the two-year continuous coverage without a lapse requirement for the waiver be eliminated, or alternatively, that “without a lapse” be eliminated as unnecessary; (6) that the requirement that the inspection waiver be based on underwriting criteria be eliminated as unnecessary; (7) the elimination of the provision mandating that coverage not be suspended during the initial

policy term because the insured failed to submit the requisite documents, and the requirement that if an insured fails to produce the documents prescribed in § 67.3, then the insured must have the vehicle inspected, because they would result in “programming” costs to insurers; (8) that the insurer requesting either a copy of the window sticker/advanced dealer shipping notice or a copy of the bill of sale should be sufficient rather than both as the rule requires; and (9) that the insured should be required to send a copy of the window sticker and bill of sale within a prescribed time rather than having until its anniversary coverage renewal date as the rule proposed because this proposal would result in “programming costs” to the insurer.

### **Department’s Responses**

The Department does not find any of the insurer’s comments compelling. The Department believes that waiving the inspection requirement after two years of continuous coverage without a lapse is a reasonable compromise of the current four-year requirement to establish a trustworthy relationship between an insurer and its insured. The insurer has proffered no evidence that six months of coverage will result in a similar reduction in potential fraud. Also, New Jersey has a four-year continuous coverage requirement and not a shorter time period as the insurer stated. The inspection waiver being subject to underwriting criteria is necessary to ensure that insurers are fairly and consistently applying waivers of inspection to all their insureds. The Department believes it is necessary for the insurer to receive both the window sticker/advance dealer shipping notice and a copy of the bill of sale, because these documents contain different pertinent information. The rule as proposed provides a clear time frame for the insurer to obtain these required documents for applying the waiver of the inspection of a new automobile. If the documents are not received at least 60 days prior to the anniversary renewal, the insurer will need to require the mandatory inspection of the vehicle to continue the physical damage coverage upon renewal.

Finally, the Department is not persuaded that any programming costs incurred to implement this provision would be unduly burdensome.

### **Comment**

The vehicle inspection company stated that it did not oppose the proposed reduction from a four-year time period to a two-year time period that the insured must be continuously insured before an insurer can waive the inspection requirement, but recommended changing the time period to three years based on “feedback from law enforcement.”

### **Department’s Response**

The Department believes that at least two years of continuous coverage is sufficient to provide additional flexibility to insurers to waive inspections when warranted while safeguarding against insurance fraud and abuse. The motor vehicle inspection company has not provided any empirical data or written statements from “law enforcement” that the Department’s proposal would have a deleterious effect.

### **Comment**

One trade organization representing insurers recommended that the provision requiring consent from the insured before coverage is transferred should be eliminated because a named insured “does not commonly affirmatively consent” to the transfer, but is only advised by its agent of the transfer of coverage. One insurer also asserted that this provision should be eliminated because it is irrelevant to the inspection process.

### **Department’s Response**

The Insurance Law does not permit any automatic transfers of motor vehicle insurance coverage to another insurer without issuance of an appropriate termination notice by the current insurer unless the policy has been replaced. A replacement policy may not be effected without some form of consent from the insured. This may be done affirmatively or presumptively with appropriate and timely notification provided to the insured but subject to the insured’s rejection of the move. The Department is not compelled to revise the current provision as it exists in the regulation.

## **Comments**

The motor vehicle inspection company recommended that the rule should be amended to make payment of a physical damage claim dependent on whether the insurer obtained proof of the prior inspection from the previous insurer as required for specific optional waivers set forth in § 67.3(b) in order to minimize potential fraud.

Insurers and their trade associations asserted that requiring inspections as a condition of renewal is largely unnecessary, would only increase costs and burden consumers, and would not deter fraudulent activity because an insured who intends to commit automobile insurance fraud likely would do so within the initial policy year. Therefore, they stated, these provisions should be deleted from the regulation.

## **Department's Response**

With respect to the motor vehicle inspection company's recommendation, it is not appropriate for an insured to not receive payment of a valid physical damage claim solely due to a previous insurer not providing the inspection documents when the insured vehicle had actually been inspected as required by those specific optional waivers. Additionally, the Department does not find compelling the arguments of the insurers and their trade associations that inspections as a condition of renewal will not serve to deter fraud. Those commentators have proffered no evidence that fraudulent activity only occurs during the initial policy year, and the Department finds it implausible that no insured who intends to commit insurance fraud would attempt to do so during a renewal period.

## **Comment**

An agent trade association expressed concerns with the requirement set forth in 11 NYCRR 67.3(b)(7), (8) and (10) that in order to waive the mandatory inspection requirement, a vehicle must be physically inspected by the previous insurer, particularly in the case where the vehicle is new or has not been sold or transferred.

### **Department's Response**

The Department will take under consideration the applicability of these waivers when the vehicle was originally new and the inspection was waived by the previous insurer pursuant to § 67.3(b)(2), but will not delay implementation of the proposed amendment at this time.

### **Proposed 11 NYCRR 67.4 (“Deferral of the mandatory inspection requirement”)**

#### **Comment**

When the Department sought outreach comments prior to proposing the amendments, stakeholders recommended that the five-day inspection deferral period in 11 NYCRR 67.4(b) be expanded to 10-14 days. The Superintendent considered this alternative and agreed that a 10-day deferral period would give insureds at least one full weekend in which to comply with the inspection requirements. However, the Superintendent at that time rejected any time longer than 10 days on the ground that a longer time might lead to increased incidence of fraud. All interested parties who submitted comments to the proposed amendments regarding the Department's increase in the deferral time period for inspections after the effective date of the policy supported that change but continued to recommend that the deferral period be longer than 10 days to provide more flexibility to consumers trying to obtain inspections.

