

AFTER MARKET PARTS MODEL REGULATION

Table of Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Definitions
Section 4.	Identification
Section 5.	Like Kind and Quality
Section 6.	Disclosure
Section 7.	Enforcement
Section 8.	Severability
Section 9.	Effective Date

Section 1. Authority

This regulation is adopted pursuant to Section [insert reference to the state Unfair Trade Practices Act].

Section 2. Purpose

The purpose of the proposed regulation is to set forth standards for the prompt, fair and equitable settlements applicable to automobile insurance with regard to the use of after market parts. It is intended to regulate the use of after market parts in automobile damage repairs which insurers pay for on their insured's vehicle. The regulation requires disclosure when any use is proposed of a non-original manufacturer part. It also requires that all after market parts, as defined in the regulation, be identified and be of the same quality as the original part.

Section 3. Definitions

- A. "Insurer" includes a person authorized to represent the insurer with respect to a claim who is acting within the scope of the person's authority.
- B. "Non-original manufacturer" means a manufacturer other than the original manufacturer of the part.
- C. "After market part" for purposes of this regulation, means sheet metal or plastic parts that generally constitute the exterior of a motor vehicle, including inner and outer panels.

Section 4. Identification

An after market part that is subject to this regulation and manufactured after the effective date of this regulation shall carry sufficient permanent identification to identify its manufacturer. The identification shall be accessible to the extent possible after installation.

Section 5. Like Kind and Quality

An insurer shall not require the use of after market parts in the repair of an automobile unless the after market part is at least equal in kind and quality to the original part in terms of fit, quality and performance. Insurers specifying the use of after market parts shall consider the cost of any modifications that may become necessary when making the repair.

Section 6. Disclosure

The insurer must disclose to the claimant in writing, either on the estimate or on a separate document attached to the estimate, the following information in no smaller print 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 KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING.

All after market parts installed on the vehicle shall be clearly identified on the estimate of the repair.

Section 7. Enforcement

A violation of this regulation shall be enforced through the state's Unfair Trade Practices Act by the penalties provided for in that Act.

Note: A state may wish to consider incorporating the text of this regulation directly into its existing unfair trade practices act.

Section 8. Severability

If any section or portion of a section of this regulation, or its applicability to any person or circumstance is held invalid by a court, the remainder of this regulation, or the applicability of the provision to a person shall not be affected thereby.

Section 9. Effective Date

This regulation shall become effective on [insert date].

Note: It is recommended that states allow appropriate lead time to comply with this regulation. No regulation should take effect prior to January 1, 1988 at which time it is expected that most parts manufacturers will have had sufficient notice and time to mark their parts for identification.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1987 Proc. II 15, 21-22, 90, 125-127, 145-146 (adopted).

AFTER MARKET PARTS MODEL REGULATION

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

AFTER MARKET PARTS MODEL REGULATION

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AFTER MARKET PARTS MODEL REGULATION**KEY:**

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. CODE §§ 32-17A-1 to 32-17A-3 (1989).
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	
Arkansas	ARK. CODE ANN. §§ 4-90-302 to 4-90-307 (1991/1997) (portions of model).	
California		CAL. BUS. & PROF. CODE §§ 9875 to 9875.2 (1989).
Colorado	COLO. REV. STAT. §§ 10-3-1301 to 10-3-1307 (1989) (portions of model).	
Connecticut		P.A. 87-334 (1987) (Notification requirement).
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida	FLA. STAT. § 501.30 to 501.34 (1990) (portions of model).	

