STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 16th Floor
Sacramento, California 95814

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INITIAL STATEMENT OF REASONS

California Insurance Commissioner Steve Poizner will consider amendment of Title 10, Chapter 5, Subchapter 4.5, Section 2632.13 of the California Code of Regulations (10 CCR §2632.13).

SPECIFIC PURPOSE OF AMENDMENT

Proposition 103, approved by California voters in 1988, requires that insurance rate changes be subject to the prior approval of the Insurance Commissioner (the "Commissioner") and sets forth the means by which automobile insurance rates and premiums are to be determined. In addition, Proposition 103 makes every person who qualifies as a "good driver" eligible to purchase a Good Driver Discount policy from the insurer of his or her choice (Insurance Code §§ 1861.02(b), 1861.025).

Insurance Code section 1861.025 (b)(1)(A) excludes a driver from eligibility for a Good Driver Discount policy who, in the previous three years, has more than one point counted against him or her due to various traffic code violations and accidents that resulted only in damage to property for which he or she is "principally at fault." Insurance Code section 1861.025(c)(3) excludes a driver from eligibility who, in the previous three years, was involved in an accident that resulted in the bodily injury or death of any person for which he or she is "principally at fault."

In addition, Insurance Code section 1861.02 establishes three mandatory rating factors that insurers must use to set rates, the first being the "insured's driving safety record." Section 2632.5 of Title 10 of the California Code of Regulations defines the "insured's driving safety record" as the insured's motor vehicle traffic conviction record and the insured's history of "principally at fault" accidents.

The guidelines for determining whether a driver is "principally at fault" for an accident and for determining a driver's eligibility for a Good Driver Discount policy are found in section 2632.13 of Title 10 of the California Code of Regulations (hereinafter "Section 2632.13").

Since its last amendment, insurers, consumer advocates, and Department of Insurance (the "Department") staff have observed numerous problems with the interpretation and implementation of Section 2632.13. On June 22, 2007, the Department held a workshop to discuss improvements to the regulation. After considering comments received by workshop participants, the Commissioner proposes amending section 2632.13 to clarify and update its provisions.

NECESSITY

The Commissioner has determined that amendment of certain provisions of section 2632.13 is necessary in order to properly implement the requirements, purposes and intent of the statutes. Specifically, the regulation must be amended for the following reasons:

- The title of the regulation is amended to clarify that it contains guidelines for two separate determinations, determining "principally at fault" accidents and determining eligibility for the Good Driver Discount policy.
- Former subsection (a): This subsection is amended to explain that the "principally at fault" determination is applicable to the Good Driver Discount determination (Cal. Ins. Code section 1861.025) and to the "insured's driving safety record" (Cal. Ins. Code section 1861.02, 10 CCR section 2632.5).
- Former subsection (b) is amended as follows:
    - Subsection (b) contains guidelines for determining eligibility for the Good Driver Discount policy, which are currently inserted in the middle of guidelines for determining whether a driver is "principally at fault" for an accident. Subsection (b) is moved to subsection (j) so that the guidelines for the "principally at fault" determination and eligibility for the Good Driver Discount policy will be grouped separately. Also, moving the guidelines for determining eligibility for the Good Driver Discount policy to the end of the regulation properly orders the regulation. When a driver has been involved in an accident, an insurer must first address whether a driver is "principally at fault" for the accident before it can use the guidelines for determining eligibility for a Good Driver Discount policy. Therefore, an insurer must use the regulation's guidelines in this order. Upon moving subsection (b) to subsection (j), subsections (c) – (j) are re-lettered (b) – (i), respectively.
    - In addition, part of the text of former subsection (b) refers to Vehicle Code section 12810, specifically subsections (e), (g) and (h). These subsections are re-lettered (f), (i)(l), and (j), respectively. The re-lettered subsections match legislative re-lettering of Vehicle Code section 12810. This will update the regulation so that it remains consistent with the Vehicle Code in effect at the time Proposition 103 was passed.
    - Former subsection (b)(3), now (j)(3), is also amended to clarify that, for the purpose of determining eligibility for the Good Driver Discount policy, an insurer may choose to classify an accident as either property damage or bodily injury/death, but not both. Insurance Code 1861.025(b)(3) allows an insurer to automatically disqualify a driver from receiving a Good Driver Discount policy when the driver has been involved in an accident involving bodily injury or death for which the driver is "principally at fault." Conversely, section 1861.025(b)(1)(A) applies to "principally at fault" accidents "that resulted only in damage to property" and allows an insurer to assess points against the driver in order to disqualify a driver from the Good Driver Discount policy. Each is a separate classification and they cannot be combined for the same accident, which some insurers have mistakenly done.

