

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814**

NOTICE OF PROPOSED REGULATORY ACTION

DATE: October 16, 2009

REGULATION FILE: REG-2009-00006

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner (Commissioner) proposes to adopt certain amendments to Title 10, Section 2646.6¹, as set forth below, after considering comments from the public. The Commissioner proposes to amend the regulations to: (1) reduce the frequency of reporting Community Service Statement (CSS) data to the Department of Insurance's Statistical Analysis Division (SAD) from annually to biennially (once every two years); (2) reduce the frequency of the issuance of the Commissioner's Report on Underserved Communities from annually to biennially; and (3) impose penalties on insurers for tardy or inaccurate data reporting.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: December 2, 2009 at 10:00 a.m.

**Location: Ronald Reagan State Building
Hearing Room, First Floor
300 South Spring Street
Los Angeles, CA 90013**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

¹ All section references hereinafter are to Title 10, California Code of Regulations section 2646.6, unless otherwise stated.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on December 2, 2009.

Please direct all written comments to the following contact person:

Natasha Ray, Senior Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3559

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Ben Gentile, Chief, Statistical Analysis Division
California Department of Insurance
300 South Spring Street
Los Angeles, CA 90013
Telephone: (213) 346-6316

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, addressed to the contact persons at their addresses listed above, no later than 5:00 p.m. on **December 2, 2009**. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided these are sent to the following e-mail address: rayn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided these are directed to the attention of Natasha Ray and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

AUTHORITY AND REFERENCE

The proposed amendments to the regulations implement, interpret and make specific the provisions of Insurance Code sections 12921 and 12926; *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989), and *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994). Insurance Code sections 12921 and 12926 gives the Department the authority to adopt regulations to enforce the provision of California Insurance Code section 1861.03.

Reference: Sections 679.71, 1861.02, 1861.03, 1861.05 and 11628, Insurance Code.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

These amendments to the regulations are necessary to reduce the continuing, tardy compliance of insurance companies with CCR section 2646.6. Section 2646.6 presently requires insurance companies to report information via the CSS to the SAD annually, by March 1. Section 2646.6 also requires the Commissioner to issue the Commissioner's Report on Underserved Communities (CRUC) annually as soon as the information is available. Because insurance companies have compliance requirements in all of the states in which they do business, and because many other states penalize late- or non-compliance while California does not, a number of insurance companies have continually provided late, incomplete, and/or inaccurate submissions of data as a result. This situation is further compounded by the scant time and the resources available in SAD to analyze and process annual CSS submissions. As a result, SAD is often unable to issue timely the CRUC.

EFFECT OF PROPOSED ACTION

This rulemaking proposes to modify the reporting frequency of the CSS to the Department of Insurance (Department) from annually (every year) to biennially (once every two years). This rulemaking also proposes assessing penalties and fines for noncompliance (failure to report), late reporting or repeated, inaccurate data reporting by insurance companies.

Imposing penalties and fines will put California's regulatory requirements on par with the requirements of other states that assess fines and penalties for late and/or noncompliant reporting and will give insurance companies additional incentives for timely compliance with California's reporting requirements for the CSS. Modifying the frequency of insurer reporting of the CSS to the Department from annually to biennially will allow the Department to allocate its already overburdened and shrinking resources to provide the most benefit to consumers.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandates on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed amendments to the regulations 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. The types of businesses that may be affected are insurers. While the Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on insurance companies, interested persons are invited to submit such proposals to the Commissioner. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. (Cal Gov Code section 11346.5(a)(9)).

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state.

In the Commissioner's assessment, this regulatory action will not result in the creation or elimination of businesses or jobs in California. The proposed regulations will not affect the expansion of other businesses doing business in California. (Emphasis added.)

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments will not affect small businesses inasmuch as only insurance companies are responsible for compliance pursuant to the regulation and the proposed amendments will not affect insurance agents or agencies. Insurance companies, which will be affected, are by definition not small businesses, pursuant to Paragraph (b)(2) of Government Code section 11342.610.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The rulemaking file for this proceeding includes a copy of the express terms of the proposed amendments to the regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action. The rulemaking file is available for inspection and copying by appointment at 300 Capitol Mall, Suite 1700, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the righthand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2009-00006" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the Office of Administrative Law's notice file number assigned to the regulations ("Z-2009-1006-02"), or search by keyword ("Community Service Statement"). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Community Service Statement Data Call Penalties & Frequency' link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the amended regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.