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 Section 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 Sections 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 September 3, 2010, 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 reasonably necessary in order to properly implement the requirements, purposes and intent of the statutes. The bases for this determination and the specific purpose of the proposed amendments are set forth below.

For clarity, the regulation is split into Sections 2632.13 and 2632.13.1, the former devoted to the principally at-fault determination and the latter devoted to the determination of eligibility for a Good Driver Discount policy. Titles were given accordingly.

Section 2632.13 is reorganized and amended to make it simpler and easier to follow:

Subsection (a) is amended to clarify the purpose of the regulation.

Subsection (b) is amended to clarify the definition of a "principally at-fault" accident. It is updated to be consistent with Mitchell v. Gonzales (1991) 54 Cal.3d 1041, which disapproved the "proximate cause" jury instruction. In addition, the regulation is amended to replace the "damage to any one person" standard with "total loss or damage," recognizing that the "any one person" standard creates the potential for a driver to cause unlimited damage to more than one person and still not meet the threshold for being charged with a principally at-fault accident. Finally, the regulation is amended to adjust the threshold amount of property damage required for a finding that a driver is principally at-fault for an accident upwards to $1000 to rule out de minimus damage and in recognition of the fact that the damage to more than one person may now be counted and that inflation has increased the cost of repairs.

The existing regulation's $750 property damage threshold and "any one person" standard are set forth in Vehicle Code Section 16000. While Vehicle Code Section 16000 is applicable to the existing regulation, the Commissioner's authority governing the determination of a principally at-fault is not derived from Section 16000, but from Insurance Code Section 1861.025(b)(3). Due to the amendment of the threshold amount of damage and the damage "to any one person" standard, Vehicle Code Section 16000 is no longer applicable and is no longer relied upon.

Subsection (c) is amended to create rebuttable presumptions out of the exceptions to the principally at-fault determination. The Commissioner has concluded that these exceptions should be treated as rebuttable presumptions that an insurer can refute following a reasonable investigation. Facts may demonstrate that what may be usually true is not true in every instance.

Subsection (d) is amended to clarify that the presumption relating to Insurance Code section 488.5 shall be conclusive, as required by the statute.

Subsection (e) is amended to clarify the procedure that a driver's insurer at the time of an accident must follow to determine that the driver is principally at-fault for the accident. A requirement for the insurer to state the basis of a determination that an injury or death occurred was added to verify that insurer considered whether injury or death occurred while investigating

the accident. Unlike property damage, setting a dollar threshold for injury is impractical because a dollar amount may only reflect a doctor's visit and not bodily injury and the cost of such a visit may vary according to the medical care provider and there may be no medical expenses involved in an accident involving a death.

Subsection (f) is amended to clarify the procedure that any subsequent insurer of a driver/applicant must follow to determine that the driver was principally at-fault for an accident. Subsection (f)(2) is added to clarify that data from a subscribing loss underwriting exchange carrier cannot be solely relied upon if it does not provide enough information to ascertain whether a driver is principally at-fault for an accident as required by Subsection (b). Requiring reporting of all elements of such a finding safeguards the integrity of a database upon which numerous insurers rely.

Subsection (g) is amended by moving driver's declaration requirements to Subsection (f) and by clarifying the acceptable and unacceptable uses of a DMV motor vehicle report to determine that a driver is principally at-fault for an accident. Insurance Code Section 1861.025 does not permit insurers to use Vehicle Code Section 12810 (f) alone to charge points against a driver. Vehicle Code Section 12810(f) [subsequently re-lettered Subsection (g)] allows the DMV to assess points against a driver for a traffic accident in which the driver is deemed by the DMV to be responsible. Assignment of points for such a Vehicle Code Section 12810(f) assessment is not permitted by Insurance Code 1861.025. Instead, through Subsections (b)(1)(A) and (b)(3) of Insurance Code section 1861.025, the Commissioner is required to create the standard for determining whether a driver is principally at-fault for an accident. In addition, DMV MVRs do not currently contain enough information to determine that a driver is principally at-fault for an accident under the Commissioner's standard set forth in Subsection (b). Consequently, while an insurer may use information obtained from a DMV motor vehicle report, it may not rely solely on a motor vehicle report unless it provides all the necessary information to determine that a driver is principally at-fault for an accident as required in Subsection (b).

Subsection (h) is re-lettered (i) and new Subsection (h) clarifies the additional permissible uses of data obtained from a subscribing loss underwriting exchange carrier.

Subsection (i) (previously (h)) is amended to clarify the type of information that insurers must disclose to each other, when an inquiry is made.

Subsection (j) is added to clarify the course of action an insurer may take when a driver/applicant does not provide requested information. Increasing the premium for an insured solely because the insured fails to respond is disapproved. While an insured who fails to respond to a request for information may be considered an increased hazard pursuant to Section 2632.19, Insurance Code Section 1861.03 only authorizes cancellation. Failure to respond to an insurer's request does not support a finding that a driver is principally at-fault for an accident. Unless there is enough information available to an insurer to determine that a driver is principally at-fault for an accident as provided in Subsection (b), an insurer may not find that a driver is principally at-fault for an accident.

Section 2632.13.1 is added to clarify how an insurer may determine a driver's eligibility for a Good Driver Discount policy. That portion of existing Section 2632.13 that concerns eligibility for a Good Driver Discount policy has been moved here.

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.