- The second sentence in former subsection (b)(3) is removed because it is confusing and unnecessary. An insurer has argued that this sentence was intended to create separate guidelines for solo vehicle accidents. This is incorrect. This sentence merely states the obvious: there are exceptions to "principally at fault" determinations under former subsection (d). This statement is equally applicable to all kinds of accidents, solo or otherwise. Since the statement is unnecessary it is excluded.
- Finally, former subsection (b) is amended to clarify the distinction between DMV points and points that may be assigned by an insurer for "principally at fault" accidents involving property damage. Pursuant to Insurance Code section 1861.025(b), all points assigned by insurers must be in accordance with the official assessment of the Department of Motor Vehicles. The only exception to this rule is that Insurance Code section 1861.025 (b)(1)(A) allows insurers to determine points to be assigned for "principally at fault accidents" involving property damage. Thus, insurers' discretion to determine points is limited to points to be assigned for "principally at fault" accidents involving property damage.

- Former subsection (c) is amended as follows:
  - This section is amended to further define the term "principally at fault" for accidents involving bodily injury and death. Currently, the definition includes a $750 threshold for accidents involving property damage only. Yet, Insurance Code section 1861.025(b)(3) also instructs the commissioner to define the term "principally at fault" for accidents involving bodily injury and death. The proposed definition requires reasonable evidence of bodily injury or death and sets a threshold dollar value of $1000 for bodily injury damages. A lesser amount may pay for a physical examination. But, incurring this cost is not necessarily an indication that an injury had occurred. However, this dollar minimum may not be applied by an insurer who has access to medical records of persons involved in the accident through its claims process. In those instances, it has better evidence of bodily injury and cannot reasonably base its assignment of points upon the $1000 threshold. It must base its determination that bodily injury occurred on available medical records.
  - There is no minimum damages requirement for any insurer when determining whether a driver is "principally at fault" for an accident involving the death of a person.
  - The threshold loss for property damage is revised upward from $750 to $1000 as well. Currently, the threshold dollar amount for property damage is taken from Vehicle Code section 1600, which provides that a driver must report any accident "that has resulted in damage to the property of any one person in excess of seven hundred fifty dollars ($750) …" Vehicle Code section 1600 was last revised from $500 to $750 in 2002. Given that it has not been changed for over 7 years, it does not properly reflect current repair costs. So, the amount has been revised upward to rule out de minimus damage.
- Former subsection (d) is amended as follows:
  - Former subsection (d)(1) is deleted because it is unnecessary and can interfere with the proper determination of a driver's "principally at fault" status. Clearly,

an insurer cannot assign points against a driver for an accident that occurred after the driver lawfully parks a car, the car remains parked, and the driver does nothing to cause an accident. If the driver fails to properly set the brakes and the car moves, the driver's omission may be considered a cause of an accident. This does not need to be stated in the regulations. Moreover, if the provision is left as is, an insurer cannot assign points against a driver for other acts or omissions related to the parked car that are covered by insurers, such as unsafely swinging the door open into oncoming traffic. If such an act is at least 51 percent of the proximate cause of an accident, the driver should be considered "principally at fault" for the accident and the accident should be included in the Good Driver Discount eligibility determination and the "insured's driving safety record."

- With the deletion of subsection (d)(1), subsections (d)(2) – (d)(7) are renumbered (c)(1) –(c)(6), respectively.
- Former subsection (d)(7), now (c)(6), is amended to clarify that a driver cannot be found "principally at fault" when the driver reasonably could not have avoided an accident. The Department has observed that this is a recurring area of dispute in insurance claims settlement.

