

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

STANDARDS FOR REPAIR AND USE OF AFTERMARKET PARTS

DATE: June 12, 2012

CDI REGULATION FILE: REG-2011-00024

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that a public hearing will be held regarding the amendment of Article 1 to be set forth in Title 10, Chapter 5, Subchapter 7.5 of the California Code of Regulations ("CCR"). (All references to CCR sections in this Notice are references to sections in CCR Title 10.) The proposed changes consist of amendments to Sections 2695.8.

The proposed regulations implement, interpret, and make specific the provisions of Insurance Code Section 790.03, defining prohibited acts under Article 6.5, Unfair Practices, of the Insurance Code.

AUTHORITY AND REFERENCE

The Department of Insurance proposes the amendment of California Code of Regulations Title 10, Chapter 5, Subchapter 7.5, Article 1, Section 2695.8 pursuant to the authority vested in him by Insurance Code Sections 790.10, 12921 and 12926. The proposed regulations will implement, interpret and make specific the provisions of Insurance Code Section 790.03.

HEARING DATE AND LOCATION

The Department of Insurance will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed regulations, as follows:

Date and time: Thursday, August 9, 2012, at 10:00 a.m.

Location: Employment Development Department
Auditorium
722 Capitol Mall
Sacramento, CA 95814

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. **The public comment period will end at 5:00 p.m. on August 9, 2012.**

Please direct all written comments to the following contact person:

Teresa R. Campbell, Assistant Chief Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4126

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Lisa Marshall, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4192

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Department of Insurance, addressed to the contact person at her address listed above, **no later than 5:00 p.m. on August 9, 2012.** Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Department of Insurance will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: campbellt@insurance.ca.gov. The Department of Insurance will also accept written comments transmitted by facsimile provided they are directed to the attention of Teresa R. Campbell and sent to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
45 Fremont Street, 24th Floor
San Francisco, CA 94105
(415) 538-4129

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Policy Statement Overview

The current law with regard to an insurer's standards for adjusting and settling automobile insurance claims and use of aftermarket parts has been in existence since 1993 in substantially the same scope as currently in the California Code of Regulations, CCR, Title 10, Section 2695.8.

Subdivision (f) of section 2695.8 governs how insurers are to handle partial losses for automobile insurance claims settled on the basis of a written estimate prepared by or for the insurer. Currently, the insurer must provide a copy of the estimate to the claimant and the estimate must be in an amount which will allow for the repairs to be made in a workmanlike manner. Additionally, when the claimant contends the cost of repair to a vehicle exceeds the insurer's written estimate, the insurer shall (1) pay the difference between the two written estimates or (2) if requested by claimant, provide the name of at least one shop that will repair the vehicle for the amount of the insurer's estimate, or (3) reasonably adjust the written estimate prepared for the claimant by the body shop of his/her choice and provide a copy of adjusted estimate to the claimant.

Subdivision (g) of section 2695.8 prohibits an insurer from requiring the use of non-original equipment manufacturer (aftermarket) replacement crash parts in the repair of an automobile unless certain conditions are met. Those conditions include: (1) the part must be at least equal to the original equipment manufacturer (OEM) part in terms of kind, quality, safety, fit, and performance; (2) insurers requiring the use of the part shall pay the cost of any modifications to the parts which may become necessary to effect the repair; (3) insurers requiring the use of the part must warrant that such parts are of like kind, quality, safety, fit, and performance as original

equipment manufacturer replacement crash parts; (4) the part must carry sufficient permanent, non-removable identification so as to identify the manufacturer; 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.

The purpose of these longstanding laws is to protect the public from financial and physical harms caused by inferior repairs or defective aftermarket parts and to maintain insurer accountability in the process. Performing repairs in a manner that is not compliant with current repair standards or placing an inferior aftermarket part in a vehicle may result the vehicle's value to depreciate. Also, a part that is not of like kind, quality, safety, fit, and performance may cause injury or even death if it malfunctions.

After several years of evaluating this law and investigating complaints from the consumers and auto repair shops, The Department of Insurance has concluded that disputes regarding the true cost of repairs of damaged vehicles and the applicable repair standard required to comply with the current regulation continue to negatively effect the claims handling process. Additionally, aftermarket parts that are not compliant with the current regulations continue to infiltrate the repair process threatening public safety. The Department is also aware of substantial costs borne by auto repair shops and their customers associated with installing defective or poorly fitting parts required by insurers.

The proposed amendments are intended to address these and related issues. The Department of Insurance proposes to amend these regulations in order to achieve the goal of clarifying and making more specific an insurer's obligation to provide prompt, fair and equitable settlements that allow for the vehicle repair be made in a workmanlike manner, particularly when the repair includes using an aftermarket part. The proposed amendments are intended to address the problems that policyholders and third party claimants have when insurers require them to install defective or poorly fitting replacement or crash parts. The proposed amendments will improve public health and safety by mandating improved repair standards and better fitting parts to be used in vehicle repairs, which will result in safer cars and possibly produce a savings in liability insurance premiums. Additionally, the added disclosures and reporting safeguards provided by the proposed amendments increase the overall transparency in the insurance claims transaction and maintain insurers' accountability in the process.

