

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

REG-2009-00025

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INITIAL STATEMENT OF REASONS

INTRODUCTION

California Insurance Commissioner Dave Jones will hold a public hearing to consider changes to the Plan of Operations Manual for the California Low Cost Automobile (“CLCA”) Insurance program. The date, time and location for the public hearing as well as applicable contact information are set forth in the Notice of Proposed Action for this rulemaking matter.

California Insurance Code section 11629.7(d) provides that the Commissioner shall approve a reasonable plan for the equitable apportionment of Low Cost Automobile business and that such plan shall be established within the California Automobile Assigned Risk Plan (“CAARP”), as set forth in section 11620. By this proposed rulemaking action, the Commissioner hereby proposes amendments to the CLCA program Plan of Operations. As is explained below, each of the proposed changes are necessary to make the Plan consistent with existing law and policy. The Commissioner invites public comment on these proposed changes.

STATEMENT OF SPECIFIC PURPOSE AND NECESSITY FOR REGULATIONS

California Insurance Code sections 11629.7 through 11629.85 require, within the CAARP established under section 11620, a statewide low cost automobile insurance program. Because the program is established and administered through CAARP, CAARP procedures are applied where appropriate and consistent with the low cost automobile insurance statutes.

Insurance Code sections 11620, 11624 and 11629.7 provide that, after a public hearing, the Commissioner shall approve or issue a reasonable plan for the equitable apportionment, among insurers, of eligible consumers. This plan, approved by the Commissioner, is referenced in Title 10, section 2498.6 of the California Code of Regulations. The proposed amendments to the plan are reasonably necessary to implement, interpret and make specific Insurance Code sections 11620, 11623, 11624 and 11629.7, which authorize the establishment of a Plan of Operations for the implementation of the California Low Cost Automobile Insurance Program. These proposed amendments, by establishing a Plan of Operations for Low Cost Automobile Insurance in each county, fulfill the statutory requirements set forth in section 11629.7, et seq.

In accordance with these standards, the Commissioner is holding a public hearing to consider proposed revisions to the California Low Cost Automobile Plan of Operations.

The specific purpose of each amendment and an explanation of the reasons why each amendment is required to carry out the purpose of the Low Cost Automobile Program are described directly below.

PROPOSED REVISIONS TO THE TEXT OF THE PLAN OF OPERATIONS

Introduction

HOW, WHEN, WHERE

[Proposed third paragraph]:

The Introduction to the Plan of Operations is proposed for revisions. Specifically, a third paragraph will be added for the purpose of identifying the three alternative options for applying for a Low Cost Automobile Policy. The first option is described as the “EASi Expedited Application with Electronic Payment Option.” This option permits a producer to complete an application on-line in order to expedite the process for binding coverage. The alternate application submission procedures represent the second and third options. The second option, known as the Electronic Effective Date Procedure (EEDP), provides an alternative method for obtaining immediate binding of coverage for those persons who cannot or do not wish to utilize the EASi Expedited Application method for binding coverage. The third option is the mail delivery option. This method does not allow for immediate binding of coverage, but does provide a third alternative approach to submitting an application for a Low Cost Automobile Insurance policy.

Each of the three options are described in this proposed third paragraph in order to provide the reader with an introduction to the various options for submitting a Low Cost Automobile application. This proposed third paragraph also includes references to the rules within the Plan of Operations Manual that provide the reader with further detail about the procedures for each option.

The proposed third paragraph is reasonably necessary in order to provide the reader with a summary of the three alternative methods for processing a Low Cost Automobile policy. By briefly describing the options and referring the reader to more detailed rules addressing each method for application processing, producers will be provided with adequate guidance to ensure proper use of the Plan of Operations Manual.

[Revisions to fourth paragraph]:

Amendments to the fourth (formerly third) paragraph are proposed for the purpose of recommending that producers use the EASi application method for processing applications. The CAARP has observed that there is a greater frequency of error associated with the use of alternate application submission procedures when compared to applications prepared through the EASi application method. Consequently, CAARP seeks to encourage producers to utilize the EASi application process. This change is reasonably necessary to encourage producers to use

EASi for processing applications, while at the same time recognizing that some producers may prefer to use alternative, generally less-efficient methods at their option.

In addition to this change, the fourth paragraph is proposed for revision to explain that the original application form must be transmitted or forwarded to the CAARP for processing. These changes are reasonably necessary to notify the producers that an original application must be utilized both for applications transmitted via EASi as well as for applications transmitted via one of the alternative application submission methods. When using one of the alternate application submission methods, the instructions preserve the requirement that producers must not forward copies and facsimiles of the form to the CAARP.