AFTER MARKET PARTS MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Georgia	GA. CODE ANN. § 33-6-5 (13) (1989) (Disclosure provisions only); GA. COMP. R. & REGS. 120-2-52 (1993) (portions of model).	
Guam	NO CURRENT ACTIVITY	
Hawaii	NO CURRENT ACTIVITY	
Idaho	IDAHO CODE ANN. §§ 41-1328A to 41-1328D (1990) (portions of model).	
Illinois	215 ILL. COMP. STAT. 5/155.29 (1991) (portions of model); ILL. ADMIN. CODE. tit. 50, § 919.80(d)(5) (1989).	
Indiana	IND. CODE §§ 27-4-1.5-1 to 27-4-1.5-13 (1991).	
Iowa		IOWA ADMIN. CODE r. 91-15.45 (2000/2003).
Kansas	KAN. STAT. ANN. 40-1-34a (1989) (Disclosure provisions only).	
Kentucky		806 KY. ADMIN. REGS. 12:095 (1992) (Provision from model 902).
Louisiana	LA. REV. STAT. ANN. §§ 36:2180 to 36:2184 (1990) (portions of model).	
Maine	NO CURRENT ACTIVITY	
Maryland		MD. CODE ANN., INS. § 27-906 (1988/1997) (Provide copy of warranty of non-OEM parts).
Massachusetts	MASS. GEN. LAWS ch. 90, § 34R (1990) (portions of model).	BULLETIN 00-15 (Revised) (2000).
Michigan		MICH. COMP. LAWS §§ 257.1361 to 257.1364 (1992) (Notification requirement).

AFTER MARKET PARTS MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Minnesota		MINN. STAT. § 72A.20 subd. 12a (f)(7) (1987) (Prohibits insurer from requiring non-OEM parts).
Mississippi		MISS. CODE ANN. §§ 63-27-1 to 63-27-7 (1990) (Notification requirement).
Missouri	MO. REV. STAT. § 407.295 (1989); MO. CODE REGS. ANN. tit. 20, § 100-1.050 (1987/1997).	
Montana	NO CURRENT ACTIVITY	
Nebraska	210 NEB. CODE R. § 45 (1988/1994).	
Nevada		NEV. ADMIN. CODE § 686A.240 (1992) (Requires disclosure).
New Hampshire	N.H. CODE ADMIN. R. ANN. INS. 407-D:1 to 407-D:5 (1989).	BULLETIN No. 99-014-AB.
New Jersey	N.J. ADMIN. CODE § 11:2-17.3; §§ 11:2-17.10 to 11:2-17.13 (1988).	
New Mexico	NO CURRENT ACTIVITY	
New York	N.Y. COMP. CODES R. & REGS. tit. 11, § 216.7 (Regulation 64) (1993/2014).	
North Carolina	11 N.C. ADMIN. CODE 4.0425 to 4.0428 (1989/2004) (portions of model).	N.C. GEN. STAT. § 58-36-95 (2004) (Disclosure); § 58-36-41 (2004) (May sell policy with only original parts).
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. § 1345.81 (1990) (portions of model).	

AFTER MARKET PARTS MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Oklahoma	OKLA. STAT. tit. 15, §§ 953 to 955 (1991) (Without § 5).	
Oregon		OR. REV. STAT. §§ 746.287 to 746.292 (1988); OR. ADMIN. R. §§ 836-80-210 to 836-80-240 (1987).
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island		R.I. GEN. LAWS §§ 27-10.2-1 to 27-10.2-3 (1987/2003).
South Carolina	NO CURRENT ACTIVITY	
South Dakota	S.D. CODIFIED LAWS §§ 58-33-70 to 58-33-71 (1990) (portions of model).	
Tennessee		
Texas	NO CURRENT ACTIVITY	
Utah	UTAH CODE ANN. §§ 31A-22-351 to 31A-22-354 (1990/1995) (portions of model).	
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	VA. CODE ANN. § 38.2-510C (1988)(portions of model).	
Washington	NO CURRENT ACTIVITY	
West Virginia		W. VA. CODE R. §§ 46A-6B-1 to 46A-6B-5 (1988/1995) (Notification requirement).
Wisconsin		WIS. STAT. § 632.38 (1993) (Notification requirement).
Wyoming	19 WYO. CODE R. (1988).	

NAIC MODEL RULES GOVERNING AFTER MARKET PARTS MODEL REGULATION

Proceedings Citations

Cited to the Proceedings of the NAIC.