Summary of Existing Law; Effect of Proposed Action

Section 2695.8(f)

Section 2659.8(f) governs how insurers are to handle partial losses for automobile insurance claims settled on the basis of a written estimate prepared by or for the insurer. Currently, the insurer must provide a copy of the estimate to the claimant and the estimate must be in an amount which will allow for the repairs to be made in a workmanlike manner. Additionally, when the claimant contends the cost of repair to a vehicle exceeds the insurer's written estimate, the insurer shall (1) pay the difference between the two written estimates or (2) if requested by claimant, provide the name of at least one shop that will repair the vehicle for the amount of the

insurer's estimate, or (3) reasonably adjust the written estimate prepared for the claimant by the body shop of his/her choice and provide a copy of adjusted estimate to the claimant.

The proposed amendments to Section 2695.8(f) will have the effect of clarifying the standard for completing a repair in a workmanlike manner and what is required of the insurer if it chooses to reasonably adjust the estimate obtained by the claimant. Under the proposed amendment, the insurer has provided an estimate in an amount to provide a workmanlike repair when the amount allowed for repairs is sufficient for the repairs to be completed in accordance with accepted trade standards as defined in Section 9889.51 of the Business and Professions Code and associated regulations and do not willfully deviate from those standards or the guidelines provided by the estimating software.

Section 2695.8(g)

Section 2695.8(g) prohibits an insurer from requiring the use of non-original manufacture replacement crash (aftermarket) parts unless certain criteria are met. The effect of the proposed amendments is to clarify the current criteria and provide additional requirements to ensure noncompliant parts are removed from circulation and that claimants are paid for any additional costs associated with installing an aftermarket part.

Notes: Authority and Reference

The Note section currently cites Section 790.03(c) and 790.03(h)(3) as references for the current regulations. The proposed amendment has the effect of consolidating those two sections to a single reference to Section 790.03.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

The proposed regulations implement, interpret, and make specific the provisions of Insurance Code Section 790.03. The amendments further clarify the terms used in the statute and existing regulations and make specific how insurers are to comply with the statute. The proposed regulations are not inconsistent or incompatible with any existing state regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Department of Insurance has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Department of Insurance has made an initial determination that the proposed amendment of the regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies and auto body repair shops.

The Department of Insurance expects that the proposed regulations will create only insignificant cost impact on insurers. The proposed amendments require insurers make some minor changes to their written estimate forms to include the required warranty disclosure. Additionally, there may be some additional cost to insurers to implement procedures to notify the body shops, parts manufacturers and distributors of particular parts that are not of like kind, quality, safety, fit, and performance, but those should not impose any significant cost.

The Department of Insurance has considered proposed alternatives that would lessen any adverse economic impact on business and he invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Department of Insurance is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department of Insurance is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, the expansion of businesses currently doing business within the State of California, and the benefits of the proposed regulations to the health and welfare of California residents, worker safety, and the state's environment.

Neither the proposed amendments, nor the alternatives set forth in the Initial Statement of Reasons will have a discernable effect on possible changes in employment, including the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. These determinations were made by evaluating the changes in personal income, or Gross State Product (GSP) that could result from this action. Employment, business formation and changes in both components are captured in GSP and similar national measures of output.

Also, CDI has evaluated whether the proposed amendments impair the ability of California businesses to compete with businesses in other states, whether the regulations impact insurers or other businesses or industries and whether they affect the ability of California insurers to compete with insurers in other states. CDI concluded that the proposed amendments will have an insignificant economic impact.

CDI has also determined that the proposed regulations will be beneficial to the welfare of California residents. The proposed regulation is expected to improve the health of California residents who are involved in crashes. When motorists repair their vehicles with safer parts, drivers of the repaired car, other drivers and the highways should be safer.

The full text of the Department of Insurance's assessment is set forth in the Economic Impact Assessment, a copy of which is included in the rulemaking record.

FINDING OF NECESSITY FOR APPLICATION TO BUSINESS

The Department of Insurance finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Department of Insurance must determine that no reasonable alternative considered by the Department of Insurance or that has otherwise been identified and brought to the attention of the Department of Insurance would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IMPACT ON SMALL BUSINESS

The Department of Insurance has not identified a reasonable alternative to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any adverse impact on small businesses.

The Department of Insurance has determined that the proposed regulations will affect insurance companies. Insurance companies are not small businesses pursuant to California Government Code Section 11342.610(b)(2).

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department of Insurance has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest, which contains the general substance of the proposed regulations, as well as a copy of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department of Insurance's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right side of the page the heading "QUICK LINKS." The first item in this column under this heading is "Online Services"; on the drop-down menu for this item, select "Search for Proposed Regulations." When the "Search for Proposed Regulations" screen appears, you can choose to either search currently proposed regulations or search by keyword.

To browse "Currently Proposed Regulations", click on the "Currently Proposed Regulations" button near the top of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Repair Standards" link, and click it. Links to the documents associated with these regulations will then be displayed.

To search by key word, enter "REG-2011-00024" (the Department of Insurance's regulation file number for these regulations) in the search field. Alternatively, search by using a keyword ("repair standards," for example, or "aftermarket parts"). Then, click on the "Submit" button to display links to the various filing documents.

MODIFIED LANGUAGE

If the regulations adopted by the Department of Insurance differ from those that have originally been made available but are sufficiently related to the action proposed, the full text of the regulations will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

