

211 CMR: DIVISION OF INSURANCE

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

Section

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133.01: Purpose and Applicability

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

133.02: Authority

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

133.03: Definitions

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

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

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

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

133.04: Determination of Damage and Cost of Repair

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

- (a) the operational safety of the vehicle might otherwise be impaired;
- (b) reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful;
- (c) a new original equipment part of like kind and quality is available and will result in the lowest overall repair cost;
- (d) for vehicles insured under policies written on or before December 31, 2003, the vehicle has been used no more than 15,000 miles unless the pre-accident condition warrants otherwise; or.
- (e) for vehicles insured under policies written or renewed on or after January 1, 2004, the vehicle has been used no more than 20,000 miles unless the pre-accident condition warrants otherwise.

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

- (2) When an insurance company specifies the use of used, rebuilt, or aftermarket parts, the source and specific part(s) must be indicated on the appraisal. If the repairer uses the source and specified part(s) indicated on the appraisal and these parts are later determined by both parties to be unfit for use in the repair, the insurance company shall be responsible for the costs of restoring the parts to usable condition. If both parties agree that a specified part is unfit and must be replaced, the insurer shall be responsible for replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree. As to such costs, nothing in 211 CMR 133.00 shall preclude an insurer from exercising any available rights of recovery against the supplier.
- (3) Damage to motor vehicle glass shall be repaired rather than replaced if:
 - (a) damage to the windshield is outside the critical viewing area, which is that area covered by the sweep of the wipers originally provided by the vehicle manufacturer, exclusive of the outer two inches within the perimeter of that sweep; and
 - (b) damage to the glass is minor, including, but not limited to, a crack less than six inches in length and stone breaks or bruises, bullseyes and star breaks less than one inch in diameter; and
 - (c) the repair will not impair the operational safety of the motor vehicle.

Insurers shall use reasonable efforts to ensure that, before any decision is made to replace glass, the damage is inspected to determine whether it is suitable for repair.

133.05: Determination of Values

- (1) Actual Cash Value. Whenever the appraised cost of repair plus the probable salvage value may be reasonably expected to exceed the actual cash value of the vehicle, the insurer shall determine the vehicle's actual cash value. This determination shall be based on a consideration of all the following factors:
 - (a) the retail book value for a motor vehicle of like kind and quality, but for the damage incurred;
 - (b) the price paid for the vehicle plus the value of prior improvements to the motor vehicle at the time of the accident, less appropriate depreciation;
 - (c) the decrease in value of the motor vehicle resulting from prior unrelated damage which is detected by the appraiser; and
 - (d) the actual cost of purchase of an available motor vehicle of like kind and quality but for the damage sustained.
- (2) Salvage Value. Whenever the appraised cost of repair plus the probable salvage may be reasonably expected to exceed the actual cash value, a staff or independent appraiser licensed pursuant to 212 CMR 2.00 shall complete a total loss report on a form that has been filed with the Division of Insurance. If the claimant retains title to the vehicle, the appraiser shall obtain bids from two geographically convenient licensed salvage companies. The average of the two bids shall be used as the salvage value. The appraiser shall provide to the claimant the names and addresses of the potential salvage buyers, the amount of each salvage estimate used by the appraiser in computing the salvage value, and the expiration dates of offers, if any, made by potential salvage buyers.

133.06: Option for Contract Repair

- (1) With respect to a claim presented under either Limited Collision, Collision or Comprehensive Coverage, if the insurer deems a motor vehicle a total loss, the claimant may, with the consent of the insurer, enter into an agreement to have the vehicle repaired by any registered repair shop for the contracted cost of repair if:
 - (a) the insurer allows the claimant to retain possession and ownership of the vehicle; and
 - (b) the claimant obtains a salvage title for said vehicle in compliance with M.G.L. c. 90D.

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

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

133.07: Intensified Appraisals

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

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

133.08: Penalties

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

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

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

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

133.09: Severability

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

REGULATORY AUTHORITY

211 CMR 133.00: M.G.L. c. 175, §§ 3A, 4 and 113B, c. 90, § 34O and c. 176D, § 11.

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