HOW TO APPLY TO THE PROGRAM

[Proposed new second paragraph]:

A new second paragraph is proposed to inform producers that they have the option of submitting their applications via the EASi procedure, or alternatively, through one of the Alternate Application Submission Procedures. This proposed revision also directs producers to a new Appendix section within the Plan of Operations, which provides detailed instructions to producers regarding how to submit an application through the Alternate Application Submission process. These changes are reasonably necessary to inform producers of the various options that may be used to submit an application to the CAARP. The changes are also reasonably necessary to provide producers with a useful reference to the Appendix within the introductory paragraphs of the Plan of Operations Manual.

[Proposed amendments to the third paragraph, third bullet point]:

Nonsubstantive revisions are proposed to the third bullet point in order to augment the syntax. As with the previous version of the Plan of Operations, this version informs the producer that both the producer and the applicant must certify the date and time of coverage when using the EASi application.

[Proposed amendments to the third paragraph, eighth bullet point]:

Revisions are proposed to this bullet point in order to clarify that establishing the effective date and time for coverage varies, depending upon whether the producer uses the EASi process or an alternate application submission procedure. By way of these revisions, the alternate application procedure will no longer permit a producer to establish the effective date and time of coverage by telephone. These revisions are reasonably necessary to clarify the differences between establishing the effective date and time of coverage through the EASi procedure and the alternate application submission procedures.

WHAT TO SEND TO THE PLAN

[Replacement of old first paragraph with new first paragraph]:

The proposed replacement of the first paragraph explains in greater detail the documents that are required to be submitted to the CAARP along with the EASi application. The proposed revisions also recognize that applicants may submit a money order in lieu of a deposit check as a form of payment. These changes are reasonably necessary to provide greater clarity to the reader regarding the document submission process and payment options.

AVAILABILITY OF APPLICATIONS, FORMS, MANUALS, ETC.

The revisions to bullets three and five reflect the decision to no longer use the term “Electronic Effective Date Procedure” when referring to the Alternate Application Submission Procedure. The EASi application method is now the established method for implementing the Electronic Effective Date Procedure described in Insurance Code section 11622.5(b). Additionally, and consistent with the revisions described in the preceding sentences, the Electronic Effective Date Procedure Pamphlet is proposed for deletion.

DEFINITIONS

The proposed regulations include new definitions for the terms: “Alternate Application Submission Procedures” and “Electronic Payment.” Additionally, the “Electronic Effective Date Procedure” definition is proposed for revision. Each of these definitions is reasonably necessary. The new definitions for “Alternate Application Submission Procedures” and “Electronic Payment” are necessary to identify and define two new concepts that are now referenced within the Plan of Operations.

The revisions to the “Electronic Effective Date Procedure” definition are reasonably necessary to reflect that the toll-free telephone call process for establishing effective dates no longer exists. Additionally, the revisions to this definition are reasonably necessary to affirm that the EASi process is now the established process for compliance with Insurance Code section 11622.5(b).

Section 8. DETERMINATION AND FULFILLMENT OF PRIVATE PASSENGER NONFLEET LIABILITY LOW COST AUTOMOBILE INSURANCE PROGRAM QUOTAS

[Proposed amendments to Paragraph B.1 through B.3]:

Paragraph B is proposed for revision in order to clarify that an A.M. Best rating of A- or better cannot be waived when a servicing company applicant is evaluated by the CAARP Advisory Committee. The proposed revisions also seek to clarify that, in addition to the annual review process, the Advisory Committee may review the eligibility of a servicing company at any time that circumstances warrant. Finally, the proposed revisions explain that if a Limited Assignment Distribution (“LAD”) carrier is terminated, the CAARP will provide subscriber companies with written notification of that termination. Each of these changes is reasonably necessary to clarify the A.M. Best rating requirements as well as the CAARP’s role and duties in reviewing servicing carriers’ operations.

[Proposed amendments to Paragraph B.6, B.8, and new B.16:]

Section 8 is amended to introduce a LAD procedure requiring that subscriber companies (including terminated servicing companies) with LCA quotas and A.M. Best ratings of B or below (including not rated) enter into LAD arrangements. The proposed procedure will authorize CAARP to review the A.M. Best ratings of all companies with Low Cost Automobile quotas. In addition, the Commissioner may direct at any time that a company buy out in Low Cost LAD for any reason(s) other than their A.M. Best rating or lack of a rating.

