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February 22, 2017

Wyoming Department of Insurance
Attn: Heather Canarecci
106 E. 6th Avenue
Cheyenne, WY 82002

SENT VIA ELECTRONIC MAIL
doi.rules@wyo.gov

RE: Proposed Amendments to Chapter 19, Aftermarket Parts -NAMIC's written testimony IN OPPOSITION

Dear Ms. Canarecci:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony on the Proposed Amendments to Chapter 19, Aftermarket Parts Regulation.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly $225 billion in annual premiums. NAMIC has 119 members who write property/casualty in the State of Wyoming, which represents 42% of the insurance marketplace.

NAMIC is concerned that the Proposed Amendments to Chapter 19, Aftermarket Parts Regulation could: a) Lead to needless consumer confusion; b) effectuate a "de-facto" ban on the use of aftermarket parts and Non-OEM parts in Wyoming; c) hinder insurers in their ability to provide consumers with timely and cost-effective quality auto repairs; d) create an unfair and inappropriate competitive advantage for OEM parts manufacturers to the detriment of all auto repair consumers; and e) adversely impact the affordability of insurance for auto insurance consumers.

We are also concerned that the proposed regulation is inconsistent with the stated purpose and legislative intent of the pending federal legislation on point, "Promoting Automotive Repair, Trade, and Sales Act" (The PARTS Act)[1], and the national trend toward increasing market

[1] As considered by Congress, the Promoting Automotive Repair, Trade, and Sales (PARTS) Act of 2015 (H.R. 1057 and S. 560) is designed to ensure open competition for one of the most expensive aspects of crash repair, the parts consumers need to get their cars fixed. Without robust competition, consumers are saddled with only one source for the parts they need (the car companies) and there will be no incentive to fairly price those parts. Competition is the most fundamental component of the America's free market. It ensures fair prices and quality products for the American consumer. The PARTS Act will protect the competitive marketplace.

competition in the creation and use of affordable, reliable and safe automobile replacement parts. Interstate and international aftermarket parts and Non-OEM parts manufacturing and commerce involves matters subject to the regulatory authority of the federal government pursuant to the Dormant Commerce Clause of the U.S. Constitution. Therefore, a state agency should avoid interfering with federal regulation of this interstate commerce activity, especially when said state regulation has federal anti-trust law implications and promotes monopolistic practices in favor of OEM parts manufacturers.

Since there is no evidence to support the contention that aftermarket parts and Non-OEM parts are inferior in any way to OEM parts[2], NAMIC is concerned that the DOI is creating a regulatory preference for the use of OEM parts. Further, since the state legislature has not passed any statute prohibiting or restricting the use of aftermarket parts and Non-OEM parts, NAMIC believes that the DOI should not create a regulation that imposes administrative costs and burdens on insurers that could result in a "de-facto" prohibition on the use of aftermarket parts and Non-OEM parts.

NAMIC respectfully request that the DOI reconsider its contemplated regulation for the following reasons:

a) The proposed amendments are likely to lead to needless consumer confusion.

Chapter 19 is titled "Aftermarket Parts Regulation", but the proposed amendments remove the entire current definition of an "aftermarket part". Moreover, the amended regulation then redefines "Non-OEM" parts to include the current regulatory definition of "aftermarket parts" less the universally accepted qualifier to the definition of an "aftermarket part", i.e. that it applies to "sheet metal or plastic parts". This is confusing and inconsistent with how Non-OEM and aftermarket parts are defined and utilized in every other state in the nation.

b) The proposed amendments to the regulation could effectuate a "de-facto" ban on the use of Non-OEM and aftermarket parts in Wyoming.

The Proposed Amended Regulation states:

Section 5. Consent

(b) No insurer shall directly or indirectly require the consumer to pay any difference in price if the consumer elects to use OEM parts in the repair of the vehicle.

The regulatory implication of this provision is that an insurer would be required to pay the difference between the cost of OEM parts and aftermarket parts or Non-OEM parts, regardless of what the parties agreed to in the insuring agreement as to the use of aftermarket parts or Non-

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[2] According to Edmunds, today's aftermarket parts can be as good, or even better, than their OEM counterparts. Because aftermarket companies are trying to compete with one another and don't need to devote their time to creating a new design, they can re-engineer the OEM part to eliminate weaknesses or flaws.

OEM parts in auto repairs or regardless of what the policyholder saved in premium by agreeing to have his motor vehicle repaired with aftermarket parts or Non-OEM parts as opposed to more expensive OEM parts.

If insurers are going to be required by regulation to pay the difference between aftermarket parts or Non-OEM parts and OEM parts, insurers will just factor this increased cost into the price of their automobile insurance policy to cover the cost of OEM parts and then they will likely just stop using aftermarket parts or Non-OEM parts altogether. Consequently, the proposed regulation will effectuate a "de-facto ban" on the use of aftermarket parts and Non-OEM parts because insurers only use them to save insurance consumers from having to needlessly spend more money on an insurance policy that provides for use of more expensive OEM parts.

c) The contemplated regulation will hinder insurers in their ability to provide consumers with timely and cost-effective quality auto repairs.

NAMIC is concerned that the proposed amendments to the Aftermarket Parts Regulation will lead insurers and auto repair shops to only use OEM parts, which could cause serious delays in repairing automobiles because use of OEM parts will ultimately become the "only game in town". Further, once Non-OEM and aftermarket parts become scares in the Wyoming marketplace, OEM parts will be subject to "demand-surge" pricing, which will lead to more expensive auto repairs for insurance consumers.

d) The contemplated regulation will create an unfair and inappropriate competitive advantage for OEM manufacturers to the detriment of <u>all</u> auto repair consumers.

One has to remember that a significant number of auto repairs are negotiated and paid for outside of the insurance transaction by consumers that may not have procured first-party collision insurance coverage or for auto repairs unrelated to an insurance claim, so if the DOI promulgates a regulation that weakens the Non-OEM and aftermarket parts manufacturing industry, <u>all</u> auto repair consumers will be adversely impacted by higher auto repair costs. According to the Quality Parts Coalition, "the use of aftermarket parts saves consumer $1.5 Billion a year". Additionally, national studies have repeatedly determined that the average price of an OEM part costs about 60 percent more than the average price of an aftermarket part.[3]

e) The proposed amendments to the regulation could adversely impact the affordability of insurance for consumers.

Based upon a 2013 analysis by the Property and Casualty Insurers Association of America (PCI), if the use of Non-OEM parts or aftermarket parts were prohibited, "[t]he average insurance premium reflecting vehicle damage coverages may increase by about 3.6 percent more per insured car…."

Consequently, NAMIC is concerned that the proposed amendment to the regulation would needlessly act an insurance rate cost-driver that could adversely impact affordability of insurance.

[3] *Insurance Journal*, "Alliance Hails DC Reg. Promoting Aftermarket Parts," www.insurancejournal.com/news/east/2003/06/04/29512.htm.

Further, since insurance consumers already have the option of purchasing an auto insurance coverage endorsement from certain insurers that provided for only the use of OEM parts in repairs, the proposed amendments to the regulation are unnecessary, especially in Wyoming's competitive automobile insurance marketplace.

For the aforementioned reasons, NAMIC respectfully requests that the proposed amendments to Chapter 19, Aftermarket Parts be withdrawn for the benefit of insurance consumers.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs
Western Region