#### **Department's Response**

Although the Department was originally concerned that a deferral period longer than 10 days would lead to increased incidence of fraud, the Department has reconsidered that position. Advancements in the use of technology mean that insurers now get almost instantaneous reports from car inspection sites, whereas it used to take several days to mail the reports. Because the reports get into the hands of the insurers sooner, there is no substantive difference between the 10 days plus mailing that the Department was considering as the period and 14 days with electronic reports. Accordingly, the Department agrees with the commenters and will increase the deferral period to 14 days as some commenters suggested. Fourteen days will allow more time for consumers

to obtain inspections without having an adverse impact on other anti-fraud measures in the regulation.

**Comment**

Insurers and their trade associations recommended that the notification of mandatory inspection requirements prescribed in 11 NYCRR 67.4(f) et. seq. should be deleted as impractical and that an online transaction should serve as an insured's consent to receive notice electronically.

**Department's Response**

As the Department has expressed, pre-insurance automobile inspections are critical to thwarting insurance fraud and abuse. These notification of inspection provisions are necessary to ensure that consumers are made aware of the mandatory automobile inspections. The Department does not find it an undue burden, especially with advances in technology, for an insurer to maintain a record of the insurer's representative who notified the insured in person or by telephone of the inspection requirement and possible inspection locations, or for an insurer to format its online database to ensure than an insured acknowledges the notice of mandatory inspection before completing its transaction.

**Proposed 11 NYCRR 67.5 ("Standards for inspections")**

**Comment**

One insurer suggested that § 67.5(a)(1) and (2) pertaining to inspection times and locations be deleted or waived because there may not be a facility convenient to an insured on a Sunday and there may be instances where an insured purchased a vehicle in a state with no inspection requirement or no location within 50 miles of the insured, and the insured may not return to New York State before the inspection deferral period expires.

**Department's Response**

The Department is not persuaded by the insurer's reasons for deleting or waiving those provisions. These provisions were amended to provide the widest possible latitude for insurers and consumers to comply with the inspection requirement prescribed in Insurance Law § 3411 and Insurance Regulation 79.

**Comment**

An insurer expressed concerns with the provision in § 67.5(e)(3) that requires an insurer to send a copy of the inspection report to the insured within seven calendar days of the inspection, if the person presenting the vehicle for inspection was not the insured.

**Department's Response**

This amendment will ensure that the insured receives a copy of the inspection report, and the Department believes that such instances will be infrequent and that insurers will not incur any unduly burdensome costs to comply with this requirement.

**Proposed 11 NYCRR 67.6 (“Standards for suspension of private passenger automobile physical damage insurance”)**

**Comment**

One insurer questioned why § 67.6(a) was amended to state that the automobile should be made “available” rather than to explain how the inspection should be conducted as set forth in the current regulation.

**Department's Response**

This amendment was made to address the concern that an insured should not be penalized for not complying with the mandatory inspection requirement because the inspection facility was unable to conduct the inspection at the time the vehicle was made available.

**Comment**

One insurer questioned the need to provide an insured with a Confirmation of Suspension of Physical Damage Coverage form for failing to comply with the mandatory inspection requirement because, when coverage is suspended, the insurer sends the insured an endorsement policy declaration page that shows removal of coverage.

### **Department's Response**

The prescribed Confirmation of Suspension of Physical Damage Coverage form is necessary to specifically notify an insured that coverage has been suspended for failure to comply with the mandatory inspection requirement. A policy declaration page does not specifically alert the insured of this suspension but simply informs the insured that the coverage is no longer part of the policy, along with providing other information regarding the policy.

### **Proposed 11 NYCRR 67.8 (“Standards for inspection by NYAIP”)**

#### **Comment**

A trade association representing insurers recommended that § 67.8(c) be amended to include the use of a form substantially equivalent to the prescribed Automobile Insurance Inspection Report (Form A).

### **Department's Response**

Insurance Law § 3411(h) requires that the inspection be recorded on a form prescribed by the Superintendent, and that is Form A.

### **Proposed 11 NYCRR 67.9 (“Required Amendatory Endorsements”)**

#### **Comment**

One insurer objected to the deletion of current § 67.9(d), which pertains to the New York mandatory automobile repairs endorsement for physical damage, because the insurer may require a completed Certification of Automobile Repairs.

### **Department's Response**

This provision was removed from Insurance Regulation 79 because it pertains to endorsements and is unrelated to mandatory inspection requirements. This provision may be found at 11 NYCRR 216.12 (Insurance Regulation 64).

## **Proposed 11 NYCRR 67.11 (“Inspection report central repository”)**

### **Comments**

An insurer asked whether there is any record-keeping requirement should an insurer elect to maintain inspection records in a central repository pursuant to 11 NYCRR 67.11.

Another insurer sought clarification as to whether this provision precludes an insurer from maintaining an inspection in its own repository in addition to a central repository.

### **Department’s Responses**

All inspection records, regardless of where maintained, are subject to the record retention requirements prescribed in § 67.5(e)(1) and 11 NYCRR 243 (Insurance Regulation 152), and the insurer is responsible for ensuring that the records are kept in accordance with such requirements. See 11 NYCRR 243.2(d). Nothing in the proposed rule, however, precludes an insurer from maintaining its inspection records in its own repository.

## **Proposed 11 NYCRR 67.12 (“Forms”)**

### **Comments**

One insurer suggested that the Insurance Inspection Report (NYS APD FORM A) be amended to include other accessories and optional equipment. Another insurer suggested removing “motorcycle” from the Inspection Report since a motorcycle is not a “private passenger automobile” under the regulation.

### **Department’s Responses**

Form A contains an “Other” section to include accessories and optional equipment that are not specified on the form. The Department agrees with the technical change to remove “motorcycle” from Form A. The form has been amended to reflect that change.