

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, California 94105

TEXT OF PROPOSED AMENDMENT TO REGULATION

STANDARDS FOR REPAIR AND USE OF AFTERMARKET PARTS

Title 10. Investment

Chapter 5. Insurance Commissioner

Subchapter 7.5. Unfair or Deceptive Acts or Practices in the Business of Insurance

Article 1. Fair Claims Settlement Practices Regulations

**Amend Section 2695.8(f):**

(f) If partial losses are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the claimant with a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be of an amount which will allow for repairs to be made in accordance with accepted trade standards for good and workmanlike automotive repairs by an "auto body repair shop" as defined in section 9889.51 of the Business and Professions Code, and in accordance with the standards of automotive repair required of auto body repair shops, as described in the Business and Professions Code, and associated regulations, including but not limited to Section 3365 of the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 8. No insurer shall willfully depart from or disregard accepted trade standards for good and workmanlike repair in the preparation of claim settlement offers or estimates prepared by or for the insurer. An insurer shall not prepare an estimate that is less favorable to the claimant than the standards, costs, and guidelines provided by the third-party automobile collision repair estimating software used by the insurer to prepare the estimate, ~~a workmanlike manner~~. If the claimant subsequently contends, based upon a written estimate which he or she obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall:

(1) pay the difference between the written estimate and a higher estimate obtained by the claimant; or,

(2) if requested by the claimant, promptly provide the claimant with the name of at least one repair shop that will make the repairs for the amount of the insurer's written estimate. The insurer shall cause the damaged vehicle to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy or as otherwise allowed by law. The insurer shall maintain documentation of all such communications;  
or,

(3) reasonably adjust any written estimates prepared by the repair shop of the claimant's choice and provide a copy of the adjusted estimate to the claimant and the claimant's repair shop. The adjusted estimate provided to the claimant and repair shop shall be either an edited copy of the claimant's repair shop estimate or a supplemental estimate based on the itemized copy of the claimant's repair shop estimate. The adjusted estimate shall identify the specific adjustment made to each item and the cost associated with each adjustment made to the claimant's shop's estimate.

**Amend section 2695.8(g) as follows:**

(g) No insurer shall require the use of non-original equipment manufacture replacement crash parts in the repair of an automobile unless:

(1) the parts are at least equal to the original equipment manufacturer parts in terms of kind, quality, safety, fit, and performance;

(2) insurers specifying the use of non-original equipment manufacturer replacement crash parts shall pay the cost of any modifications, inspections, and tests to the parts which may become necessary to effect the repair; and,

(3) insurers specifying the use of non-original equipment manufacture replacement crash parts warrant that such parts are of like kind, quality, safety, fit, and performance as original equipment manufacturer replacement crash parts. The insurer must disclose in writing, in any estimate prepared by or for the insurer, the fact that it warrants that such parts are of like kind, quality, safety, fit, and performance as original equipment manufacturer replacement crash parts ; and,

(4) all original and non-original manufacture replacement crash parts, manufactured after the effective date of this subchapter, when supplied by repair shops shall carry sufficient permanent, non-removable identification so as to identify the manufacturer. Such identification shall be accessible to the greatest extent possible after installation; and,

(5) the use of non-original equipment manufacturer replacement crash parts is disclosed in accordance with section 9875 of the California Business and Professions Code.

(6) Insurers specifying the use of non-original equipment manufacturer replacement crash parts that the insurer has implied, actual, or constructive knowledge are not equal to the original equipment manufacturer parts in terms of kind, quality, safety, fit, and performance, or do not otherwise comply with this section, shall immediately cease specifying the use of these parts and shall, within thirty (30) calendar days, notify the collision repair estimating software provider, or other estimating entity it contracts with, of the part and request this part be removed from the collision repair estimating software.

(7) Insurers specifying the use of non-original equipment manufacturer replacement crash parts that the insurer has implied, actual, or constructive knowledge are not equal to

the original equipment manufacturer parts in terms of kind, quality, safety, fit, and performance, or do not otherwise comply with this section, shall immediately cease specifying the use of these parts and shall, within thirty (30) calendar days, notify the distributor of the part of the defect, safety issue, or non-compliant aspect of the part.

(8) Insurers specifying the use of non-original equipment manufacturer replacement crash parts, which are certified by a non-original equipment manufacturer replacement crash part certifying entity and the insurer has implied, actual, or constructive knowledge are not equal to the original equipment manufacturer parts in terms of kind, quality, safety, fit, and performance shall, within thirty (30) calendar days, file a report with the non-original equipment manufacturer replacement crash part certifying entity.

(9) Insurers specifying the use of non-original equipment manufacturer replacement crash parts that the insurer has implied, actual, or constructive knowledge are not equal to the original equipment manufacturer parts in terms of kind, quality, safety, fit, and performance, or do not otherwise comply with this section, shall pay for the costs associated with returning the part and the cost to remove and replace the non-original equipment manufacturer part with a compliant non-original equipment manufacturer part or an original equipment manufacturer part.

Note: Authority: Sections 790.10, 12921 and 12926 of the California Insurance Code, Section 3333 of the California Civil Code and Sections 11152 and 11342.2 of the California Government Code. Reference: Sections 790.03(e), and 790.03(h)(3) of the California Insurance Code and Section 9875 of the California Business and Professions Code.

