

PUBLIC NOTICE

BANKING AND INSURANCE

DIVISION OF INSURANCE

OFFICE OF PROPERTY AND CASUALTY

Notice of Receipt of Petition for Rulemaking

Rules for Fair and Equitable Settlements Applicable to Property and Liability

Insurance; Use of After Market Parts

N.J.A.C. 11:2-17.10(a)11 and 13

Petitioner: Joseph Lubrano, J & E Auto Body Inc., Clark, New Jersey

Take notice that on October 26, 2011, the Department of Banking and Insurance (Department) received a petition for rulemaking from the above petitioner (dated September 29, 2011) requesting that the Department amend its rules regarding insurers' requiring the use of after market parts in the repairs of automobiles. Specifically, the petitioner requests the Department amend N.J.A.C. 11:2-17.10(a)11, which provides that an insurer may not require the physical damage repair of a vehicle with after market parts unless the after market part is warranted by the manufacturer in a reasonable manner as to duration and coverage and at least equal in like kind and quality to replacement parts available from the original manufacturer of the part in terms of fit, quality and performance. The petitioner requests that this rule be amended to replace the phrase "at least equal in like kind and quality" with "is functionally equivalent" and to specify that only after market parts that have been certified as referenced in the current rule will be deemed to comply with the rule's requirements. The petitioner also seeks the inclusion of additional text in the rule as set forth below.

The petitioner also requests the Department amend N.J.A.C. 11:2-17.10(a)13, which requires insurers that specify the use of after market parts to disclose to the claimant in writing, either in the estimate or in a separate document attached to the estimate, that the estimate has been prepared based on the use of parts not made by the original manufacturer. The petitioner requests the Department amend this paragraph by adding various repair estimating system descriptions of after market parts which are used in the industry to provide repair estimates.

The following are the amendments requested in the petition (additions in boldface; deletions in brackets):

N.J.A.C. 11:2-17.10(a)11

No insurer shall require the use of after market parts in the repair of an automobile unless the after market part is warranted by the manufacturer in a reasonable manner as to duration and coverage and **is functionally equivalent** [at least equal in like kind and quality] to replacement parts available from the original manufacturer of the part in terms of fit, quality and performance. **Only** after market parts which have been certified by an independent testing laboratory as being of like kind and quality to the original manufactured part will be [deemed to be] in compliance with the requirements of this paragraph.

The distributor of aftermarket parts must be able to track all parts sold. All invoices will carry the manufacturers' name, part number and repair order number so the part can be tracked in order to recall a part if the need arises. Any infraction of the aftermarket regulation should carry a fine per incident to insurer [sic] the regulation is not ignored.

Any part such as a bumper reinforcement, a bumper absorber, hoods or any other parts that would impact the safety of the occupants or the operation of a safety item must be tested and certified that it was manufactured to function in a manner equivalent to the original manufacturers' part. These parts should also be certified that they have been crash tested in a manner equal to the testing of the vehicle crash tested with original manufacturers' part installed on it.

N.J.A.C. 11:2-17.10(a)13

Where the insurer specifies the use of after market parts, the insurer shall disclose to the claimant, in writing, either on the estimate or on a separate document attached to the estimate, the following information, which shall appear in print no smaller than 10 point type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN LIKE KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE TO REPLACEMENT PARTS AVAILABLE FROM THE ORIGINAL MANUFACTURER.

The following descriptions are used by various industry repair estimating systems to identify non-original parts in repair estimates:

General Description	Industry Description
After Market Part, Certified & Non-Certified:	Competitive Part; Replace Economy; LKQ;
Used part:	Recycled Part; Replace Recycled; Qualified Recycled Part
Reconditioned Part:	Replace Reconditioned; Recond
After- market non-approved part:	A/M
After- market certified part:	A/M CAPA
After market part:	Qualified Replacement Part
Recondition cover:	Remanufactured

The petitioner is requesting these amendments because it is his view that the current wording in the rule addressing after market parts is ambiguous and does not adequately protect consumers. According to the petitioner, no manufacturer is currently warranting their parts per the current rule as only distributors are warranting these parts, and insurer appraisers are unable to substantiate that non-certified parts used in estimates are of “like kind and quality to the original part” in the absence of Certified Automotive Parts Association (CAPA) certification.

The petitioner also asserts that the requested amendments will require insurers and repair facilities to use more consumer friendly wording to describe the non-original parts listed in the estimates.

In accordance with N.J.A.C. 11:1-15.3(b), the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petitioner’s request.