

July 15, 1993

SUBJECT: INSURANCE

Circular Letter No. 7 (1993)  
July 15, 1993

TO: ALL INSURERS LICENSED TO WRITE MOTOR VEHICLE PHYSICAL DAMAGE INSURANCE IN NEW YORK STATE; AND INSURER, PRODUCER AND AUTO BODY REPAIR ORGANIZATIONS

RE: MOTOR VEHICLE PHYSICAL DAMAGE CLAIMS INVOLVING AUTO BODY REPAIRS

The Fourth Amendment to Insurance Department Regulation 64 (11 NYCRR Part 216) became effective on June 1, 1993. This Amendment is designed to improve the quality of auto body repair by requiring insurers to:

- (a) use parts of quality comparable to original equipment or OEM parts, whenever so-called aftermarket or non-OEM parts are specified for auto body part replacement; and
- (b) itemize paint-related hazardous waste disposal costs on auto repair estimates.

A. Qualified Certifying Entity.

The Fourth Amendment requires that non-OEM parts be warranted at least to the same extent as OEM parts. Under the Regulation, insurers electing to specify non-OEM parts must specify only parts that are independently certified by an entity acceptable to the Department -- if and whenever non-OEM parts become duly certified [11 NYCRR § 216.7(b)(5)(v)]. The Insurance Department has determined, pursuant to the criteria set forth in the Regulation, that the Certified Automotive Parts Association (CAPA) is qualified and acceptable for the purpose of certifying non-OEM parts.

If a particular crash part has not been certified by CAPA, the Fourth Amendment requires the non-OEM part manufacturer or distributor to issue a further written warranty that its crash part equals or exceeds the comparable OEM crash part in terms of fit, form, finish, quality and performance [11 NYCRR § 216.7(b)(5)(vi)]. This additional warranty must remain in effect for at least the period of the insured's ownership of the vehicle.

Accordingly, insurers must make certain that the non-OEM provides warranties sufficient to meet these requirements. Furthermore, the insurer must restore the vehicle to its pre-loss condition if the manufacturer or distributor fails to honor its warranty, consistent with that warranty.

B. Hazardous Waste Disposal Cost Methodologies.

The Fourth Amendment also requires insurers to include, as a separate line item on the repair estimate, the reasonable cost for proper disposal of hazardous waste material generated by the painting of the repaired motor vehicle or crash part [11 NYCRR § 216.7(b)(4)]. The Regulation sets forth a formula for calculating this cost, but permits the Department to recognize an alternative method if deemed by the Superintendent to be functionally equivalent to the set formula.

In order to expedite the preparation of auto body repair estimates by insurers at the time of initial inspection, the Department recognizes the following alternative method as functionally equivalent:

If an insurer has determined the average cost per paint hour for hazardous waste disposal incurred by auto body repair shops, the insurer may calculate the hazardous waste disposal cost by multiplying that average cost by the number of hours estimated to paint the damaged vehicle, provided that for each repair involving painting there is:

(1) a minimum cost reimbursement calculated based upon a total of ten (10) paint hours;  
and

(2) a maximum cost reimbursement calculated based upon a total of twenty-five (25) paint hours.

Repairers may contest an insurer's determination of the prevailing average cost per paint hour, and insurers may request documentation of the actual costs incurred by the repairer for hazardous waste disposal.

The insurer's senior claims officer should, no later than August 15, 1993, acknowledge in writing receipt of this Circular Letter to Joseph Smeragliuolo, Associate Examiner, Property & Casualty Insurance Bureau, 160 West Broadway, New York, New York 10013. Please direct any questions regarding this Circular Letter to Mr. Smeragliuolo (212-602-0338).

Very truly yours,

[SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE