Summary of and Response to Public Comments Received Pursuant to April 26, 2006, Notice of Availability of Changed Text

Submitted by: Allied Property and Casualty Insurance Company
Dated: May 17, 2006
Type: Written
Vol. 14 Tab 17

Summary: Increasing the number of frequency and severity bands will have a modest impact but there will still be significant dislocation and movement away from cost based rates. The amount will vary based on coverage and risk distribution.

Response: The Commissioner is proposing increasing the number of frequency and severity bands in order to minimize the amount of disparity between rates for adjoining zip codes. The existing regulations permit up to 100 zip code groupings (10 frequency bands x 10 severity bands). The proposed revised regulations increase that number to 400 (20 frequency bands x 20 severity bands). The Commissioner believes that this will allow more options for insurers to group similar risks together for rating purposes and will reduce the dramatic discrepancies in rates observed between similar risks living within a short distance of one another. The Commissioner agrees that the premium differences will correlate with an insurer's book of business and the manner in which it implements the proposed regulations. The Commissioner believes that insurers will implement the proposed regulations in a manner beneficial to their policyholders.

Summary: Although the option of combining coverages does provide more flexibility, the three mandatory factors do not sufficiently explain the cost differences in comprehensive claims.

Response: In response to earlier comments, the revised regulations allow insurers to combine bodily injury coverage with property damage coverage, and comprehensive coverage with collision coverage. California Insurance Code Section 1861.02 provides that rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined in a specified manner. California Insurance Code Section 660(a) defines "policy" to mean an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof. Therefore, the rating provisions of section 1861.02 must apply to automobile liability, physical damage, and collision coverages. The Commissioner lacks authority to allow some of these coverages to be rated in a different manner.

Summary: Thirty days is an insufficient time period for an insurer to prepare and submit a new class plan.

Response: While the proposed regulations do change the weighting methodology, much of the regulation is unchanged. Insurers have been filing class plans pursuant to the existing regulations for approximately ten years and have been able to streamline the

class plan preparation process over that time period. The petition for rulemaking which resulted in these proposed regulations was submitted three years ago, in May 2003, and possible proposed regulations have been the subject of considerable public discussion. Additionally, insurers can begin preparing to submit new class plans in advance of the effective date of the proposed regulation. Therefore, the Commissioner believes that thirty days allows sufficient time for filing of a class plan.

Summary: It is unclear when insurers must actually make class plan filings. Proposed section 2632.11(c)(1) refers to "at least two annual class plan filings" and to the "first of two annual class plan filings." Section 2632.11(c)(8) provides that an insurer may choose to make more than one class plan filing during each annual period. It also states that an insurer may choose to achieve full compliance at any time prior to the end of the two-year period. It is unclear whether insurers must make a minimum of two filings, or precisely two filings, or whether they can omit the second filing if they elect to be fully compliant with the regulation in a single filing.

Response: Given the comments received during the course of this rulemaking proceeding, the Commissioner believes that most insurers will choose to implement the changes proposed by these regulations in at least two stages. Therefore, the regulations recognize that filings may be submitted on an annual or more frequent basis. However, if an insurer desires to implement the changes at one time, the regulations recognize an insurer's ability to do that as well. They specifically provide that an insurer may choose to achieve full compliance at any date prior to the end of the two-year transition period.

Summary: Insurers should have the option of filing for full compliance in the initial filing or file for a set of adjustments to the relativities to be effective for each renewal cycle that would be pre-approved for the two-year period.

Response: As stated in the response immediately above, the Commissioner believes that the regulations allow insurers to file for full compliance in the initial filing. However, because the existing regulations (continued in the proposed regulations) require implementation of an approved class plan within 90 days, the Commissioner believes an insurer cannot submit a class plan which would include changes to be implemented over the course of a two-year period.

Summary: "Annual" in section 2643.11(c)(1) is unclear as to whether the second annual filing is to be made one year after the first annual filing, or is to have an effective date one year after the effective date of the first filing.

Response: Because the Commissioner desires to allow insurers reasonable flexibility in implementing the proposed regulations, the regulations do not specify precisely when a second filing must be made, as long as the insurer is in full compliance within two years of the date the proposed regulations are filed with the Secretary of State.

Summary: It is unclear why the regulation based compliance on a December 31, 2005, baseline, especially if an insurer's current class plan was approved after that date.

Response: The Commissioner believes it is appropriate for him to set a recent, uniform, and reasonable benchmark from which to measure compliance, and determined that December 31, 2005, was a realistic date.

Summary: "Tempering" and "pumping" should be defined.

Response: The Commissioner believes that the terms are sufficiently understood in connection with the regulations that a specific definition is not necessary. Additionally, section 2632.8(d)(4) provides that if the weights are not in the specified order, the insurer may increase or decrease the weight of either factor weight to achieve compliance. The Commissioner believes it is appropriate to allow insurers flexibility to determine the best manner in which to achieve compliance.

Summary: The requirement that insurers must perform the weight test and correction calculation with a set of policies having effective dates no more than six months prior to the date of filing is unworkable and results in use of incomplete data.

Response: The Commissioner believes that these calculations must be made based upon recent data, and determined that policies having an effective date no more than six months before the date of filing allows for use of recent data and still allows use of a sufficient number of policies to make a reasonable calculation.

Summary: Insurers are precluded from making a single filing with preset transition steps applicable on renewal, which is especially problematic for insurers having a small market share.

Response: Please see the response to the similar comment above. The existing and proposed regulations require implementation of an approved class plan within 90 days.

Submitted by: Pacific Association of Domestic Insurance Companies
Dated: May 16, 2006
Type: Written
Vol. 14 Tab 17

Summary: The comment begins with background about the commenter and reiterates previously-submitted comments.

Response: Because this portion of the comment is not specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, no response is necessary. (Government Code Sections 11346.9 9 & 11346.8(c).)

Summary: The regulations will result in rates that are arbitrary and inconsistent and less cost-based, since they provide that if two rating factor weights are not in the order specified, the insurer shall have the right to increase or decrease weights to achieve compliance. Companies will do this to reduce potential rate dislocation to their policyholders.

Response: The Commissioner agrees that insurers will implement the regulations in a manner which will reduce the potential rate dislocation on their policyholders. Existing regulation section 2632.8(d) currently provides that if the weights are not in the specified order, the insurer must correct the relativities of the rating factors using a correction factor. The proposed new language simply clarifies, in response to previous comments, that insurers may make the correction either by increasing or decreasing factor weights.

Summary: Each company has a unique book of business and will therefore increase or decrease their rating factor weights differently. As a result, some companies' class plans will be more arbitrary than others.

Response: The Commissioner believes that insurers will prepare class plans in a manner that is not arbitrary and that best reflects the interests of the company's policyholders. That different companies choose to implement the regulations differently is to be expected, and will result in a more competitive marketplace.

Summary: The regulations will lead to arbitrary and inconsistent regulation by the Department, especially when reviewing the numerous class plans which will be filed in connection with these regulations.

Response: The allegation that the Department's review of class plans will result in arbitrary and inconsistent treatment of insurers is wholly speculative and unsupported. The Department frequently receives numerous class plans when required by a change in the law, such as promulgation of the existing regulations, or when the voters approved Proposition 213. The Department is capable of ensuring that filings are consistently reviewed.

Submitted by: Robert O. Bernstein
Dated: May 15, 2006
Type: Written
Vol. 14 Tab 15

Summary: There is no rationale for increasing the number of frequency and severity bands from 10 to 20. Doing so will not help insurers comply with the revised regulations and will not help consumers. It will increase the difference in premiums charged in different zip codes. There has not been a problem with the existing number of rating bands, and this change is a step backwards.

Response: This change was made in response to comments previously submitted in connection with this rulemaking proceeding. Increasing the number of rating bands will allow insurers to minimize the premium differences from one rating band to another, thus smoothing premium disparity, not increasing premium differences.

Summary: Guidance is not provided as to how insurers would demonstrate that the factors used in combination comply with the weight ordering requirements. The regulations must spell out how insurers can make such a demonstration.

Response: Compliance may be demonstrated in the same manner in which an insurer demonstrates compliance with the other weight ordering provisions of the proposed regulations. Section 2632.5(e) references section 2632.8, which sets forth the weighting requirements.

Summary: Rather than allowing comprehensive coverage to be combined, which provides no benefit to consumers, it should be exempted from the regulations. Allowing insurers to combine coverages will result in additional pumping and tempering.

Response: In response to earlier comments, the revised regulations allow insurers to combine bodily injury coverage with property damage coverage, and comprehensive coverage with collision coverage. The Commissioner believes that this allows insurers to appropriately enhance the proposed regulations' substantial relationship to the risk of loss. California Insurance Code Section 1861.02 provides that rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined in a specified manner. California Insurance Code Section 660(a) defines "policy" to mean an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof. Therefore, the rating provisions of section 1861.02 must apply to automobile liability, physical damage, and collision coverages. The Commissioner lacks authority to allow some of these coverages to be rated in a different manner, or to exempt comprehensive coverage from application of the regulations.

Summary: The language in section 2632.8(d)(4) allowing insurers to increase the weight of the optional rating factors does not comply with Proposition 103 and allows insurers to deviate further from cost-based rates.

Response: This language was added in response to earlier comments and clarifies the existing regulations. Proposition 103 requires a specified weight ordering, but does not specify the manner in which the weight ordering must be accomplished.