Section 1. Authority

Section 2. Purpose

The NAIC appointed a subgroup to study the after market parts issue after several states raised the question, and at least one state had enough complaints from consumers who received inferior parts that some regulatory attention was needed. The advisory committee viewed the issue as primarily one of competition and suggested that consumers have benefitted in terms of cost savings. They suggested that competition was so fragile in this young industry that no action should be taken. One insurance representative stated that the issue was being promoted by the original parts makers and that some complaints would now surface due to the mass media campaign being waged by the original parts manufacturers. **1987 Proc. I 138.**

An advisory committee report stated the opinion that the debate over the use of after market parts was being driven by original equipment manufacturers, who in recent years have begun to experience competition in replacement exterior sheet metal parts that previously did not exist. Original equipment manufacturers have petitioned the U.S. Congress and state officials for various forms of protection against after market parts competition. To date, no legislature has passed such a law or finalized a regulation specifically addressing this area. **1987 Proc. I 142.**

The NAIC model regulation should be designed to permit the continued use by insurers of non-OEM parts with acceptable safeguards to insureds that such parts are not inferior to the parts that existed on their vehicles prior to the accident. **1987 Proc. II 147.**

Section 3. Definitions

C. “After market” generically refers to all parts manufactured as replacement parts, whether by the original equipment manufacturer or someone other than the original equipment manufacturer. Non-original equipment after market parts have been in production for many years, including well-established replacement parts as shock absorbers, batteries, mufflers, suspension parts, oil filters and tires. The current debate involves the after market for exterior sheet metal parts, such as fenders, hoods and grills. There was virtually no competition in this area until the 1970s, due to the high costs of tooling these parts. As U.S. automakers began to make fewer changes in the basic design of their automobiles, it became economically feasible for nonoriginal equipment manufacturers to undertake production of external sheet metal parts. **1987 Proc. I 142.**

It is the policy of some insurers to mandate the use of after market “crash” parts in automobile accident repairs. A “crash” part is not universally defined. However, one commonly accepted definition is that it is any sheet metal or plastic part which generally constitutes the exterior of a motor vehicle. The term is used to describe any part not made by the original auto manufacturer—hence the lesser used but synonymous term “non-original equipment manufacturer” or simply “non-OEM” part. The term after market part is not synonymous with “foreign” or “non-American made.” It applies to all parts including those made by the original manufacturer. The issue centers on whether the after market part is made by the original manufacturer or someone else. **1987 Proc. II 154.**

NAIC MODEL RULES GOVERNING AFTER MARKET PARTS MODEL REGULATION

Proceedings Citations

Cited to the Proceedings of the NAIC.

Section 4. Identification

A representative from the After Market Body Parts Association reported that their group has mandated that all parts be impressed with the identification of the manufacturer and placed as to be readable after the installation. **1987 Proc. I 137.**

Section 5. Like Kind and Quality

A representative of the After Market Body Parts Association testified on the standards established by his organization. They have a warranty certification program, and a standards and specification manual has been promulgated by the association. Test runs on the products are extensive and ratings are established for the parts. The association standards call for all production plants to be checked every 30 days for compliance with the standards. **1987 Proc. I 137.**

As is the case with non-sheet metal replacement parts, the quality of after market parts varies from manufacturer to manufacturer. Many carry substantial warranties; one major distributor offers a lifetime guarantee. **1987 Proc. I 143.**

The exposure draft of the model contained a provision limiting the use of after market parts. An insurer could not require the use of non-OEM parts on new or late model cars from the current or preceding model year. A comment received from an insurer stated that this restriction arbitrarily limited the availability of replacement parts. A limitation would immediately foreclose the use of available, competitively priced, non-OEM parts on these cars. Such a limitation also conveys the mistake impression that non-OEM replacement parts are inherently inferior. **1987 Proc. II 157.**