These changes are reasonably necessary to ensure that CAARP and the Commissioner are able to ensure proper service to Low Cost Automobile policyholders. These proposed procedures will serve to ensure that LAD carriers are able to manage the Low Cost Automobile business of insurers with questionable financial conditions. Because LAD carriers are subject to substantial oversight by CAARP, these proposed procedures ensure greater financial certainty to policyholders enrolled in the CAARP Low Cost Automobile Program.

Section 20. PERFORMANCE STANDARDS FOR PRODUCERS WRITING CALIFORNIA LOW COST AUTOMOBILE INSURANCE PROGRAM RISKS

[New proposed subsection 3 (redesignating the former subsection 3 as subsection 4)]:

The proposed language in new subsection 3 provides the reader with instructions relating to the EASi assignment notice that must be printed by the producer when using the electronic payment option. This change is reasonably necessary to provide producers with appropriate instruction regarding how to process applications when using a form of electronic payment.

[Proposed Amendments to Paragraph C]:

The terms for maintenance of records are proposed for revision to remove certain unnecessarily burdensome requirements and to take into account the automated recordkeeping processes that are part of the EASi application process. Revisions to Insurance Code section 11622.5(g), which are effective as of January 1, 2011, provide CAARP with greater flexibility in establishing a process for the maintenance of records. Because the EASi system keeps a record of all in-process, submitted, expired, and voided applications for at least 400 days, the existing producer log requirement is no longer needed. Over 90% of all applications are now processed through the EASi system. The revisions to these regulations also require producers using the Alternate Application Submission Procedures to maintain appropriate records. The proposed revisions to Paragraph C are reasonably necessary to remove unnecessarily burdensome recordkeeping requirements that are largely obsolete in light of the EASi system.

Section 23 APPLICATION REQUIREMENTS

[Proposed amendments to the first paragraph]:

The proposed revisions to the first paragraph of Section 23 are intended to provide a clearer explanation to producers of the process for preparing and delivering original application forms to the CAARP. The revised instructions also clarify that, when submitting an application through the EASi process and using the electronic payment option, the completed original EASi

application form must be faxed to the CAARP. These changes are reasonably necessary to ensure that producers receive clear instructions regarding the process for submitting applications to the CAARP.

Section 26. Premium Payment Options

[Proposed amendments to the first paragraph]:

Revised language is proposed for the first paragraph of Section 26 in order to notify producers that an electronic payment option is available for use when submitting applications through the EASi application process. These revisions are reasonably necessary to ensure that producers are aware of this new optional method of payment; namely, the electronic payment method.

[Proposed amendments to Paragraphs D and E]:

As with the first paragraph of Section 26, revisions are proposed to paragraphs D and E in order to notify producers of the availability of an electronic payment option. The revisions to paragraph E serve to specify that electronic payments may be dishonored or returned by a bank and may result in a dishonored payment fee. Additional revisions have been made to replace the word “Manager” with the word “Plan” in order to make clear that the Automobile Assigned Risk Plan is the entity charged with responsibility for monitoring premium payments. Each of these revisions is reasonably necessary to ensure that producers are aware of the existence of the electronic payment option and the role of the Assigned Risk Plan in monitoring payments.

[Proposed amendments to Paragraph F.2]:

The terms “premium” and “check” are proposed for deletion within Paragraph F.2. These revisions are reasonably necessary to: 1) clarify that payment deposits may come in the form of an electronic payment (i.e. - not a check) and 2) remove the extraneous and potentially confusing term “premium.”

Section 28. Application for Assignment, Designation of Insurer, Evidence of Insurance, and Effective Date of Coverage

[Proposed amendments to Paragraphs A, A.3.b. and B are as follows]:

The term “Manager” has been replaced with “Plan” and the term “check” has been deleted. The removal of “Manager” and insertion of “Plan” are reasonably necessary in order to make clear that the Automobile Assigned Risk Plan is the entity charged with responsibility for verifying applications have been properly completed and for assigning applications to particular insurers.

[Proposed Amendments to Paragraph C.2 are as follows]:

The language describing the Electronic Effective Date Procedure (“EEDP”) is proposed for deletion and relocation to the newly-proposed Appendix Part VI. With this change, the EASi method for application submission will be highlighted as the preferred option for processing

applications. The EASi method for submitting applications has been found to result in fewer processing errors. The EASi method also generally results in a faster turn-around time between submission of an application and the beginning date of coverage. This change is reasonably necessary to encourage producers to utilize the EASi method for application submission.