Summary: Mr. Bernstein references an April 26, 2006, press release which the Department has not included in the rulemaking file. Mr. Bernstein notes that although the press release indicates that the regulations will judge drivers more according to how they drive, this will not come true for many consumers and that zip code will have as much effect because the number of territory bands is increased and because insurers can pump and temper factors and can thereby increase the effect of territory.

Response: To the extent Mr. Bernstein is commenting on documents which are not part of the rulemaking file, a response is not required. The Commissioner disagrees that the increase in the number of rating bands will allow zip code to have a greater effect. Increasing the number of rating bands will allow insurers to more closely group areas that have similar risk of loss, thereby minimizing the premium discrepancy across rating bands. Although territory can still have a large impact on premium under the regulations, neither the frequency band nor the severity band can have more impact on premium than any of the three mandatory factors. The existing regulations allow for use of both frequency bands and severity bands, resulting in insurers' ability to account for both

frequency of claims and severity of claims in determining rates and premiums. Continuing to allow use of both is not a change from the existing regulations.

Summary: Mr. Bernstein further quotes from the press release referenced above. He notes that insurers may pump miles driven, resulting in double hardship for long commuters who are already facing rising gas prices. Inexperienced drivers and those with even one small accident or moving violation will also see premium increases. Insurers should not be permitted to pump the optional factors.

Response: To the extent Mr. Bernstein's comments involve speculation about what insurers may do to comply with the regulations, the Commissioner incorporates by reference his response to similar comments elsewhere in this rulemaking file. The Commissioner notes that California Insurance Code Section 1861.02(a) requires that the three mandatory factors have the most impact on an individual's premium. Therefore, to the extent inexperienced drivers and those having accidents or violations pay more, that is what Proposition 103 requires. Pursuant to the existing regulations, insurers can pump or temper the mandatory or the optional rating factors.

Summary: Thirty days is an unreasonable deadline for insurers to submit new class plans. Ninety days should be provided.

Response: While the proposed regulations do change the weighting methodology, much of the regulation is unchanged. Insurers have been filing class plans pursuant to the existing regulations for approximately ten years and have been able to streamline the class plan preparation process over that time period. The petition for rulemaking which resulted in these proposed regulations was submitted three years ago, in May 2003, and possible proposed regulations have been the subject of considerable public discussion. Additionally, insurers can begin preparing to submit new class plans in advance of the effective date of the proposed regulation. Therefore, the Commissioner believes that thirty days allows sufficient time for filing of a class plan.

Summary: The requirement that insurers perform the weight test and correction calculation with a set of policies with effective dates no more than six months prior to the date of filing conflicts with section 2632.8(b)'s provision allowing three different data sets to demonstrate compliance. This is internally inconsistent and must be resolved. The best way to resolve it would be to allow use of any of the three allowable sets of insureds.

Response: The Commissioner disagrees that these are inconsistent. Section 2632.8(b) is not changed in this proposal. The data set required for filings submitted in accordance with the revised regulations is set forth in section 2632.11.

Summary: The regulation mandates at least 15% compliance, but full compliance is required at the end of two years. This is a conflict because at 15% per year, it would take six years to comply. Six years is a reasonable compliance period, since the proposed regulations will cause hardship to consumers.

Response: The proposed regulations require full compliance within two years. The first filing must demonstrate at least 15% compliance. At the end of two years, insurers must be in full compliance. The compliance period is not 15% per year until the insurer is in full compliance. The proposed regulations will not result in hardship to consumers. While some consumers may see rate increases, the Commissioner believes they will be modest. The regulations will implement the voters' mandate that where a driver lives should be less important than the driver's driving safety record. Moreover, until insurers make filings pursuant to the new regulations, the precise impact on a particular driver is speculative.

Summary: The transition plan does not comply with the statement in the initial statement of reasons that the Department intends to solicit public comment regarding an appropriate phase-in process for the regulations, in order to prevent significant changes in rates. The phase-in process is arbitrary and capricious and lacks technical support.

Response: The Commissioner believes the phase-in period is not arbitrary and capricious and does not lack technical support. The proposal allows insurers significant flexibility to implement the regulations in a manner which will minimize any negative impact to their customers. The Commissioner did solicit public comment on transition issues, which he considered in proposing the transition plan included in the regulations. The voters enacted Proposition 103 in 1988, and they are entitled to regulations which implement its mandate that rates and premiums for an automobile insurance policy should be based first on a driver's driving safety record, not where the driver lives.

Submitted by: California Farm Bureau Federation
Dated: May 12, 2006
Type: Written
Vol. 14 Tab 15

Summary: The comment begins with general background information and a summary of the changes made from the earlier draft regulations.

Response: Because this portion of the comment is not specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, no response is necessary. (Government Code Sections 11346.9 9 & 11346.8(c).)

Summary: In addition to the changes made, the regulation should provide that insurers compile and provide to the Department data demonstrating the amount of cross-subsidy paid or received by different groups of policyholders. The proposed regulation is irresponsible and collecting data on the resulting subsidies will at least allow the Department a solid basis for analyzing the actual impact of the regulation in the future.

Response: The Commissioner believes it is not necessary to require the data suggested by the Farm Bureau. It does not necessarily follow that one group of policyholders will subsidize another. The regulations allow insurers considerable flexibility in determining how they will implement the regulations; they do not require a

subsidy. In fact, they require that rates be substantially related to risk of loss. Additionally, the regulations merely implement the voters' mandate that the three mandatory automobile rating factors be the most important in determining a driver's rates and premiums.

Summary: The current ten frequency and severity bands result in complaints that policyholders can move a short distance to what appears to be a similar community and see a large premium change. Sometimes adjoining zip codes with moderate differences in frequency will end up in different bands, resulting in different premiums. The proposal doubles the number of bands from ten to twenty, which will reduce the range of frequencies and severities within each band and the average difference across bands. This may tend to mitigate the boundary problem.

Response: The comment supports the change in the number of frequency and severity bands.

Summary: The increase in the number of bands will do nothing to mitigate the subsidy of urban drivers by rural drivers, and does not address the overall regressive income transfer. The policyholders whose premiums increase under the proposed regulation will still have lower average household incomes than policyholders whose premiums will decrease.

Response: Until insurers file applications pursuant to the new regulation, it is impossible to say what the impact will be on an individual policyholder. Insurers have considerable flexibility in implementing the regulations, and the Commissioner is confident they will do so in a fair and equitable manner. The proposed regulations continue to require that rates and premiums be substantially related to the risk of loss. The proposed regulations will benefit all good drivers, no matter where they live. The Department will carefully review the applications filed by insurers pursuant to these regulations to ensure that they comply with all applicable legal requirements and are not unfairly discriminatory.

Summary: The only change that should be implemented is to increase the number of frequency and severity bands from ten to twenty.

Response: The petition for rulemaking which instituted this proceeding specifically requested a change in the weighting methodology. Simply increasing the number of frequency and severity bands will not implement the requirement in Proposition 103 that how safely one drives should be more important in determining a driver's rates and premiums than where that driver lives.

Summary: The proposed regulations allow insurers to combine bodily injury and property damage liability coverages and collision and comprehensive coverages. All of the three mandatory factors focus on characteristics associated with the driving coverages; they are not strongly predictive of the incidence of comprehensive claims which provides coverage for non-driving hazards. Where the policyholder lives and

whether the car is garaged or street parked are better indicators of potential loss. This provision is an example of rearranging the deck chairs on the Titanic.

Response: It is unclear what the commenter means by the statement that this proposal is akin to rearranging the deck chairs on the Titanic. This proposal is designed to allow insurers to tie coverage that has a greater relationship to risk of loss to the coverage that has less of a relationship. California Insurance Code Section 1861.02 provides that rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined in a specified manner. California Insurance Code Section 660(a) defines "policy" to mean an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof. Therefore, the rating provisions of section 1861.02 must apply to automobile liability, physical damage, and collision coverages.

Summary: The transition period mitigates the immediate, but not the long-term, impact of the proposed regulations on rural policyholders.

Response: The Commissioner believes that the regulations will not result in considerable negative impact on policyholders no matter where they live. The regulations continue to allow territory to influence insurance rates, but as required by Proposition 103, they require that a driver's driving safety record be the most important factor in determining that driver's premium.

Summary: The proposed regulations will result in some policyholders paying less than the cost of their claims and others will pay more. The Department should collect data from insurers to determine the overall pattern of under- and over-charges by zip code and in a specified format. This will allow for a determination of the surcharges imposed on certain drivers.

Response: The Commissioner believes that the proposed reporting requirement is unnecessary. These regulations implement the requirement in Proposition 103 that a driver's driving safety record be the most important factor in determining a driver's rates and premiums, and that where that person lives should be less important than the three mandatory factors. The Commissioner is confident that insurers will implement the regulations in a fair and equitable manner.

Submitted by: Progressive West Insurance Company
Dated: May 16, 2006
Type: Written
Vol. 14 Tab 16

Summary: The proposed revised regulations would result in rates that are arbitrary, not cost-based, not substantially related to risk of loss, and cause unfair subsidization of bad drivers by good. They are inconsistent with California Insurance Code Section 1861.02(a) and the decision in *Spanish Speaking Citizens' Foundation v. Low.*

Response: The Commissioner incorporates by reference his response to other comments alleging that the regulations will result in unfair and arbitrary rates and are contrary to the court's decision in *Spanish Speaking Citizens' Foundation v. Low*.

