

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

File No. REG-2010-00013
Date: August 13, 2010

NOTICE OF PROPOSED ACTION

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that the California Insurance Commissioner (“Commissioner”) proposes to amend a regulation as described below after considering comments from the public.

The Commissioner proposes to amend Title 10, California Code of Regulations, Chapter 5, Subchapter 4.3, Article 1, Section 2614 et seq., entitled “Governing Procedure for Noncompliance Hearings.” The proposed amendment will modify the procedure for conducting hearings pursuant to California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2. The proposed amendment will also make technical changes to Section 2614 et seq.

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: Monday, October 25, 2010, at 10:00 a.m.
Location: Department of Insurance
45 Fremont St. 22nd Floor Hearing Room
San Francisco CA 94105

The hearing will continue on the above date until all testimony has been submitted or 2:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed amendments during the public comment period.

Please direct all written comments to the following contact person:

Alec Stone, Staff Counsel
Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3567

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:

Lisbeth Landsman-Smith, Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3561

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact persons at his address listed above, no later than 5:00 p.m. on October 25, 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: alec.stone@insurance.ca.gov. The Commissioner strongly encourages e-mail comments in Word® or PDF text format.

The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Alec Stone and sent to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by email or facsimile are subject to the deadline set forth above for written comments.**

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(s) for the hearing in order to make special arrangements, if necessary.

AUTHORITY AND REFERENCE

According to California Government Code section 11349(b), "authority" means the provision of law that permits or obligates the agency to adopt a regulation. The authority for the proposed amendment is the express authority provided by Government Code section 11400.20. That section states that an agency may adopt interim or permanent regulations to govern an adjudicative proceeding.

California Government Code section 11349(e) defines "reference" to mean the statute, court decision, or other provision of law which an agency implements, interprets, or makes specific when adopting a regulation. The following statutes are referenced as being made specific by the proposed amendment. The proposed amendment is making specific California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2

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, Chapter 5, Subchapter 4.5 of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
45 Fremont Street, 21st Floor
San Francisco, CA 94105
(415) 538-4190

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 further information.

INFORMATIVE DIGEST Summary of Existing Law

California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2 provide that the Commissioner shall hold a public hearing when a violation of Chapter 9 of the California Insurance Code is alleged pursuant to a public complaint, or after examination of an insurer. These Insurance Code sections address adherence by insurers to California's insurance rate regulation law. Title 10 C.C.R. § 2614 et seq. contains the procedure for "Notice of Noncompliance" hearings conducted under California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2.

POLICY STATEMENT OVERVIEW

Effect of Proposed Action

Section 2614.13 currently requires parties to file written prepared direct testimony ("PDT"), in narrative or question and answer format, for each direct witness expected to be called to testify. PDT must be signed under penalty of perjury. PDT must be filed before the first day of an evidentiary hearing.

Compliance with the PDT requirement in existing section 2614.13 from an adverse witness or a witness not under the control of a party is either impractical or impossible. A witness who has no affinity with or other incentive to assist the party calling that witness may be unwilling to sign PDT. A witness who is an employee or agent of an adverse party will usually be positively disinclined to assist his or her employer's or principal's opponent by signing PDT.

The Commissioner proposes to amend Section 2614.13 to clarify that PDT is required only from certain types of witnesses, as specified in the proposed amendment, which are typically willing to sign PDT and cooperate in its drafting.

The Commissioner also proposes to make technical amendments to Section 2614. Specifically, in two places he proposes to change erroneous use of the word "chapter" to "subchapter."

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed amendments 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 AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed amendments 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 regulations may 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 and automotive repair dealers. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. 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 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.

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. The Commissioner does not foresee that the proposed amendment will have an impact on any of the above, but invites interested parties 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 amendments 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, as defined by Government Code § 11342.610. The proposed amendment clarifies existing law rather than changing it. The proposed regulation clarifies procedures for noncompliance hearings held pursuant to consumer complaints regarding insurer rating systems or underwriting rules. The parties to the hearings are insurers, the Department and, at times, a non-profit intervenor. None of the affected parties are small businesses as defined by Government Code § 11342.610.

COMPARABLE FEDERAL LAW

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

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 file for this proceeding, which includes a copy of the express terms of the proposed 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 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 4:00 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed amendments, 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:

1. Go to <http://www.insurance.ca.gov>
2. Under the red menu bar, the home page is divided into three columns. Find the "Quick Links" at the top of the right column.
3. Under "Quick Links," there are four pull-down menus. Find the third pull-down menu, entitled "For Insurers."
4. Within the "For Insurers" pull-down menu, click on the topmost item - "Regulations." This will bring you to the "Insurers: Regulations" page.
5. Click on the 4th bullet, "Proposed Regulations." This will take you to the "Insurers: Proposed Regulations" page.
6. Click on "Search for Proposed Regulations"
7. Click on "Currently Proposed Regulations," look for the title of this regulation in the resulting list, and click on the title.

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.

STEVE POIZNER
Insurance Commissioner

By: _____/s/_____
Alec Stone
Staff Counsel