

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

DRAFT TEXT

DATE: October 20, 2011

REGULATION FILE: REG-2011-00024

Amend Article 1 of Subchapter 7.5 of Chapter 5 of the California Code of Regulations, as follows:

Amend FCSPRs 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 trade standards for good and workmanlike, mechanical, auto body, and frame repairs and shall include, but not be limited to, repair procedures performed in accordance with original equipment manufacturer service specifications or, if manufacturer specifications and procedures are not available, nationally distributed and periodically updated service specifications that are generally accepted by the autobody repair industry. 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. Insurers shall not prepare an estimate that deviates from the collision repair estimating software guidelines for use and repair.** ~~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. The adjusted estimate shall identify each adjustment and the cost associated with each adjustment made to the claimant's shop's estimate.

Amend FCSPRs 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 will warrant 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 are found to be defective, unsafe, or do not otherwise comply with this section, shall immediately cease requiring the use of these parts and shall 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, which are certified by the Certified Automotive Parts Association (CAPA) and are found to be defective or unsafe, shall file a Quality Complaint Report with the Certified Automotive Parts Association (CAPA);

(8) insurers specifying the use of non-original equipment manufacturer replacement crash parts that are found to be defective, unsafe, 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 an original equipment manufacturer part.

(9) insurers specifying the use of non-original equipment manufacturer replacement crash parts that are found to be defective, unsafe, or do not otherwise comply with this section, shall pay for the costs associated with loss of use or rental car expenses caused by the use of such part.

Amend FCSPRs section 2695.8 “Note” as follows:

NOTE: Authority cited: Sections 790.10, 12921 and 12926 of the California Insurance Code, Section 3333 of the California Civil Code and Sections 11342.2 and 11152 of the California Government Code. Reference: Sections 758.5, 790.03(c) and 790.03(h)(3) of the California Insurance Code, ~~and~~ Section 9875 of the California Business and Professions Code, **and Section 3365 of the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 8.**