



January 24, 2008

Buffy Cheung  
State of New York Insurance Department  
25 Beaver Street  
New York, NY 10004

Re: INS-50-07-00002-P—Mandatory Underwriting Inspection Requirements for Private Passenger Automobiles

On behalf of the Professional Insurance Agents of New York, I write in support of this proposed rulemaking. PIANY in general supports every type of liberalization in the current rules. Changes like those proposed in this rulemaking can provide more time and flexibility with which to accommodate the needs of our members' clients and prevent inadvertent lapses in their physical damage coverage.

While in two instances we request clarification from the Department in its adoption notice (see below), we strongly support the initiative of the Insurance Department in proposing changes to improve what we consider to be a burdensome regulation. The regulation, we recognize, is required by law. However, we believe at this point that the physical damage inspection requirement imposed by Section 3411 of the Insurance Law is a rule whose costs far outweigh its benefits at this point—a discussion that is beyond the scope of this proposed rulemaking.

Specifically, we believe the change in the tolling of the five-day deferral for the inspection from the current calendar days, to business days, will benefit clients by affording them a longer period of time to have the inspections performed.

We also appreciate the proposed language that would clarify that digital photos and other durable electronic media are acceptable for producing the required photos and storing the inspection documents. While this has been the Department's position, it will be helpful to our members to see it set forth in the regulation itself, eliminating any confusion.

Similarly, it is helpful to have an unambiguous definition of "new, unused automobile," as proposed, since this is a question that sometimes arises.

We approve the change in the existing optional waiver at Subdivision 65.3(b)(3) which reduces, from four to two policy-years, the amount of time an insured must have been continuously insured with the same insurer for inspection to be waived on an additional or replacement vehicle.

We likewise support adding two more situations in which a company, at its discretion, may waive the inspection requirement. However, we do have certain questions about these additional waivers, as follows:

1. Proposed new Subdivision 67.3(b)(11) and 67.3(c)(2). Taken together, these permit a waiver where an insured under a new policy has had continuous physical damage coverage from, and the vehicle has been inspected within the past two years by, a prior insurer, and the new insurer is provided with a copy of an inspection report and photos.

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**PROFESSIONAL  
INSURANCE  
AGENTS**

25 CHAMBERLAIN ST.  
P. O. BOX 997  
GLENMONT, NY 12077-0997  
(800) 424-4244  
FAX: (888) 225-6935  
WEB: [www.pia.org](http://www.pia.org)  
E-MAIL: [pia@pia.org](mailto:pia@pia.org)

Our question has to do with the construction of proposed 67.3(c)(2), especially the sentence, “If a mandatory inspection is waived pursuant to subdivision (b)(11) of this section, *the insurer shall be provided with a copy of the inspection report and applicable photographs from the previous insurer or its authorized representative* within ten business days of the effective date of coverage” [emphasis added].

This passive-construction language (“shall be provided”), we believe, could be interpreted to create a legal obligation on the part of third parties that is triggered by the new insurer’s waiver decision. For example, it potentially could be construed to create a new duty on the part of the prior insurer, its agent or its designated central repository to furnish to the new insurer any inspection report/photos that are requested by the new insurer pursuant to the new insurer’s decision to waive. We would oppose this interpretation and would appreciate a clarification in the adoption notice regarding the intent of this language.

2. Proposed new Subdivision 67.3(b)(12). We understand and support the ability of the insurer to waive inspection based on true hardship, especially if this involves hardship to the *insured*. However, we would oppose any application of this provision that would work to the detriment of one market distribution system and to the advantage of another.

Specifically, an insurer which does not market its insurance through local independent agents nor maintain a physical presence in New York might look at this provision as an opportunity to grant across-the-board inspection waivers based on a purported “serious hardship *to the insurer*.” Again, we would appreciate clarification in the adoption notice of the types of situations that would constitute bona fide “circumstances of such hardship,” as would be required to be documented in the insured’s policy record, especially as regards “serious hardship *to the insurer*,” in such a way that clarifies that all types of insurers equally are subject to the provisions of the regulation.

In closing, PIANY appreciates the Insurance Department’s continuing willingness to help customers and the industry work within the statutory requirement, which PIANY considers at this point to be onerous and unnecessary. We support repeal of the underlying statute (Insurance Law Section 3411), which we believe has been rendered unnecessary by vastly improved ways of verifying and tracking the existence and physical condition of insured vehicles since its original enactment. However, failing a legislative remedy, we commend the Insurance Department for undertaking these proposed changes.

Sincerely,



ELLEN D. KIEHL, Ph.D.  
Assistant Executive Director  
for Government & Industry Affairs