With the deletion of Paragraph C 2, the paragraph describing EASi becomes the new C.2. Changes have been made to the new C.2.a. in order to remind producers that the EASi application process is a more expeditious process. Additionally, the term “Manager” has been replaced with the term “Plan” in order to make clear that the Automobile Assigned Risk Plan is the entity charged with responsibility for providing a toll-free number for producer technical support. Language has also been added to notify producers that applications cannot be transmitted through EASi until the application is complete and the deposit has been received. Each of these changes is reasonably necessary to encourage the use of EASi, to clarify that the CAARP is responsible for providing technical assistance to producers, and to ensure that producers do not submit incomplete applications via EASi.

Additional language is proposed for addition to Paragraph C.2.b. in order to provide instructions regarding the new electronic payment option for EASi. This language will serve to notify producers of the process for submitting electronic payments along with an EASi application. Alternatively, a producer may process an EASi application with a regular check or money order. Revisions are proposed to Paragraph C.2.b.(2) in order to clearly identify that a payment may be made by check or money order mailed to the CAARP Plan office within two working days of the date of transmission for the EASi application. These changes are reasonably necessary to ensure that producers are properly informed of the process for implementing immediate coverage when paying via the new electronic payment option for EASi application processing.

Paragraph C.2.c., which describes the process for instituting a future effective date, now will include language that explains how to obtain a future effective date for coverage purchased through the new electronic payment option. Proposed revisions are also intended to clarify that premium deposits may also be made by check or money order and that applications submitted through EASi are principally transmitted electronically, rather than signed and dated. Each of these changes is reasonably necessary to ensure that producers understand the process for submitting applications when utilizing the new electronic payment option. These changes are also necessary to clarify the method of application transmittal for applications submitted through EASi.

Paragraph C.2.d. describes the procedure for retraction. Proposed revisions to the retraction procedure include the replacement of the word “assignment” with “issuance” and the addition of language indicating that an application may be submitted to the CAARP via fax. Additionally, new language is proposed to explain the process for retraction when an application is submitted through EASi and the applicant has used the electronic payment option. These changes are reasonably necessary to clarify the nature of issuing EASi reference numbers and to acknowledge the ability of producers to submit applications via fax. These changes are also necessary in order to explain the process of retraction when an application is submitted through EASi, using the new electronic payment option.

[Proposed amendments to Paragraph C.3 are as follows:]

A new Paragraph C.3 is proposed for insertion in the Plan of Operations. This new Paragraph C.3 is designed to direct producers to alternative application submission procedures in the event that a producer cannot, or does not wish to, utilize the EASi application process. New Paragraph C.3 directs producers to the Appendix Part for those persons interested in submitting an application through a method other than EASi. This additional language is reasonably necessary to provide an appropriate reference to producers that, for whatever reason, do not use the EASi application method for application submission.

[Proposed amendments to Paragraph C.4 are as follows:]

Paragraph C.4 is proposed for deletion in its entirety. In its place, a newly-revised Paragraph C.4 is proposed. The newly-revised Paragraph C.4 is intended to explain the process for assigning effective dates for those applications submitted via the EASi application process, which do not comply with the provisions of Section 28.C.2.b.(1) or (2). Thus, the newly-revised Paragraph C.4 describes the effective date assignment process for payments submitted with errors either via the electronic payment, deposit check or money order options. Applications submitted through a method other than EASi that fail to comply with the procedures for submission are addressed elsewhere in the newly-proposed Appendix Part of the Plan. These revisions are reasonably necessary because they align the Plan manual requirements with the new payment options now available for EASi applications.

[Proposed amendments to paragraphs C.5 through C.7 are as follows:]

Minor revisions are proposed to paragraphs C.5 through C.7. In paragraph C.5, the term “Manager” will be replaced with “Plan” in order to clarify that the Automobile Assigned Risk Plan is the entity charged with responsibility for designating the effective date of coverage. A similar revision is proposed for paragraph C.6. Additionally, for paragraph C.6, and also for paragraph C.7, a technical revision is proposed in order to remain consistent with the correct Plan of operations sections which address the manner in which effective dates are determined. Each of these changes are reasonably necessary to provide clarity to the terms of the Plan of Operations, as well as to ensure the language of the Plan is consistent with the changes proposed.

