

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105**

NOTICE OF PROPOSED ACTION

DATE: February 12, 2010

REGULATION FILE: REG-2009-00021

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to add to California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 1.3, Sections 2278.50 through 2278.59 (Standards for Approval of Insurer Names.) The regulations set forth the standards used by the Commissioner for the review and approval of names of those entities that are required to obtain name approval pursuant to California Insurance Code Section 742.42, Sections 881 through 886 and Sections 10970, 12162, and 12743.

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: Tuesday, April 20, 2010
Time: 10:00 a.m.
Location: California Department of Insurance
Administrative Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

The hearing will continue on the date noted above until the earlier of 4:00 p.m. or the time when all testimony has been submitted.

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 April 20, 2010. Please direct all written comments to the following contact person:

Harry J. LeVine
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
(415) 538-4109
levineh@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If Mr. LeVine is unavailable, inquiries may be addressed to either of the following backup contact persons:

Pretrice Curry-Bossett
Senior Legal Analyst
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
(415) 538-4818
curry-bossettp@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact persons at the addresses specified above, no later than 5:00 p.m. on April 20, 2010. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: levineh@insurance.ca.gov. Comments that are submitted in a pdf format should also be submitted in a Word format.

The Commissioner will also accept written comments transmitted by facsimile if they are directed to the attention of Harry J. LeVine and sent to the following number: (415) 904-5490.

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 regulations will implement, interpret and make specific the provisions of Insurance Code Section 742.42, Sections 881 through 886, Section 10970, Section 12162, Section 12389, and Section 12743. Insurance Code Sections 700, 720, and 790.10 provide the authority for this rulemaking, as do the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805, and *20th Century Ins. Co. v. Garamendi*, (1944) 8 Cal. 4th 216.

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Pursuant to Insurance Code Sections 881 *et seq.*, every insurer, attorney in fact, motor club, underwritten title company, home protection company, fraternal benefit society, insurers issuing an underwriters policy, and multiple employers welfare arrangement that conducts business in California must obtain approval of a name from the Insurance Commissioner before using the name in California. Insurance Code Sections 881 *et seq.* provide, among other things, that the Commissioner may reject the use of a proposed name when the name would be an interference with, or too similar to a name that is already appropriated or when it is likely to mislead the public in any respect.

The Commissioner currently reviews name requests and name reservation requests on a case by case basis, applying concepts derived from years of experience in handling such requests, responding to objections to name requests, and attempting to assure clarity for the public so that an approved name is not likely to mislead the public in any respect, is not too similar to another name, and is not an interference with another name. Over time, the Commissioner has determined that certain words may in most circumstances be likely to mislead the public to believe that an insurer is performing a function other than as an insurer, or has an affiliation that it does not in fact have. Similarly, the Commissioner has generally required insurers to use names that indicate the type of insurance products for which they have a certificate of authority and may offer to the public (e.g., life insurance, title insurance) and conversely, which prohibit insurers from using names that would be likely to mislead the public to believe that the insurer offers a product that it does not in fact offer. The Commissioner has not permitted insurers to use certain words that are generally prohibited from use by statute. Based on his experience, the Commissioner has developed principles set forth in these regulations for name approval which generally prevent the use of names that imply an affiliation with other entities (governmental or private) that does not in fact exist, or which interfere with or are too similar to the names of other companies. The Commissioner has also developed principles set forth in these regulations to avoid name confusion and to protect the public from being misled as to similar names that are used by affiliated companies. The foregoing principles include such matters as prohibiting words or phrases that imply affiliation, sponsorship or other relationship with an unrelated entity, whether or not the an affected entity permits or objects to the use. Words or phrases that sound like, appear like or are otherwise similar in nature, appearance or sound to words in the name of an unrelated entity will generally be likely to mislead the public (or may interfere with or be too similar to other names.) In the case of affiliated entities, the public is not as likely to

be misled by the names of such entities, and accordingly, greater leeway may be permitted.

The Commissioner proposes adopting as regulations the principles that have been developed from the case by case review of name approval requests. Adopting regulations will provide guidance to the industry and the public and in so doing, may reduce the number of name approval application rejections and modifications.

The Commissioner's procedures for name approval have required the submission of materials that are necessary for the Commissioner to fully evaluate whether a proposed name would be an interference with, or too similar to a name that is already appropriated or whether it is likely to mislead the public in any respect. The Commissioner currently has name reservation processes that are specified in form letters that are sent to applicants. The provisions of those form letters are set forth in these regulations in order to provide guidance to persons considering seeking name approval. The procedures include the submission of information regarding an applicant's organizational structure, affiliates, lines of business, applications pending with the Commissioner, and other necessary information.

These regulations will provide consistent guidance to insurers regarding general circumstances when the Commissioner will consider a proposed name to be violative of Insurance Code Section 881 as being an interference with or too similar to a name that is either already in use, reserved, or applied for, or when a proposed name is likely to mislead the public.

Effect of Proposed Action

The proposed regulations accomplish the following functions.