The section ultimately deleted was discussed extensively before its removal. It was designed to deal with a perception problem on the part of the consuming public that those with newer cars are entitled to replacement with original equipment manufacturer parts. The provision was an attempt to reach a compromise. Within the task force there was some disagreement as to the best way to deal with the issue. One regulator thought it was redundant because Section 5 required parts to be of like quality, and it was in the consumer's best interest to have the widest availability on non-OEM parts. The provision would impose restrictions on the market and have an adverse affect on competition. An industry representative stated his understanding that cost savings reached the tens of millions of dollars. **1987 Proc. II 126.**

One regulator suggested the approach which was being taken in a New York bill to deal with the issue of determining whether the replacement parts were of like kind and quality. There a study committee recommended that insurers utilizing after market parts on estimates be required to use only after market parts that had been certified by an independent testing laboratory as meeting the standards of like kind and quality to their original part. The Commissioner of Insurance could approve the testing laboratory. In testimony to the New York committee, an after market parts association representative admitted that 20-25 percent of the parts manufactured by his members were not of like kind and quality to the OEM part. The association was instituting a testing program. **1987 Proc. II 147.**

NAIC MODEL RULES GOVERNING AFTER MARKET PARTS MODEL REGULATION

Proceedings Citations Cited to the Proceedings of the NAIC.

Section 5 (cont.)

The drafting committee considered but did not adopt certification and testing because it would put the state in the position of being the approval source. This was a position for which the state departments were not necessarily qualified, nor should they take it upon themselves to become so. **1987 Proc. II 126.**

It was suggested that the language of Section 5 require certification that the parts were of like kind and quality. An after market parts manufacturer wouldn't incur the expense of certification if insurers didn't require it. In lieu of certification, the manufacturer could guarantee the parts. To the extent the non-OEM manufacturer failed to provide or honor such guarantee, the insurer should provide or honor the guarantee. **1987 Proc. II 147.**

One regulator said he would feel more confident with an expert determining whether a part is of like kind and quality. He noted that if testing is not implemented in the draft, then the task force should at least consider a provision requiring the insurer to guarantee the after market part, as provided for in some earlier drafts. It was the decision of the subgroup that it was unnecessary since Section 5 requirements are in effect a guarantee. **1987 Proc. II 126.**

Section 6. Disclosure

The after market parts issue was brought to the attention of the NAIC in September 1986. Some commissioners noted that certain insurance companies were requiring repair shops to use after market parts in auto repairs. While the regulators recognized that few complaints regarding the use of after market parts have been received, consumer awareness of the practice and its implication appeared limited. **1989 Proc. II 154.**

At one point the draft apparently provided for disclosure without specifying that this was to be done prior to repairs. One state regulator expressed disappointment that the model did not provide more protection for consumers. He suggested insurers be encouraged to utilize after market parts to drive down the cost of auto crash parts. **1987 Proc. II 146.**

One suggestion was that the model language specifically state that disclosure should be made prior to actual repairs. **1987 Proc. II 147.**

Section 7. Enforcement

Insurance regulatory officials have a recognized and appropriate role in assuring that policyholders are treated fairly in the process of having damaged vehicles repaired with insurance proceeds. Existing unfair trade practice laws and regulations prohibit insurers from failing to respond to their contractual obligation to indemnify policyholders for loss. These regulatory requirements apply to all areas of potential abuse in the claims handling process and would therefore extend to improper insurer practices involving the use of after market crash parts. **1987 Proc. I 143.**

The earlier drafts used the phrase “any violation of this act is deemed to be a violation” of the unfair trade practices law. It was changed to “be enforced through” to avoid amending any current state law which calls for a business practice to be established to qualify as a violation. **1987 Proc. II 149.**

**NAIC MODEL RULES GOVERNING
AFTER MARKET PARTS MODEL REGULATION**

Proceedings Citations

Cited to the Proceedings of the NAIC.

Section 8. Severability

Section 9. Effective Date

Chronological Summary of Actions

June 1987: Model adopted.