Summary: Deletion of a uniform implementation date eliminates the level playing field and is contrary to past practice of the Department. It is discriminatory both to insurers and consumers.

Response: The Commissioner believes that not requiring a uniform implementation dates allows insurers desired flexibility. It is unclear why the commenter believes insurers whose class plans are approved earlier than others will be at a distinct disadvantage. Therefore, it is impossible to provide a detailed response to that portion of the comment. While in the past the Commissioner may have set a uniform implementation date, nothing requires him to do so.

Summary: Transition plans must be treated confidentially by the Commissioner.

Response: The Commissioner agrees. However the Commissioner does not believe it is necessary to change the regulations to incorporate this language. The Commissioner currently includes in the confidential file proprietary and similar information submitted in connection with rate and class plan applications.

Summary: The proposed regulations require the submission of a rate application with a class plan application. It is unclear whether the Commissioner has the right to impose such a requirement.

Response: California Insurance Code Section 1861.05(a) provides that no rate shall remain in effect which is excessive, inadequate, unfairly discriminatory, or otherwise in violation of applicable law. To ensure that rates continue to comply with all applicable statutory and regulatory provisions once revised class plans are proposed, the Commissioner believes submission of a new rate application is necessary and the most efficient and effective way to effectuate this requirement. As Mr. Downer notes in his comments, the proposed revised regulations could result in a revenue change for insurers, and any change should be evaluated in connection with a rate application.

Summary: Not all insurers have the ability to make a rate filing within 30 days of the effective date of the regulations and the Commissioner does not have the resources to timely review and evaluate all of the rate filings. This will lead to delays in the implementation and transition on the part of some companies to the detriment of others.

Response: The regulations at issue in this rulemaking file were the subject of a petition for rulemaking submitted to the Commissioner in March 2003. Since then they have been thoroughly discussed at numerous public discussions and have received considerable press attention. Insurers should have expected their promulgation. The final language was released for public comment on April 26, 2006. Once the rulemaking file is submitted to OAL, OAL has 30 business days to review the rulemaking file. Insurers have 30 days from the date the regulations are filed with the Secretary of State to file new rate and class plan applications. The Commissioner also notes that 21st

Century's comments indicate that it was able to determine a method for complying with the regulations in slightly over 60 days. Therefore, the Commissioner believes insurers have sufficient time to prepare and timely submit their applications. Although the weighting requirement provisions are important, they are only a portion of the class plan regulations. Insurers need not institute a completely new class plan development process. A similar situation exists with respect to rate applications. Insurers routinely file rate applications with the Department. Submitting a new rate application, while it does involve substantial work, is by no means impossible to complete in the time set forth in the regulations. For example, in 2003, the Rate Regulation Branch rate analysts reviewed a total of 649 private passenger automobile applications and all applications received totaled 7,704. The Branch is confident it will be able to timely review applications received pursuant to these regulation changes, and that no insurer will be disadvantaged as a result of delay in Rate Regulation review.

Summary: The current regulations limit insurers' ability to combine rating factors. To allow insurers greater flexibility to implement the revised regulations and to set rates at levels that more accurately reflect the risk of loss, insurers should be allowed to combine rating factors as long as the proposed combination is substantially related to risk of loss.

Response: The commenter previously made the same comment in this rulemaking proceeding. As indicated in the Commissioner's response to that comment, the Commissioner respectfully declines this proposal. Proposition 103 requires insurers to make the mandatory factors the most important factors in establishing an auto insurance rate. The Commissioner is extremely hesitant to permit insurers to combine mandatory or optional factors because of the risk that this practice may dilute the importance of the mandatory factors and threaten the hierarchy of importance set forth by section 1861.02 and Proposition 103.

Summary: Implementation of the proposed changes should be limited to bodily injury and property damage liability rates. It is premature and inappropriate to apply the proposed amendments to physical damage coverage, especially since the Mercer study only analyzed the effect of the proposed changes on bodily injury and property damage coverage.

Response: The commenter previously made the same comment in this rulemaking proceeding. As indicated in the Commissioner's response to that comment, the Commissioner respectfully declines this proposal. Insurance Code section 1861.02(a) provides that "automobile insurance policy" has the meaning described in Insurance Code section 660(a). Section 660(a) provides that a "policy" "means an automobile liability policy, automobile physical damage, or automobile collision policy, or any combination thereof…" Section 660(c) defines physical damage coverage as including "loss or damage to an automobile insured … except loss or damage resulting from collision or upset." Insurance Code section 11580.07 defines comprehensive coverage as "coverage for loss or damage…resulting from a cause other than collision or upset." Thus, the plain reading of the statutes requires that every coverage must comply with the weight ordering requirements of Proposition 103. Based upon the plain meaning of this provision,

therefore, the Commissioner disagrees with the commentator's suggestion that 1861.02(a) should only apply to property damage and bodily injury coverages.

The Commissioner believes that the effect of the proposed regulations upon the bodily injury and property damage coverages will be substantially similar to the effect the proposed regulations will have on other coverages. To the extent that comprehensive coverage bears less of a relationship to the mandatory factors of driving safety record, mileage driven and years of driving experience, the Commissioner has revised the regulations to account for the unique concerns raised by comprehensive coverage. The revision to title 10 California Code of Regulations section 2632.8(a) permits an insurer to combine comprehensive coverage with collision coverage to enhance the proposed regulations' substantial relationship to the risk of loss. The regulatory change which will allow such combination will comply with Proposition 103's weight ordering requirements insofar as comprehensive coverage and collision coverage represent a policy "combination thereof" as described in section 660(a).

Submitted by: Farmers' Insurance Group
Dated: May 17, 2006
Type: Written
Vol. 14 Tab 17

Summary: The comment begins with general background information.

Response: Because this is not a comment on the specifically-proposed regulatory change, a response is not required. Additionally, the Commissioner incorporates herein by this reference his responses to similar comments made elsewhere in this rulemaking file.

Summary: The regulations should include a rate capping procedure to reduce the harm and unfairness policyholders will experience. Proposed text implementing this suggestion is submitted. The procedure allows insurers to limit the rate change experienced by policyholders. Although the proposed phase-in procedure is designed to minimize disruption to policyholders, some policyholders are still likely to receive large premium changes.

Response: The Commissioner declines to adopt a rate capping procedure in these regulations. The Commissioner believes that the transition procedure set forth in section 2632.11(c) allows insurers sufficient flexibility to minimize any negative impact on their policyholders.

Summary: Section 2632.11(c)(4)(b) contradicts section 2632.8(b) because 2632.11(c)(4)(b) requires the use of policies with effective dates no more than six months prior to the effective date of the filing, and section 2632.8(b) allows for the use of a set of insured vehicles published by the Department, which has not been updated within the required time period.

Response: The Commissioner disagrees that these two provisions are contradictory. Section 2632.11(c)(4)(b) is a provision specific to filings submitted during the two-year transition period. Section 2632.8(b) is an unchanged section of these regulations and applies to filings made at other times.

Summary: The Department should update the set of insured vehicles or produce a distribution of average annual mileage that insurers may use in connection with the proposed auto rating factors regulations. Because the Department's proposed regulations providing methods to better project and validate annual mileage have not yet been implemented, the annual mileage data that insurers are able to use for the weight test and correction calculation will not include data developed pursuant to the proposed regulations.

Response: The Department has determined that, at this time, it will not update the set of insured vehicles or produce a distribution of average annual mileage that insurers may use. Annual miles driven is the second mandatory automobile rating factor, as adopted by the voters when they enacted Proposition 103 in 1988. Pursuant to California Insurance Code Section 1861.02(a)(2), insurers should have been collecting annual mileage data since that time. (See also Title 10, Cal. Code Regs. section 2632.15(a)(T).) Therefore, the Commissioner believes the proposal is not necessary.

Summary: The transition plan is strategic company property and should be explicitly treated as such in the regulations.

Response: The Commissioner agrees that the transition plan should be treated as confidential information. However the Commissioner does not believe it is necessary to change the regulations to explicitly so state. The Commissioner currently includes in the confidential file proprietary and similar information submitted in connection with rate and class plan applications. Information regarding transition plans will be treated in the same manner.

Summary: The simultaneous submission of both a rate and class plan application is overly burdensome. Since an insurer is using a currently approved rate, any further rate impact associated with the class plan filing can be offset by adjustments to the base rate, resulting in a revenue neutral change which does not require a rate filing. The Department's intent in requiring a rate filing is unclear.

Response: The Commissioner incorporates herein by this reference his response to similar comments made elsewhere in this rulemaking file.

Summary: Under normal circumstances it would require several weeks to prepare each of a rate filing and a class plan filing. Additional time is needed to review the final regulations to make business decisions regarding class plan changes and implementation. As least 60 days should be provided to make these filings.

Response: The Commissioner disagrees, and notes that 21st Century's comments indicate that it was able to determine a method for complying with the regulations in slightly over 60 days. The regulations at issue in this rulemaking file were the subject of

a petition for rulemaking submitted to the Commissioner in March 2003. Since then they have been thoroughly discussed at numerous public discussions and have received considerable press attention. Insurers should have expected their promulgation. The final language was released for public comment on April 26, 2006. Once the rulemaking file is submitted to OAL, OAL has 30 business days to review the rulemaking file. Insurers have 30 days from the date the regulations are filed with the Secretary of State to file new rate and class plan applications. Therefore, the Commissioner believes insurers have sufficient time to prepare and timely submit their applications.