- Former subsection (e): The clause "other than an indisputably solo accident and which is not of the type specified in subpart (d)" is omitted to clarify that all accidents must be investigated before an insurer may determine that a driver was "principally at fault," even a solo vehicle accident. Investigation is necessary to determine whether any of the exceptions in former subsection (d), now (c), apply. This amendment also clarifies that, for any accident, the insurer must comply with former subsections (e)(2) and (e)(3), now (d)(2) and (d)(3).
- Former subsection (f) is amended as follows:
  - Former subsection (f)(1) is amended to allow subsequent insurers to find that a driver is "principally at fault" for an accident, even if the driver was not formally charged by the insurer at the time of the accident. This is meant to address cases in which the past insurer properly determines that the driver is "principally at fault" but does not get the opportunity to actually charge the driver with the accident because the policy is not renewed, either by the insurer's choice or because the insured fails to accept the renewal. This will further a more consistent classification of accidents by insurers.
  - Former subsections (f)(2) and (f)(3) were amended to correct typographical errors and to re-letter the subsections in accordance with the other amendments.
  - A paragraph is added to former subsection (f), now subsection (e)(4), to allow subsequent insurers to find that a driver was "principally at fault" for an accident when the driver provides written confirmation to that effect. This will further a more consistent classification of accidents by insurers.
- Former subsection (g) is amended as follows:
  - The clause "or if the driver confirms in writing…" is added, again to allow subsequent insurers to find that a driver was "principally at fault" for an accident when the driver provides written confirmation to that effect. This will further a more consistent classification of accidents by insurers.
  - Former subsection (g)(3) is merged with subsection (g)(2), now (f)(2), and amended to clarify the guidelines in cases where a driver was involved in an

accident for which there was no prior carrier and the insured fails to respond to written request for information regarding the accident. The limitations in the last sentence clarify that, under this subsection, if an accident appears on a Department of Motor Vehicles record or a CLUE report, the driver may only be assigned points for property damage and cannot be disqualified from the Good Driver Discount based solely upon the record or report. Evidence of an accident on a CLUE report indicates prior insurer involvement, either the driver's (in which case former subsection (f), now (e), of the regulation applies) or someone else's (in which case former subsection (g)(1), now (f)(1), of the regulation applies).

- Former subsection (i) is amended as follows:
  - The last sentence of the first paragraph is deleted because the proper treatment of fraudulent or material misrepresentations by a driver is already set forth in Insurance Code sections 661 and 1861.03. Because this provision is duplicative, redundant and restates the law, it should be omitted.
  - In addition, the first paragraph is amended to create a mechanism that allows an insurer to use contrary information to rate the driver if the driver confirms that the contrary information is true. Currently, if the driver had coverage at the time of the accident, then the insurer must contact the insurer at the time of the accident to determine whether it can assign points against the driver. But, the insurer cannot rely on a written confirmation from the driver acknowledging the truth about accident information that the insurer discovered. This amendment will allow the insurer to do so. In addition, if a driver fails to respond to a request for a confirmation from the insurer, then the insurer must follow the steps set out in former subsections (f) and (g), now (e) and (f), as if the accident information discovered by the insurer was available at the outset. This will allow accident information to be treated more consistently.
  - The last paragraph is omitted because the time frame for implementation of Proposition 103 has passed and therefore, this paragraph is no longer needed.
- Former subsection (j) is amended as stated above (see former subsection (b) and (c).)
- References to subsections within the text of the entire regulation are re-lettered as necessary, in accordance with the amendments.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Commissioner did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption and amendment of these regulations.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives to the regulation (including alternatives to lessen any adverse impact on small business) were presented to or considered by the Commissioner. The Commissioner has determined that the proposed amendment will only affect insurance companies and will therefore not affect or impact small business. Pursuant to Government Code

section 11342.610(b)(2), insurers are not small businesses. All reinsurers are necessarily insurers.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Commissioner has made an initial determination that adoption of the proposed amendment 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.