- The regulations specify the materials that must be submitted for a name approval application and in the case of a name change, the regulations specify that the applicant must indicate the reasons for the proposed change. Applicants may use an optional form specified by the Commissioner for this purpose, which is set forth in these regulations. Basic information about the applicant is required, including information about its position in a holding company or other organizational structure, and the business that it transacts or will transact. The regulations also require the applicant to identify applications and filings that are pending with the Commissioner (excluding dividend applications and property/casualty rate filings and applications.) Applicants to whom California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 1, Section 2303.15(q) applies must submit the commitment specified in Section 2303.15(r) regarding compliance with Section 2303.15(q).
- The regulations specify words and phrases that may not be used in names because they are either prohibited by statutes or their use is likely to mislead the public.

- The regulations specify words and phrases that must be used in certain circumstances. Generally, they require that an insurer or other entity name must accurately identify the type of company that the applicant is and must accurately identify the type of business that it will transact. For examples, insurers must include one of the words "Assurance," "Casualty," "Indemnity," or "Insurance" in the name, life insurers must include the word "life," underwritten title companies must include the word "title," and motor clubs must include one of the words "motor," "auto," or "automobile."
- The regulations specify circumstances under which a proposed name will not be approved because it either would be an interference with or too similar to a name that is already appropriated or when it is likely to mislead the public. These include names that would lead the public to believe that the applicant offers a type of insurance that it does not offer, names that imply that the applicant began conducting business prior to other insurers, names that include a state or jurisdiction other than the applicant's domicile, names that imply governmental affiliation, names that imply affiliation with a financial institution and names that could be interpreted as implying that the applicant is an insurance producer (i.e., agent or broker.) The regulations prohibit a name that is too similar to or an interference with the name of another, unaffiliated entity, either because of its appearance, pronunciation, or appearance of its words, the use of words that are used by unaffiliated Licensees and which are uncommon words, re coined words, or words not typically used in the name of a Licensee. The regulations prohibit the use of a name that is too similar to the name of a well-known entity that is not an Affiliate, or is too similar to the name of a Licensee that is not an Affiliate. The regulations prohibit the use of a name that is the same as that of another Licensee, except for the order of the words. Because the Commissioner cannot anticipate every circumstance under which a proposed name may be too similar to or an interference with the name of another business, entity or Licensee, or when a name will be likely to mislead the public, the regulations reserve the Commissioner's discretion to make a determination as to a proposed name on a case by case basis whether a name is too similar, an interference, or likely to mislead the public.
- The regulations specify circumstances when a proposed name will not be considered to be too similar to, or an interference with, the name of an affiliate if it is not likely to mislead the public. The regulations require the affiliate to provide its written consent to the use of the name by the applicant, and the regulations requires a commitment from both the applicant and the affiliate that the similarity of their names will not be used as a defense or reason to avoid payment of a claim.
- The regulations specify that a foreign or alien insurer that has an approved operating name may only use the approved operating name in California. The regulation also specifies, by examples, materials on which only the approved operating name may be used.

- The regulations specify that the Commissioner retains discretion to approve or disapprove name applications on a case by case basis to assure that the proposed name will not be an interference with or too similar to a name that is either already in use, applied for, or reserved, and to approve an application that will not be likely to mislead the public.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate 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/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 BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed 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.

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 regulations. The Commissioner has made an initial determination that the proposed regulations will not have a significant cost impact on private persons or business entities. It may be possible for insurers and other entities that apply for name approval to experience a small cost savings if the applicant files fewer name approval applications as a result of having greater guidance resulting from the adoption of the regulations.

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 existing businesses, and the expansion of businesses currently operating in the state. The Commissioner estimates that the proposed regulations will not have any impact on the creation or elimination of jobs in the State of California, the

creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. Interested parties are invited to comment on this issue.

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 it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the 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 regulations will affect small businesses other than insurance companies (including for example, underwritten title companies.) Insurance companies, which will be affected by the regulations, 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 INITIAL STATEMENT OF REASONS

The Department has prepared the text of the regulations and an Initial Statement of Reasons that sets forth the reasons for the proposed regulations. Upon request, the proposed text of the regulations and the Initial Statement of Reasons will be made available for inspection and copying. Requests for the proposed regulation text and 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 file for this proceeding, which includes a copy of the proposed regulation text, 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 that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including this 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 titled "Proposed Regulations." A screen titled "INSURERS: PROPOSED REGULATIONS" will be displayed. Select the only available link, titled "Search for Proposed Regulations." Then, when the "Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. In the list, find the link for Standards For Approval of Insurer Names and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter REG 2009-00021 (the Department's file number for these regulations) in the search field. Alternatively, search by using the California Insurance Code section number that the regulations implement, i.e. section 881, or the name of these regulations, "Standards For Approval of Insurer Names." Or, you can search by using a keyword. After typing the search term, click on the "Submit" button to display links to the various filing documents.

MODIFIED LANGUAGE

If the 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.