Summary: It is unwise to make such dramatic changes without a complete understanding of the impact of such changes, but the Department has only considered the impact to bodily injury and property damage coverages. Even though bodily injury and property damage constitute less than half of the total private passenger auto insurance premium written in California every year, the Department did not consider the impact of the proposed changes on the other coverages.

Response: The Commissioner believes that the proposed regulatory changes are required by existing law, and that he appreciates the impact anticipated for other coverages.

Summary: The proposed revisions set forth in the April 26, 2006, version of the regulations are substantial and change the originally proposed regulations. Consequently 45 days' notice and a public hearing should have been provided, as required by California Government Code Sections 11346.4 and 11346.8.

Response: The Commissioner disagrees, because many of the proposed changes were made in response to public comment. Many of the changes involve the transition period, and the Commissioner specifically invited comment on the originally-proposed transition language.

Submitted by: State Farm Mutual Automobile Insurance Company
Dated: May 17, 2006
Type: Written
Vol. 14 Tab 17

Summary: The proposed changes violate Government Code Section 11346.8(c) because they are not merely grammatical or sufficiently related to the original text that the public was put on notice that the change could result from the originally proposed regulatory action. Specifically State Farm objects to the proposed change to section 2632.5(e)

Response: Please see response to comment immediately above. The Commissioner notes that many comments were made regarding combining coverages. Additionally, the Initial Statement of Reasons states that one of the primary purposes for the proposed regulations is to "ensure that no individual optional rating factor adopted by regulation can carry greater importance than the driver's driving safety record, annual miles driven or years of driving experience." A reasonable member of the directly affected public

could have determined that the language added to section 2632.5(e) was necessary to achieve this end. Therefore, the language added to section 2632.5(e) is sufficiently related to the original text and the public was placed on notice that changes regarding the weight applicable to combined factors could reasonably be considered during this rulemaking process.

Summary: The proposed changes violate Government Code Section 11346.8(c) because they are not merely grammatical or sufficiently related to the original text that the public was put on notice that the change could result from the originally proposed regulatory action. Specifically State Farm objects to the provision that if an insurer elects to combine years of driving experience with any other optional factor, the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individually, comply with the regulations' weight ordering requirements.

Response: Please see response set forth immediately above.

Summary: The proposed changes violate Government Code Section 11346.8(c) because they are not merely grammatical or sufficiently related to the original text that the public was put on notice that the change could result from the originally proposed regulatory action. Specifically State Farm objects that it is not able to adequately study and address the change to section 2632.8(a) which combines the weight for the collision and comprehensive coverages, which does not allow the rating factors to maintain their statistical relationship to risk of loss as applied. This simply underscores the artificiality of the weighting proposed in these regulations. The fact that this was never studied adds to the amendment's unforeseeability.

Response: Please see response set forth immediately above.

Summary: The proposed changes violate Government Code Section 11346.8(c) because they are not merely grammatical or sufficiently related to the original text that the public was put on notice that the change could result from the originally proposed regulatory action. Specifically State Farm objects that the filing requirements in section 2632.11 are almost certainly unattainable.

Response: The Initial Statement of Reasons issued in this proceeding in December 2005 indicated the Commissioner intended to revise the class plan submission requirements and specifically invited public comment on an appropriate implementation process. The Commissioner made changes to section 2632.11 after considering all public comments during the initial public comment period. Although State Farm initially appears to object that these changes were not sufficiently related to the original text that the public was placed on notice that the changes might result from the originally proposed regulatory action, the Commissioner respectfully disagrees because he proposed changes to this section in the language originally issued in December and specifically invited comment on alternative implementation language. State Farm's comment later appears to indicate that its objection is to the actual language proposed because the implementation timeframe is not attainable. The Commissioner disagrees. The regulations at issue in this rulemaking file were the subject of a petition for rulemaking

submitted to the Commissioner in March 2003. Since then they have been thoroughly discussed at numerous public discussions and have received considerable press attention. Insurers should have expected their promulgation. The final language was released for public comment on April 26, 2006. Once the rulemaking file is submitted to OAL, OAL has 30 business days to review the rulemaking file. Insurers have 30 days from the date the regulations are filed with the Secretary of State to file new rate and class plan applications. Therefore, the Commissioner believes insurers have sufficient time to prepare and timely submit their applications. The Commissioner also notes that 21st Century's comments indicate that it was able to determine a method for complying with the regulations in slightly over 60 days.

Summary: Additional comments were submitted on behalf of State Farm by Jay Hieb. His comments begin with background information.

Response: These comments are not specifically directed to the proposed changed regulation text or to the procedures followed in proposing the revised regulation text; a specific response is not required.

Summary: Changes to section 2632.5 have been made the subject of a separate rulemaking proceeding. However, those changes will not fix the inherent flaws in this rulemaking file.

Response: The mileage verification changes proposed in section 2632.5 relate to the second mandatory factor of annual miles driven. However, those changes are not specifically related to this rulemaking file. The changes proposed in that rulemaking proceeding set forth methods for determining estimated annual mileage. Contrary to the possible implication in this comment -- that additional mileage categories do not necessarily significantly add to the amount of weight calculated for annual mileage – nothing in the other rulemaking proceeding requires additional mileage categories. Therefore, because that rulemaking proceeding involves a different issue than this rulemaking proceeding, comments related to that rulemaking proceeding do not require a response in this rulemaking proceeding.

Summary: The regulation precludes combination of Years Driving Experience with any other factor for purposes of calculating "weight", although that factor is used in combination with other factors. In the past, the Department has permitted calculation of weight looking at the combination of factors as they are used. This proposal constitutes a sudden and complete change, which was never suggested in the prior Notice.

Response: Like the other changes made in connection with this rulemaking proceeding, this clarification ensures that the weight of the mandatory rating factors align in decreasing order of important so that driving safety record has the most weight, followed by annual miles driven, followed by years of driving experience, followed by each individual weight of each optional factor. This change is merely a clarification to ensure that all of the optional rating factor weighting regulations are consistent.

Summary: Time permitting, State Farm would study the practical applications of the proposed change on the rates of policyholders. State Farm is concerned that the Department does not fully realize the impact of this change.

Response: As indicated in the response immediately above, the Department believes that this language is necessary to ensure compliance with the weighting requirement provisions of Proposition 103. The Department believes that it does understand the impact of the proposed language.

Summary: The new language constricts an insurer's ability to select "tempering" versus "pumping" to comply with the weighting requirements, limiting an insurer's flexibility and ability to minimize dislocation.

Response: It is unclear which language the commenter believes results in the restriction on an insurer's ability to select tempering versus pumping. In fact, language added to the regulation text specifically provides that "if two rating factor weights are not in the order specified in this section, the subject company shall have the right to increase or decrease the weight of either factor to achieve compliance. This right shall apply to both the optional rating factors and the mandatory rating factors. Therefore, the Department has not made further changes to the regulations in response to this comment.

Summary: Together with the changes proposed in rulemaking file no. RH06091489, it appears that the Department has chosen to push insurers to place significantly more emphasis on annual mileage. However, that does not give annual mileage more importance because it distorts the relationship between annual mileage and risk of loss. Those who drive more will pay rates higher than justified to subsidize the rates for those who drive less. On average, annual mileage will be given nearly twice as much weight if the calculation of weight for annual miles driven is redefined.

Response: Rulemaking file no. RH06091489 simply sets forth the manner in which insurers may determine a policyholder's estimated annual miles driven. It does not address the weight insurers place on annual miles. Pursuant to the provisions of California Insurance Code Section 1861.02(a), rates and premiums for an automobile insurance policy shall be determined by application of the following factors, in decreasing order of importance: (1) the insured's driving safety record, (2) the number of miles he or she drives annually . . . . Therefore, the statute requires that annual miles driven be the second-most-important factor in determining automobile insurance rates.

Summary: The Department appears to be improperly relying on Template 8 from the Mercer study. Arbitrary rate increases or decreases are not appropriate.

Response: The Commissioner believes, as set forth elsewhere in this rulemaking file, that the proposed changes are required by the provisions of Proposition 103 which provide that weights and premiums for an automobile insurance policy shall be determined primarily by one's driving safety record, annual miles driven, and years of driving experience, rather than optional factors such as where one lives. The proposed regulations will not result in arbitrary rates.

Summary: The new weight requirements are likely to create an even greater disconnect between rating factors and risk of loss for coverages other than BI/PD because the mandatory rating factors consider risk in terms of accidents, and do not relate to risk for other types of risks insured against, such as comprehensive, and uninsured/underinsured motorist coverage. The proposed weight requirement increases the dislocation between the rating factor and risk of loss, contrary to the requirement that rating factors bear a substantial relationship to risk of loss.

Response: California Insurance Code Section 1861.02 provides that rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined in a specified manner. California Insurance Code Section 660(a) defines "policy" to mean an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof. Therefore, the rating provisions of section 1861.02 must apply to these coverages. The Commissioner believes that the proposed regulations balance the requirements of the statute with appropriate actuarial considerations.

Summary: Combining weights for collision and comprehensive coverages appears to be in response to earlier State Farm comments. But combining two sets of distortions to rate relativities does not result in rates substantially related to risk of loss, even if the impact of weight tends to drive the relativities in different directions for the different coverages. Since the distortions going in one direction are not related to the distortions going in the other, they do not balance out. If the goal is to strengthen provisions of the regulations that relate to risk of loss, the regulation should not apply to comprehensive coverage. This change to the regulation has not been sufficiently studied and unforeseen and arbitrary consequences may result.