[Proposed amendments to paragraph C.9 are as follows:]

Revisions are proposed for paragraph C.9 in order to remove obsolete language about the EEDP program and insert language directing producers to the Appendix Part when a producer is unable to access the EASi application system. Language describing the process for binding coverage under the EEDP is also deleted in order to account for the newer procedures set forth in the proposed Appendix Part language. These changes are reasonably necessary in order to reflect changes to the Plan’s description of application procedure alternatives to EASi.

Section 28 D. Plan Submission to the Designated Insurer

Consistent with other changes described above, minor revisions to section 28 D are proposed. Specifically, the word “Manager” has been replaced with “Plan,” the term “premium” has been deleted after deposit, and the Plan now makes specific reference to the three available forms of payment (electronic, check or money order). Each of these revisions is reasonably necessary in order to provide clarity to the Plan and to ensure consistency with the Plan’s other provisions.

Appendix Part

The Appendix Part is proposed for addition to the Plan of Operations. The proposed procedure set forth within the Appendix Part provides producers with an alternative method for Low Cost Automobile Insurance Applications for those producers who, for whatever reason, do not wish to use the electronic application process known as EASi.

The alternative procedure represents the existing EEDP procedure set forth within the Plan. Thus, the EEDP procedure describes the requirements for obtaining immediate coverage, seeking a future effective date for coverage, procedures for retraction and the effective date for applications submitted using the US postal service or other delivery methods.

The proposed addition of the Appendix Part is reasonably necessary to provide producers with an alternative method for submitting California Automobile Insurance Low Cost applications. The alternative method allows producers to have another option for processing applications in the event that the EASi application process is unavailable, or the producer is unwilling to use the procedure for any reason.

PROPOSED REVISIONS TO UNINSURED MOTORISTS BODILY INJURY COVERAGE ENDORSEMENT

The current Low Cost Uninsured Motorists Bodily Injury Coverage Endorsement states that an uninsured motor vehicle does not include a land motor vehicle owned by “any government or any of its political subdivisions, units, or agencies...” Insurance Code § 11580.2.(b)(2) provides, however, that an uninsured motor vehicle “shall not include a motor vehicle ... that is owned by the United States of America, Canada, a state or political subdivision of any of those governments or an agency of any of the foregoing...” The language of the Bodily Injury Coverage Endorsement, therefore, is proposed for revision to reflect the requirements of section 11580.2(b)(2). Technically, this change is a change without regulatory effect. The change is reasonably necessary in order to bring the Uninsured Motorists Bodily Injury Coverage Endorsement into conformity with existing law.

The current Low Cost Uninsured Motorists Bodily Injury Coverage Endorsement also provides under the Limits of Liability provision that the limits for, and damages resulting from, an underinsured motor vehicle will be reduced by any medical payments coverage. Because Insurance Code section 11580.2(e) makes the medical payments limits reduction discretionary, this language is proposed for deletion. This change is reasonably necessary to ensure that payments for uninsured motor vehicle liability limits are not reduced by any amounts payable under other valid and collectible automobile medical payment insurance.

PROPOSED REVISIONS TO CALIFORNIA AUTOMOBILE LOW COST APPLICATION

The validity of same sex marriages under California law has changed over time. Currently, same sex marriages performed between June 16, 2008 and November 5, 2008 are recognized in California. For periods of time other than from June 16, 2008 to November 5, 2008, California's domestic partnership law controls. Additionally, Family Code section 308 provides that same-sex marriages contracted on or after November 5, 2008 that would be valid by the laws of the jurisdiction where the marriage was contracted are entitled to the same rights and protections as other marriages. In order to adapt to the changing requirements regarding same sex marriage in California, the gender-neutral term "spouse" is proposed for addition to Section 4 of the California Automobile Low Cost Application. This change is reasonably necessary to ensure that the Low Cost Application correctly captures the marital status of applicants using the form.

SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed regulations would not mandate the use of specific technologies or equipment.

REASONABLE ALTERNATIVES

The Commissioner has identified no reasonable alternatives to the presently proposed regulations. The Commissioner has determined that no reasonable alternatives exist to carry out the purpose for which the regulations are proposed. Performance standards were considered but were rejected as an unreasonable and impracticable alternative. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes.

ECONOMIC IMPACT ON BUSINESS

The Commissioner has initially determined that the proposed regulations will not have a significant adverse economic impact on businesses because the changes to the Plan of Operations Manual represent minor alterations. The Commissioner invites interested parties to comment on whether the proposed regulations will have a significant adverse economic impact on business.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses. Nor have any such alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)