

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION**

**DATE: July 30, 2010**

**REGULATION FILE: REG-2010-00008**

**SUBJECT OF PROPOSED RULEMAKING**

The California Department of Insurance (“CDI”) proposes to amend and adopt the regulations described below, after considering comments from the public.

1) Title 10, Chapter 5, Subchapter 2, Article 1, “Document Submission and Approval Procedures; Fees.” The CDI is considering amendments to 10 California Code of Regulations sections 2201, 2205, 2206, 2207, 2216, 2217 and 2218.10 to require that all forms filed with the Policy Approval Bureau and Actuarial Office be filed electronically through the System for Electronic Rate and Form Filing (SERFF) of the National Association of Insurance Commissioners (NAIC) for life, health, disability income, long-term care, variable annuity, and other form filings, eliminate provisions pertaining to paper filing, clarify nomenclature regarding actions on submissions, and to use gender-neutral language.

The amendment to the existing regulation(s), and any necessary additional regulation, would be added to existing regulations based on the authority set forth in Insurance Code sections 742.43, 779.21, 10191, 10195.1, 10234, 10327, 10506, 10704 and 12973.9, and the references set forth in Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10168.93,, 10192.14, 10192.15, 10192.19, 10205, 10225, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658 and 12250.

2) Title 10, Chapter 5, Subchapter 3, Article 1.5, Corporate Affairs Bureau – Electronic Filing. The CDI is considering adopting regulations to require that all applications, registrations, notices, reports, or other material that are submitted to the CDI’s Corporate Affairs Bureau be submitted by means of the CDI’s Online Assistance System for Insurer Submittals (“OASIS”) pursuant to Insurance Code sections 720, 1215.8, 12921(c), 1652, 10113.2, 11520.5, 11694.5, 12161, 12389(a)(3) Insurance Code; *CalFarm Insurance Company v. Deukemjian* (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Insurance Company v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216, or by means of the National Association of Insurance Commissioner’s (“NAIC”) online UCAA system, as appropriate.

The proposed regulations are intended to reduce the use of paper in transactions between filers and the CDI and thereby improve the efficiency of the CDI’s operations. They are also intended to enable personnel to access files from different locations without the cost and delay of transporting paper files, speed communication between filers and the CDI, provide for improved searching and faster retrieval of materials for public inspection, provide for improved file storage security through secure electronic storage of files with backup, improve file data integrity by permitting file access without removal or transport of the original file material from its storage location, and improve CDI’s ability

to aggregate file data as required for internal operations and for reporting of data to federal agencies.

**PUBLIC HEARING - DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows

<b>Date and Time</b>	<b>Wednesday, September 15, 2010 11:00 A.M.</b>
<b>Location</b>	<b>Department of Insurance 45 Fremont Street, 22<sup>nd</sup> Floor Hearing Room San Francisco, CA 94105</b>

**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 September 15, 2010**. Please direct all written comments to the following contact person:

Jack K. Hom  
Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, California 94105

(415) 538-4129  
(415) 904-5896 (facsimile)  
[homj@insurance.ca.gov](mailto:homj@insurance.ca.gov)

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

Bruce Hinze  
Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, California 94105

(415) 538-4392  
(415) 904-5896 (facsimile)  
[hinzeb@insurance.ca.gov](mailto:hinzeb@insurance.ca.gov)

**DEADLINE FOR WRITTEN COMMENTS**

All written materials must be received by the Commissioner, addressed to the contact person at the address listed above, **no later than 5:00 p.m. on September 15, 2010**. Any written materials received after that time will not be considered.

## **COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE**

Written comments transmitted by e-mail will be accepted only if they are sent to the following e-mail address: [homj@insurance.ca.gov](mailto:homj@insurance.ca.gov). The Commissioner will also accept written comments submitted by facsimile only if they are sent to the attention of the contact person at the following **facsimile number: (415) 904-5896**. 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 5:00 P.M., September 15, 2010 deadline.**

## **AUTHORITY AND REFERENCE**

The proposed amendments to Title 10, Chapter 5, Subchapter 2, Article 1, “Document Submission and Approval Procedures; Fees” will implement, interpret, and make specific the provisions of Insurance Code sections 742.43, 779.21, 10191, 10195.1, 10234, 10327, 10506, 10704 and 12973.9, and the references set forth in Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10168.93, 10192.14, 10192.15, 10192.19, 10205, 10225, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658 and 12250.