Response: Claims for vehicle theft or vandalism generally fall under an insurance policy's comprehensive coverage. Claims under that coverage may have limited correlation to the mandatory rating factors. To the extent that comprehensive coverage bears less of a relationship to the mandatory factors of driving safety record, mileage driven and years of driving experience, the Commissioner has revised the regulations to account for the unique concerns raised by comprehensive coverage. Title 10 California Code of Regulations section 2632.8(a) permits, but does not require, an insurer to combine comprehensive coverage with collision coverage to enhance the proposed regulations' substantial relationship to the risk of loss. However, the Commissioner does not believe he can exempt comprehensive coverage from the provisions of these regulations.

Summary: The compliance plan set forth in section 2632.11 is new and could not have been anticipated. It is unlikely that State Farm will be able to comply with the 30 day filing requirement.

Response: The originally noticed regulatory text included language regarding the filing of class plans pursuant to the new regulations. The Initial Statement of Reasons specifically stated that "the proposed regulations require each insurer to revise its class plan in order to bring the insurer's rating factors into compliance with the weight

ordering mandate required under the new regulations. In order to ensure that the Commissioner's regulatory changes are implemented in a fair and consistent manner, the Commissioner proposes to revise the class plan submission requirements in California Code of Regulations, title 10, section 2632.11 ("section 2632.11"). The Commissioner invites public discussion regarding the appropriate timeline and process for implementation of the weight ordering mandate in section 2632.8. The timeline and process will ensure a gradual and careful method for carrying out the proposed regulatory changes. The Commissioner invites public comment regarding the best way to ensure that insurers' class plan changes to the rating factor weights are applied to the public in a structured, fair and uniform manner." Therefore, the Commissioner disagrees that the language in proposed section 2632.11 could not have been anticipated. The Commissioner also disagrees that 30 days provides insufficient time in which to submit filings. The regulations at issue in this rulemaking file were the subject of a petition for rulemaking submitted to the Commissioner in March 2003. Since then they have been thoroughly discussed at numerous public discussions and have received considerable press attention. Insurers should have expected their promulgation. The final language was released for public comment on April 26, 2006. Once the rulemaking file is submitted to OAL, OAL has 30 business days to review the rulemaking file. Insurers have 30 days from the date the regulations are filed with the Secretary of State to file new rate and class plan applications. Therefore, the Commissioner believes insurers have sufficient time to prepare and timely submit their applications. The Commissioner also notes that 21st Century's comments indicate that it was able to determine a method for complying with the regulations in slightly over 60 days. Although the weighting requirement provisions are important, they are only a portion of the class plan regulations. Insurers need not institute a completely new class plan development process.

Summary: The concept of 15% compliance does not make sense in this context. Selections made for the first filing could be different than, or even contrary to, selections made for subsequent filings. Additionally, the change to calculating weight for the third mandatory factor causes more than a 15% change. Thus, it is unlikely that dislocation will be minimized. The revised weight calculation increases the amount of dislocation.

Response: The Commissioner believes that the current phased-in implementation process provides important flexibility to insurers to implement the changes in a way most appropriate for and applicable to their own book of business. The Commissioner is confident that insurers will exercise good faith in implementing the regulations.

Summary: Using a set of policies with effective dates no more than six months prior to the date of the filing causes additional implementation issues and is an unnecessary limitation on the data insurers have available to make their filings. A one-year, rather than six-month, timeframe is more realistic for class plans voluntarily submitted.

Response: The Commissioner believes that these calculations must be made based upon recent data, and determined that policies having an effective date no more than six months before the date of filing allows for use of recent data and still allows use of a sufficient number of policies to make a reasonable calculation.

Submitted by: American Insurance Association, Association of California Insurance Companies, Personal Insurance Federation of California
Dated: May 17, 2006
Type: Written
Vol. 14 Tab 17

Summary: The comment begins with introductory, summary, and background remarks.

Response: Because this is not a comment on the proposed regulations or the procedures followed, as indicated elsewhere in this rulemaking file, a specific response is not required.

Summary: The revised regulations do not satisfy the necessity and authority tests. The Department has provided no data regarding the impact of the revised regulations.

Response: The Commissioner believes the revised regulations are necessary to satisfy the explicit statutory provisions and intent of Proposition 103, enacted by the voters in 1988. The proposed regulation would implement the provisions of Proposition 103 which require that rates and premiums for an automobile insurance policy shall be based primarily upon an insured's driving record, miles driven annually, and years of driving experience, rather than the area where a policyholder lives. The Commissioner has determined that the existing regulation is not consistent with either the express language of Section 1861.02(a) or the stated purposes of Proposition 103. The Commissioner believes that the proposed regulation correctly implements the requirements of Proposition 103 that automobile insurance rates shall be determined primarily by a drivers' safety record and mileage driven, which under section 1861.02(a) are to be more important in determining automobile insurance rates than the location of the driver's residence. The existing regulations require that the weight for all of the optional rating factors shall be averaged together. The average cannot be greater than the weight of the third mandatory factor. However, by definition, this means that an individual optional rating factor can, and frequently does, weigh more than one of the three mandatory factors. Thus the Commissioner believes that the existing regulations do not lawfully implement the requirements of section 1861.02(a)

Summary: Section 2632.5(c) describes how years driving experience may be combined with certain optional factors, but provides insufficient flexibility and does not provide for rates which more accurately reflect the risk of loss. Insurers should be permitted to combine the mandatory factors with both optional or other mandatory factors if the insurer can demonstrate that the proposed combination is substantially related to risk of loss. The Department does not have authority to limit an insurer's ability to more accurately reflect the risk of loss.

Response: The Commissioner has not adopted this suggested change. Proposition 103 requires insurers to make the mandatory factors the most important factors in an auto insurance rate. Allowing insurers to combine mandatory and optional factors could result

in one or more optional factors outweighing a mandatory factor, contrary to the weight ordering provisions of Proposition 103.

Summary: The revision to section 2632.8 adds language regarding combining coverage to calculate factor weights. However, any changes to these regulations should be limited to bodily injury and property damage liability rates, since that was the focus of the Mercer report. Any action to impose the requirements on physical damage coverage is premature and inappropriate and lacks necessity and authority

Response: In response to earlier comments, the revised regulations allow insurers to combine bodily injury coverage with property damage coverage, and comprehensive coverage with collision coverage. California Insurance Code Section 1861.02 provides that rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined in a specified manner. California Insurance Code Section 660(a) defines "policy" to mean an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof. Therefore, the rating provisions of section 1861.02 must apply to automobile liability, physical damage, and collision coverages. The Commissioner lacks authority to allow some of these coverages to be rated in a different manner.

Summary: The 30-day time frame set forth in section 2632.11 is unreasonable and lacks necessity and authority. It is especially unreasonable if every class plan must be accompanied by a rate filing. The revision requires submission of a rate application with a class plan application, which is unclear because it could be read to mean that every class plan must be part of a rate plan filing which is unreasonable and unnecessary when class plan changes are revenue neutral. It is unreasonable to expect insurers to prepare rate filings 30 days after the regulations are adopted, and it is difficult to imagine how the Department can handle that many filings in compliance with the statutory time frames.

Response: The Commissioner does not believe it is unreasonable to require insurers to file class plans within 30 days of the effective date of these regulations. As indicated elsewhere in this rulemaking file in response to similar comments, the petition for rulemaking which instituted this proceeding was submitted in March 2003, and these issues have been the subject of much discussion since then. The Commissioner notes that 21st Century's comments indicate that it was able to determine a method for complying with the regulations in slightly over 60 days. The Commissioner is authorized to set a deadline by which insurers must submit filings which comply with the revised regulations, and it is necessary to ensure that insurers comply with the mandates of Proposition 103 in as timely a manner as possible. The Commissioner believes that a rate application must accompany the class plan application because California Insurance Code Section 1861.05 provides that the Commissioner shall ensure that rates continue to meet the statutory standards. As Mr. Downer notes in his comments, the proposed revised regulations could result in a revenue change for insurers, and any change should be evaluated in connection with a rate application. Requiring the filing of a rate application is the most expeditious way to do so. Because insurers routinely file rate change applications, the Commissioner believes insurers are in a position to submit applications

within 30 days of the date the regulations are filed with the Secretary of State. The department is prepared to timely review the submitted applications.

Summary: The filing requirements impose costs on insurers, particularly small insurers, and those costs will be passed on to consumers.

Response: The Commissioner recognizes that there are costs associated with the filing of rate and class plan applications, and that those costs are passed on to consumers. However, Proposition 103 dictates this result.

Summary: As proposed, the regulations result in an unlevel playing field, since a uniform implementation date is not set forth. This is also contrary to past Department practices. The two-year transition plan is particularly problematic for insurers writing 12 month policies.

Response: The Commissioner believes the implementation, as proposed, provides desirable flexibility for insurers. Although the Department may have set forth a uniform implementation date for past changes, nothing requires a uniform implementation date. Details were not provided regarding insurers issuing 12-month policies. Therefore, a specific response to this comment cannot be provided.

Summary: Transition plans must be treated confidentially. A confidentiality provision should be added to the regulations.

Response: As stated elsewhere in this rulemaking file, the Commissioner agrees that transition plans should be treated as confidential. However, the Commissioner does not agree that such a provision is required in the regulations.

Summary: Section 2632.11(c)(1) is unclear as to when insurers must actually comply. Requiring approval and implementation within two years is a harsh and unreasonable approach, and lacks necessity and authority. Because class plans must be implemented within 90 days of approval, an insurer must make its final filing many months before the deadline.

Response: The Commissioner believes that section 2632.11(c)(1) is clear in stating that insurers must be in full compliance with section 2632.8 within two years of the date the amended regulations are filed with the Secretary of State, but this is not harsh and unreasonable. The regulations implement reforms which the voters enacted approximately 18 years ago. Allowing the final class plan to be filed two years after the regulations become effective further delays implementation of this required reform.

Summary: The revision requires insurers to perform the weight test and correction calculation using policies with effective dates no more than six months prior to the date of filing. Existing regulations, not changed by this proposal, allow for use of a Department data set, which has not been updated and therefore cannot be used. The Department should update its data file.

Response: Whether the data set should be updated is beyond the scope of the proposed amendments set forth in this rulemaking file. Therefore a specific response is not required. The Commissioner incorporates herein his response to similar comments made elsewhere in this rulemaking file.

Summary: The regulations are not easily understood by those directly affected by them. Because there is no evidentiary basis to explain the impact of the changes, the proposed regulations violate the clarity and adverse economic impact standards. It is likely that the proposed regulations will result in endless hearings since opponents could argue the class plan does not comply with the regulations, resulting in an adverse economic impact.

Response: As indicated elsewhere in this rulemaking file, because each insurer has numerous options available as to how it chooses to implement the regulations, it is impossible to predict the impact the regulations will have on a specific policyholder, especially since a policyholder can choose to purchase coverage from any one of hundreds of insurers. The commenter apparently misunderstands the meaning of the clarity standard, which requires that a regulation is written or displayed so that the meaning is easily understood by those persons directly affected. Insurers are easily able to understand what is required in order to comply with the regulations. The statement that the proposed regulations are likely to result in endless hearings is mere speculation and no basis is provided for the statement. Therefore, a specific response is not required. Class plans will not be set for hearing unless there is reason to do so.

Summary: Section 2632.8 should be revised to specify that the weights of the frequency and severity factors need not be less than the other optional factors.

Response: The Commissioner does not believe the added language in section 2632.8(d) can reasonably be interpreted to mean that the frequency and severity weights must be less than the other factors. The new language in 2632.8(d) was in response to public comment and is designed to specify that insurers may increase or decrease weights to ensure the correct weight order.

Summary: Section 2632.11 requires the transition plan to consist of at least two annual class plan filings, and an insurer may choose to achieve full compliance prior to the end of the two-year period, which is ambiguous. Also, it should be made clear whether an insurer may comply with the regulations by making one filing that seeks approval of future class plan changes at one time. And it is unclear what standards will be applied to filings pending when the regulations are approved.

Response: The Commissioner does not believe this is ambiguous. An insurer may, for example, make a filing within 30 days of the date the regulations are filed with the Secretary of State, and make a second filing one year later, but implement the second filing six months after the filing was made, which would be before the end of the two-year period. Existing regulation 2632.11(c) provides that class plans shall be implemented 90 days after they are approved. This requirement is continued in section 2632.11(d), which provides that any class plan change approved by the Commissioner

shall be implemented no later than 90 days after the date the plan is approved by the Commissioner. Therefore, an insurer may not make a filing which contemplates implementation on a date later than 90 days after approval. A filing including weighting methodology changes not in compliance with the new regulations will be superseded by the new regulations, and a new class plan would be required.

Summary: The revised regulations do not meet the consistency standard because they conflict with the court's decision in *Spanish Speaking Citizens Foundation v. Low.*

Response: As stated elsewhere in this rulemaking file, the proposed regulations do not conflict with the court's decision.

Summary: The changes proposed in the April 26, 2006, notice violate the requirement that the public must be given an opportunity to comment on proposed regulations at a public hearing. The April 26 changes are substantial and not related to the original text, including the changes to section 2632.5.

Response: The language cited in section 11346.8(c) does not require a public hearing. The changes are sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action; a 15-day notice is required and was provided. Changes were made to section 2632.5 in response to earlier public comments.

Summary: Earlier comments regarding the court's decision are repeated. The use of 20 frequency and severity bands does not prevent arbitrary rates.

Response: The Commissioner incorporates herein his responses to similar comments elsewhere in this rulemaking file. The Commissioner increased the number of frequency and severity bands in response to public comments, and believes this change allows insurers more flexibility to ensure rates and premiums are not arbitrary.

Summary: The comment summarizes comments made by Mr. Downer. He believes the April 26 revisions do nothing to relieve or eliminate the unfair and inappropriate pricing in the proposed regulations. The proposed regulations are not necessary, lack authority, and are inconsistent with the statutory provisions they seek to implement. Rates will be unfair, arbitrary, and create subsidies. They will result in large and unjustified and actuarially unsound rate changes. They impose unjustified limitations on reflecting territory in the price of automobile insurance. Drivers in lower risk areas will see rate increases to subsidize rate decreases for drivers in high risk areas. Increasing the number of rating bands does not eliminate the arbitrariness or unfairness. The regulations are proposed without the development of any specific data, findings, or study addressing the impact of the revisions. The filing and timing mandates will have severe adverse implications and cause market disruption.

Response: Please see response to the actual comments made by Mr. Downer, which can be found elsewhere in this rulemaking file.

Summary: The commenter summarizes the comments in a conclusion.

Response: Please see the response to the same comments elsewhere in this rulemaking file.

Summary: In the opinion of actuary Robert Downer, the April 26 modifications do not relieve or eliminate the substantial unfair and inappropriate pricing in the proposed regulations. A portion of his March 6 comments are repeated.

Response: Please see the response to Mr. Downer's March 6 comments elsewhere in this rulemaking file.

Summary: The April 26 revisions will cause substantial and unwarranted market disruption and rate changes for nearly every driver in the state unwarranted by the risk characteristics of the drivers.

Response: Please see response to similar comments included elsewhere in this rulemaking file. The Commissioner believes that insurers will implement the regulations in good faith, in a fair and equitable manner, which is fair to all policyholders. Until specific insurers make their class plan filings, speculation about what might happen is merely that.

Summary: Mr. Downer repeats language found in Section 5 of his March 6 comments.

Response: Please see response to those comments elsewhere in this rulemaking file.

Summary: Although the April 26 revision clarifies that insurers may either pump or temper weights, the rates produced are still actuarially unsound and unfair.

Response: As indicated elsewhere in this rulemaking file, the Commissioner believes that actuarial principles must give way to applicable statutory requirements. The Commissioner disagrees that the proposed regulations will result in actuarially unsound and unfair rates.

Summary: Mr. Downer repeats the comments he made on March 6 regarding the importance of territory in pricing.

Response: The Commissioner incorporates by this reference his response to those comments made elsewhere in this rulemaking file, and notes that territory can continue to have significant weight under the proposed regulations.

Summary: The April 26 version of the proposed regulations do not incorporate changes which would allow territory to be fairly reflected in the price of automobile insurance and result in rates which are unfair and arbitrary. Drivers in lower risk areas will see rate increases which subsidize rate decreases for drivers in higher risk areas.

Response: These comments regard changes which Mr. Downer believes should have been made to the text of the regulations but which were not. Therefore, this is not a comment on the changes made in the April 26 version of these regulations. A response,

therefore, is not required. However, the Commissioner incorporates herein his response to similar comments elsewhere in this rulemaking file.

Summary: The Department has failed to provide a study which fully analyzes the market disruption that will result from the April 26 version of the proposed regulations. Mr. Downer repeats the conclusions he set forth in sections 7 and 8 of his March 6 comments.

Response: To the extent Mr. Downer repeats the comments he made on March 6, the Commissioner incorporates his response found elsewhere in this rulemaking file. The Commissioner also notes that further study is not required and that the proposed changes are required by the provisions of Proposition 103.

Summary: Mr. Downer again summarizes (at pages 5 and 6 of his comments) the adverse consequences that he believes result from large and widespread unfair and arbitrary rate changes and which he set forth in his March 6 comments.

Response: The Commissioner incorporates herein by this reference his response to those comments made in connection with Mr. Downer's March 6 submission.

Summary: The filing and timeline provisions of the April 26 regulations are difficult for insurers and will limit the analysis a company is able to perform.

Response: The regulations at issue in this rulemaking file were the subject of a petition for rulemaking submitted to the Commissioner in March 2003. Since then they have been thoroughly discussed at numerous public discussions and have received considerable press attention. Insurers should have expected their promulgation. The final language was released for public comment on April 26, 2006. Once the rulemaking file is submitted to OAL, OAL has 30 business days to review the rulemaking file. Insurers have 30 days from the date the regulations are filed with the Secretary of State to file new rate and class plan applications. Therefore, the Commissioner believes insurers have sufficient time to fully analyze and prepare their applications. The Commissioner also notes that 21st Century's comments indicate that it was able to determine a method for complying with the regulations in slightly over 60 days.

Summary: It is difficult to understand why a rate filing is necessary.

Response: California Insurance Code Section 1861.05(a) provides that no rate shall remain in effect which is excessive, inadequate, unfairly discriminatory, or otherwise in violation of applicable law. To ensure that rates continue to comply with all applicable statutory and regulatory provisions once revised class plans are proposed, the Commissioner believes submission of a new rate application is necessary and the most efficient and effective way to effectuate this requirement. As Mr. Downer notes in his comments, the proposed revised regulations could result in a revenue change for insurers, and any change should be evaluated in connection with a rate application.