The proposed adoption of new regulations, Title 10, Chapter 5, Subchapter 3, Article 1.5, “Corporate Affairs Bureau – Electronic Filing”, will implement, interpret and make specific the provisions of Insurance Code sections 720, 1215.8, 12921(c), 1652, 10113.2, 11520.5, 11694.5, 12161, 12389(a)(3); *CalFarm Insurance Company v. Deukemjian* (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Insurance Company v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216 and references sections 131, *et seq.*, 717, *et seq.*, 810, 827, 880, *et seq.*, 922.4, 922.5, 1011(c), 1104.9, 1215, *et seq.*, 1652, 1765, 10113.2, 11520, *et seq.*, 11691, *et seq.*, 12160, *et seq.*, 12250, *et seq.*, 12389, *et seq.*

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

One of the main goals in the CDI’s Strategic Plan for 2010 is to improve department operations and reduce waste of State resources by eliminating a large volume of paper-based transactions. To that end, the CDI has begun the process to change internal processes to convert incoming paper transactions to electronic format. These regulations are part of that process

### **Proposed amendments to Title 10, Chapter 5, Subchapter 2, Article 1, “Document Submission and Approval Procedures; Fees”:**

Existing law, Insurance Code section 10191 provides that the Insurance Commissioner (“Commissioner”) may promulgate regulations as are necessary or advisable to establish a procedure for the filing and approval of documents. Insurance Code section 10327 provides that the Commissioner may make reasonable rules and regulations concerning the procedures for the filing or submission of policies. Further, the Insurance Code also provides that the Commissioner may, more generally, promulgate regulations to implement the provisions of Insurance Code sections 742.43, 779.21, 10195.1, 10234, 10506, 10704 and 12973.9. These Insurance Code sections, which provide the Commissioner with the explicit authority to promulgate filing regulations, empower the Commissioner to implement, interpret, or make specific the provisions of those Insurance Code provisions that require the filing of policy forms, certificates, rates, and other forms and documents, reference Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10168.93, 10192.14, 10192.15, 10192.19, 10205, 10225, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97,

10236.11, 10236.13 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658 and 12250.

The existing regulation specifies procedures for the filing of paper form submissions to the Policy Approval Bureau and Actuarial Office of the CDI. The proposed amendments to the regulation would eliminate the submission of paper filings, and would instead require that all forms filed with the Policy Approval Bureau and Actuarial Office of the CDI be filed electronically through the System for Electronic Rate and Form Filing (SERFF) of the National Association of Insurance Commissioners (NAIC) for life, health, disability income, long-term care, variable annuity, and other form filings. The proposed amendments also eliminate provisions pertaining to paper filing, clarify nomenclature regarding actions on submissions, and use gender-neutral language.

The objective of the proposed amendment to the regulation is to modernize and simplify the form submission process, eliminate obsolete requirements (such as the use of carbon paper), and instead use the NAIC SERFF system for the electronic submission, review, communication during review, approval, storage, and retrieval of form submissions. As a further objective, electronic submission of form filings will reduce the use of paper in transactions between filers and the CDI and thereby improve the efficiency of the CDI's operations, enabling CDI personnel to access files from different locations without the cost and delay of transporting paper files, speed communication between filers and the CDI, provide for improved searching and faster retrieval of materials for public inspection, provide for improved file storage security through secure electronic storage of files with backup, improve file data integrity by permitting file access without removal or transport of the original file material from its storage location, and improve CDI's ability to aggregate file data as required for internal operations and for reporting of data to federal agencies.

Proposed adoption of new regulations, Title 10, Chapter 5, Subchapter 3, Article 1.5, "Corporate Affairs Bureau – Electronic Filing":

Existing law, Insurance Code sections 131, *et seq.*, 717, *et seq.*, 810, 827, 880, *et seq.*, 922.4, 922.5, 1011(c), 1104.9, 1215, *et seq.*, 1652, 1765, 10113.2, 11520, *et seq.*, 11691, *et seq.*, 12160, *et seq.*, 12250, *et seq.*, 12389, *et seq.*, provides that all insurers doing business in California must submit applications, registrations, notices, reports, or other material (collectively, "corporate applications") to the Commissioner.