Summary: It will be difficult for the Department to review all of the submissions and to ensure that some files are not approved and implemented which are either non-compliant or in error.

Response: The Department is confident that it will be able to review all applications in an appropriate manner.

Summary: The proposed regulations allow companies to make multiple class plan filings each year, and companies may revise their class plans after reviewing the filings made by competitors. The result would be more rate changes for policyholders, more filings for the Department to review, and more market disruption.

Response: The Commissioner notes that, contrary to other comments made in connection with this rulemaking, this comment demonstrates that insurers can readily file class plan applications when they believe it is in their benefit to do so. The Commissioner also notes that the existing regulations allow companies to make multiple class plan filings each year, and that companies may now revise their class plans after reviewing the class plan filings of competitors. The Commissioner notes that this was one of the goals of Proposition 103.

Summary: Mr. Downer supports the increase in the number of frequency and severity bands, but states that this change does not eliminate the unfair pricing resulting from the regulations.

Response: To the extent the comment supports the change, a response is not required. To the extent the comment reiterates Mr. Downer's comments regarding unfair pricing, the Commissioner incorporates his response to similar comments found elsewhere in this rulemaking file.

Summary: The two-year phase in does not reduce or eliminate the unfair and arbitrary rates which the regulations will cause, but simply spreads it out over two years.

Response: The Commissioner incorporates by reference his response to other comments alleging that the regulations will result in unfair and arbitrary rates.

Submitted by: 21st Century Insurance Company
Dated: May 17, 2006
Type: Written
Vol. 14 Tab 18

Summary: The comment begins with general background information and a summary of the comment. The comment also includes a copy of a Department press release.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, no response is necessary. (Government Code Sections 11346.9 and 11346.8(c).)

Summary: The change proposed to section 2632.8(a) allows combining bodily injury with property damage and comprehensive with collision. However, a study performed by 21st Century shows an insignificant premium impact when bodily injury and property damage coverages are combined. The same would be true for combining comprehensive and collision coverages.

Response: The change which allows coverages to be combined was made in response to public comments. The Commissioner believes that, even if the premium impact is limited, this change is appropriate for the reasons set forth elsewhere in this rulemaking file. This provision allows insurers greater flexibility and increases the relationship to risk of loss.

Summary: Combining coverages does not create a closer relationship to the risk of loss. The cost results from the requirement that territory have a lower weight than any of the mandatory factors.

Response: The requirement that territory have a lesser premium impact is set forth in California Insurance Code Section 1861.02, and the Commissioner's regulations must comply with the statutory mandate.

Summary: 21st Century does not oppose increasing the number of rating bands and would support an unlimited number of rating bands. However, this change does not impact whether rates are substantially related to risk of loss. The weight of territory is reduced in relation to the mandatory factors, and rates are not substantially related to risk of loss.

Response: As previously stated, the statute requires that the weight of territory be less than the weight of the three mandatory factors. Therefore, the proposed regulatory change is required by the language of Proposition 103. To the extent the commenter supports the proposed regulatory change, a further response is not required.

Summary: However, 20 bands are far too few to smooth the differences between adjacent territories in California. Moreover, the proposed regulations do not require that adjacent territories be assigned rating bands that ensure the minimal premium difference. Rating bands should be assigned to reflect the loss experience in a particular territory. Because the weight of territory will be reduced, the increase in rating bands will have minimal practical impact.

Response: The language in the existing regulations, which is not changed in this proceeding, provides that the factor of relative claims frequency is based on grouping areas of the state into bands containing areas with similar average claims frequency; the factor of relative claims severity is based on grouping areas of the state into bands containing areas with similar average claims severity. Increasing the number of frequency bands from 10 to 20 allows insurers up to 400 frequency and severity bands The Commissioner believes 400 frequency and severity bands allows insurers sufficient flexibility to group similar risks together. Allowing more rating bands means that insurers can minimize the differences between bands because, by definition, similar risks

can be combined and the disparity at the boundaries of the rating bands is minimized. Although territory can still have a significant impact on the premium a policyholder pays, Proposition 103 mandates that territory can not have a more important premium impact than any of the three mandatory factors.

Summary: The commenter notes that the language in section 2632.8(d)(4)confirms the insurer's ability to pump or temper particular factors to achieve compliance.

Response: The Commissioner agrees that this language is merely a clarification of the existing regulation, which was made in response to public comment that it be included.

Summary: The comment includes a declaration of Allen Lew, which begins with background information.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, no response is necessary. (Government Code Sections 11346.9 and 11346.8(c).)

Summary: Proposed changes would allow insurers to combine bodily injury and property damage, and comprehensive and collision coverage. However, this has a negligible effect on dislocation to policyholders because most policyholders purchase both coverages. Exhibit A shows the disclocation by county, while Exhibit B shows the result by zip code. Specific examples are cited. Exhibit C shows the impact on various categories of drivers. The practical effect of combining the coverages for purposes of determining the weights is simply to average the weights.

Response: This language was added in response to public comments, and, as indicated elsewhere in this rulemaking file, the Commissioner believes it will enhance the relationship to risk of loss as set forth in the regulations.

Summary: Increasing the number of rating bands is positive, but it will not have a significant impact on the dislocation which will result from the proposed regulations because the regulations require suppression of the weight of territory. It will also not affect the perception that rates are different for policyholders who live across the street from one another. There is no guaranty that there will be a smoother gradation between a high risk territory and a low risk territory.

Response: The Commissioner believes that it is the statute, not the regulations, which require that territory not have a greater premium impact than any of the three mandatory rating factors. Under both the statute and the regulations, territory can be the fourth most important factor in determining rates and premiums for an automobile insurance policy. Therefore, territory is still significant. While loss costs in two contiguous territories may differ, the Commissioner believes that allowing for a greater number of territories will allow insurers to group locations in a manner more closely resembling their experience. Moreover, the Commissioner is confident that insurers will implement the regulations in good faith, in a manner that benefits their policyholders.

Summary: Although it believes the ability of an insurer to pump or temper both mandatory and optional factors will have no impact on dislocation to policyholders, the commenter supports this provision.

Response: Because this comment supports the proposed regulatory change, a specific response is not required.

Summary: The transition period does not change the fact that the proposed regulations artificially suppress the weight of territory in a manner not substantially related to the risk of loss.

Response: As indicated elsewhere in this rulemaking file, the Commissioner believes the proposed changes are required by the provisions of Proposition 103 and do not artificially suppress the weight of territory in a manner not substantially related to risk of loss. Insurers may still use both claims frequency bands and claims severity bands in the rate setting process, and territory can be the fourth most important factor in setting rates and premiums.

Submitted by: USAA
Dated: May 10, 2006
Type: Written
Vol. 14 Tab 10

Summary: If an insurer achieves compliance with the regulations within the first year, will the company be required to make a class plan filing in the second year?

Response: An indicated in section 2632.11(c)(8), an insurer may choose to achieve full compliance at any date prior to the end of the two-year transition period.

Summary: The requirement that class plans be submitted within 30 days of the effective date of the new regulations may not provide sufficient time to prepare a rate and class plan filing, which are both complex and time-consuming to compile.

Response: The regulations at issue in this rulemaking file were the subject of a petition for rulemaking submitted to the Commissioner in March 2003. Since then they have been thoroughly discussed at numerous public discussions and have received considerable press attention. Insurers should have expected their promulgation. The final language was released for public comment on April 26, 2006. Once the rulemaking file is submitted to OAL, OAL has 30 business days to review the rulemaking file. Insurers have 30 days from the date the regulations are filed with the Secretary of State to file new rate and class plan applications. Therefore, the Commissioner believes insurers have sufficient time to prepare and timely submit their applications. The Commissioner also notes that 21st Century's comments indicate that it was able to determine a method for complying with the regulations in slightly over 60 days. Although the weighting requirement provisions are important, they are only a portion of the class plan regulations. Insurers need not institute a completely new class plan development process. A similar situation exists with respect to rate applications. Insurers routinely file rate

applications with the Department. Submitting a new rate application is by no means impossible to complete in the time set forth in the regulations

Summary: Section 2632.11(c)(4)(B) requires use of a set of policies with effective dates no more than six months prior to the date of filing. However, data based on policy effective date is more difficult to collect than in force data. This will increase the lead time required to receive the data and shorten the already brief review period. Only data on the policies renewing at the beginning of the six-month period would be available, since the calculations must be completed before filing. While it is important to use recent data, in force data that is no more than nine months old should be sufficient.

Response: The Commissioner believes that these calculations must be made based upon recent data, and determined that policies having an effective date no more than six months before the date of filing allows for use of recent data and still allows use of a sufficient number of policies to make a reasonable calculation.

Submitted by: Consumers Union of United States, National Council of La Raza, Southern Christian Leadership Conference of Greater Los Angeles, Spanish Speaking Citizens' Foundation, Foundation for Taxpayer and Consumer Rights, City of Los Angeles, City of Oakland, and City and County of San Francisco
Dated: May 17, 2006
Type: Written
Vol. 14 Tab 19, 20, 21

Summary: The comment begins with introductory remarks and summarizes the regulatory changes. The proposed regulations should be implemented in as expeditious a manner as possible. The Commissioner should not delay final adoption and implementation of proposed section 2632.8.

Response: Because this is not a comment specifically directed at the Commissioner’s proposed revised regulations or to the procedures followed in proposing the revised regulations, no response is necessary. (Government Code Sections 11346.9 and 11346.8(c).)

Summary: Although many of the proposed changes specify the elements of a phase-in process, no phase-in plan is warranted because consumers are entitled to enforcement of Insurance Code Section 1861.02(a) now. However, if a phase-in plan were warranted, the first phase should require more than merely 15% relief. Without careful monitoring by the Department, insurers may be able to delay providing full relief.

Response: The comment indicates that some of the proposed changes in regulatory text may allow insurers to delay providing full relief, but that language is not specified. The Department intends to carefully monitor and ensure compliance, and disagrees that the proposed language allows insurers to delay. The Commissioner believes that a two-year phase-in with an initial 15% compliance strikes an appropriate balance between allowing insurers a reasonable opportunity to implement the proposed changes, consistent

with the best interests of their policyholders, while at the same time ensuring that these required reforms are implemented quickly.

Summary: The proposed phase-in plan may allow insurers to manipulate the amount of initial relief provided, as described in the comment. The Department should preclude this potential in its instructions to insurers and in its review of class plan filings.

Response: As indicated above, the Commissioner believes the proposed phase-in plan strikes a reasonable balance among competing interests. The Commissioner is confident that the Department's review will ensure that insurers do not manipulate the phase-in process.

Summary: Allowing insurers to combine comprehensive and collision coverages creates the potential for manipulation which the Department must guard against. Exhibit JRH-1 illustrates that insurers give different factors greater weight depending upon whether the coverage is comprehensive or collision. The Department should ensure that, if considered separately, no individual optional factor would have greater weight than any mandatory factor, similar to the recognition set forth in section 2632.5(e)

Response: The Department will carefully review all class plan applications to ensure that they comply with the revised regulations.

Summary: The comment ends with a conclusion supporting the proposed regulations and urging the Commissioner to ensure that insurers implement compliant class plans during 2006.

Response: To the extent the comment supports the proposed regulations, a specific response is not required. To the extent the comment discusses the timeline for implementation, the timeline is set forth in the proposed regulations.

Summary: The comment includes a declaration of Allan Schwartz, which begins with background information about Mr. Schwartz. Mr. Schwartz's qualifications are also set forth at the conclusion of his declaration and in Appendix A.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, no response is necessary. (Government Code Section 11346.9 and 11346.8(c).)

Summary: Mr. Schwartz analyzed California private passenger automobile profit and loss experience through and including 2005 in connection with the position of the commenters that based on the high level of insurance company profitability in California, rate reductions may be warranted and no phase-in of the proposed regulations is necessary.

Response: As indicated elsewhere in this rulemaking file, the Commissioner believes that a transition period is necessary for implementation of these regulations. The regulations require the filing of a rate application with an insurer's class plan application

to allow for a full evaluation of an insurer's current experience in connection with review of an insurer's proposed class plan changes.

Summary: Mr. Schwartz reviewed specified experience for private passenger automobile insurance in California during the period 1992 – 2005. He concludes that for 1992 – 2005, California combined operating profit as a percent of premium was 10.6%, and the California operating profit dollar amount for 1992 – 2005 was $20.5 billion. The numbers for 2004 were 13.7% and $2.6 billion; for 2005 they were 15.5% and $2.9 billion. Mr. Schwartz believes that the 2004 and 2005 numbers are higher than a reasonable value and indicate excessive profits. The dollar amount of operating profit for 2004 and 2005 were the highest during the entire time period. The increasing profitability is primarily attributable to decreasing losses and loss adjustment expenses as a percentage of premium. Mr. Schwartz provides further elaboration on these numbers.

Response: While the Commissioner agrees that insurer experience has been favorable in the private passenger automobile line, the Commissioner notes that this comment is not specifically addressed to the changes proposed in the regulation text as noticed on April 26, 2006. Therefore, a specific response is not required.

Summary: Mr. Schwartz examined the experience of individual insurers to determine if a few companies were distorting the results. A review of the experience of ten of the large writers indicated that the overall insurance market in California is profitable. The results are set forth in a chart on page 5 of the declaration.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, a specific response is not required.

Summary: According to Mr. Schwartz, insurers' increasing profits are the result of rate increases and favorable loss cost trends, as described, which he expects to continue. Accordingly, it would be appropriate to implement rate reductions.

Response: Because class plan filings are revenue neutral, an overall rate reduction would be implemented through a rate application, not a class plan application. The Department will review insurers' overall rate level need when reviewing the rate applications required by these proposed regulations. However, to the extent this is not a comment specifically directed at the Commissioner's proposed revised regulations, or to the procedures followed in proposing the revised regulations, a specific response is not required.

Summary: Mr. Schwartz's declaration includes 22 pages of charts and graphs substantiating his findings as set forth in his declaration.

Response: In response, the Commissioner incorporates herein by reference his responses to Mr. Schwartz's other comments as set forth above.

Summary: The comment includes a declaration of J. Robert Hunter, which begins with background information.

Response: A specific response is not required.

Summary: Mr. Hunter provides actuarial comments on the decision in *Spanish Speaking Citizens' Foundation v. Low.* The court's assumption, that how insurers use territory is the most important predictor of risk and cost, is incorrect. In this rulemaking proceeding, there is no information demonstrating that territory is a more important determinant of the risk of loss than any other factor. Insurers selected territorial relativities bear little relationship to risk of loss in those territories. The Department's 1994 "Impact Analysis" supports this statement, as does a report entitled "Auto Insurance in California: Differentials in Industrywide Pure Premiums and Company Territory Relativities between Adjacent Zipcodes," submitted as Exhibit JRH-15.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, a specific response is not required. The comment generally supports the Commissioner's proposed regulatory change.

Summary: The comment describes a Consumers Union analysis which compared insurers' relativities over time and whether they were in the same general order from one zip code to the next. The inconsistencies in the insurers' selected territorial relativities contradict any claim that territory is the best predictor of the risk of loss. Additionally, insurers seem to agree, since they sometimes give greater weight and importance to gender, marital status, and driving safety record, as reflected in JRH-1. The commenter elaborates, and uses credit scoring as an example. Insurers agree that pumping and tempering does not, as an actuarial matter, determine or sever a rating factor's relationship to risk of loss and cost.

Response: This portion of the comments, while apparently not specifically directed at the proposed changed text, generally supports the regulatory changes. Therefore, a detailed response is not required.

Summary: The court of appeal's reasoning rests on another inaccurate assumption – that insurers' current premiums are the only true and accurate measure of risk and cost. The comment includes four explicit assumptions and three necessary corollaries. However, these assumptions and corollaries are not supported by the record, as demonstrated by testing insurers' premiums in the real world.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, a specific response is not required. The comment generally supports the Commissioner's proposed regulatory change.

Summary: Individual insurers do not use only one measure of risk and cost of loss. For example, statutes vary from state to state, meaning the same driver is rated differently from state to state. This doesn't mean that the different premiums are severed from the driver's risk and cost of loss.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulation text or to the procedures followed in proposing the revised regulations, a specific response is not required. The comment generally supports the Commissioner's proposed regulatory change.

Summary: California has more than 200 auto insurers, and insurers calculate vastly divergent measures of an individual driver's risk and cost of loss. Exhibits JRH-21 to JRH-39, excerpts from the Department's premium survey, show premiums for a specified driver in 240 zip codes. The wide disparities in different insurers' calculated premiums for the same driver illustrate the falsity of each insurer's individual claim that its premium is the true and accurate measure of that driver's objective risk and cost of loss. Whether the zip code is urban, suburban, or rural and whatever the population, a pattern of disparity exists – as set forth in the comments.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulation text or to the procedures followed in proposing the revised regulations, a specific response is not required. The comment generally supports the Commissioner's proposed regulatory change.

Summary: Insurer class plans also demonstrate that insurers do not agree about how to identify the one true measure of any particular driver's risk and cost of loss. As Exhibit JRH-1 shows, insurers use different sets of rating factors and characteristics and do not agree on which measure an individual's true risk and cost of loss.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulation text or to the procedures followed in proposing the revised regulations, a specific response is not required. The comment generally supports the Commissioner's proposed regulatory change.

Summary: Insurers' claim that their premiums have identified the objective cost of a driver's risk so that any deviation severs the relationship to risk of loss ignores the standard errors of measurement inherent in their own estimates and premiums. This portion of the comment includes a description of the actuarial concept of "credibility" and the fact that insurers have not taken into consideration the fact that their premiums already deviate from accurate pricing of the driver's true risk and cost of loss.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulation text or to the procedures followed in proposing the revised regulations, a specific response is not required. The comment generally supports the Commissioner's proposed regulatory change.

Summary: Using the information provided under Insurance Code Section 11628, Exhibit JRH-40 illustrates claims by zip code. The simple average number of claims by zip code was 78.9, and using 100 claims per zip code, for pure premium means there is a 90% probability that the insurers' estimate is within +/- 37% of the actual pure premium. Therefore, insurers have no basis for asserting that correcting the order of weights severs the relationship of their current premiums to risk and cost of loss.

Response: Because this is not a comment specifically directed at the Commissioner's proposed revised regulation text or to the procedures followed in proposing the revised regulations, a specific response is not required.

Summary: The comment includes a summary conclusion.

Response: Please see response to specific comments above.

Summary: The comment includes various exhibits including premium comparisons and Exhibits JRH-23 through JRH-41 (excluding number 26).

Response: Please see response to specific comments above.