Existing law further provides that the Commissioner may determine the form of such corporate applications.

The proposed regulations would require that all corporate applications (as defined) be submitted electronically by means of the CDI's OASIS (Online Assistance System for Insurer Submittals), or by means of the NAIC's (National Association of Insurance Commissioners) online UCAA (Uniform Certificate of Authority Application) system.

The proposed regulations would also provide that electronic submission of corporate applications do not have any legal effect on the legal character of the documents nor any effect on the substantive requirements of the corporate applications.

The proposed regulations would also require filers to retain certain documents for a minimum of five years.

Finally, the proposed regulations would also provide for an effective date and for exemptions.

#### **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 ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency and 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. There are no nondiscretionary costs 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 adoption of 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 ENTITIES/BUSINESSES**

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, except that insurance companies may realize ongoing minimal cost savings in postage, paper, and file storage. Insurance companies will incur a filing fee of \$15 or less per submittal through SERFF, but most insurance companies already submit their filings through the SERFF system.

#### **EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA**

The Commissioner is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California; to assess the creation of new businesses or the elimination of existing businesses within the State of California; to assess the expansion of businesses currently doing business within the State of California. The Commissioner finds that this proposed regulation will streamline and modernize business processes with respect to filings submitted to the Department, but will not affect the creation or elimination of jobs within California, nor will it affect the creation of new businesses, nor the elimination or expansion of existing businesses within California.

The Commissioner also invites interested parties to comment on these issues.

#### **FINDING OF NECESSITY**

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

#### **IMPACT ON SMALL BUSINESS**

The Commissioner has determined the proposed action will not affect small business. This proposed regulation only affects insurance companies. Per Government Code section 11342.610(b)(2), insurance companies are, by definition, not small businesses.

## **IMPACT ON HOUSING COSTS**

The matters proposed herein will have no significant effect on housing costs.

## **ALTERNATIVES**

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

The Commissioner invites public comment on alternatives to the regulations.

## **DEADLINE FOR WRITTEN COMMENTS**

All written comments, whether submitted at the hearing or by U.S. Postal Service or any other delivery service, or by e-mail or facsimile, must be received by the Commissioner, c/o the contact person at the address listed above, **no later than 5:00 P.M. on September 15, 2010.**

All persons are invited to submit statements, arguments, or contentions relating to the proposed regulations by submitting them in writing to the contact person **no later than 5:00 P.M. on September 15, 2010.** In the alternative, statements, arguments, or contentions may be presented orally at the public hearing.

## **ACCESS TO HEARING ROOMS**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person in order to make special arrangements, if necessary.

## **ADVOCACY OR WITNESS FEES**

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the CCR in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures.

Office of the Public Advisor  
California Department of Insurance  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for additional information.

## **TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS**

The Commissioner has prepared an Initial Statement of Reasons ("ISOR") that sets forth the reasons for the proposed regulations. Upon request, the ISOR and the text of the proposed regulations will be made available for inspection and copying. Requests for the ISOR and the text of the proposed regulations should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the ISOR, and any supplemental information, is contained in the Rulemaking File: REG-2010-00008 and is available for

inspection and copying by prior appointment at 45 Fremont Street, 23<sup>rd</sup> Floor, San Francisco, California 94105, between the hours of 9:00 A.M. and 4:30 P.M., Monday through Friday.

### **Final Statement of Reasons**

After it has been prepared, and upon request, the Final Statement of Reasons ("FSOR") will be made available for inspection and copying. Requests for the FSOR should be directed to the contact person listed above.

### **AUTOMATIC MAILING**

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will be sent to all persons who have previously filed a request to receive notice of proposed rulemaking with the Commissioner.

### **WEBSITE POSTINGS**

Documents concerning these proposed regulations are available on the CDI's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand 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 '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. Find in the list the link to 'Electronic Filing' and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter "REG-2010-00008" (the CDI's regulation file number for these regulations) in the search field. Alternatively, search by keyword ("electronic filing," for example, or "OASIS." Then, click on the 'Submit' button to display links to the various filing documents.

### **MODIFIED LANGUAGE**

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

July 30, 2010