

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

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

DATE: June 21, 2013

REGULATION FILE: REG-2013-00005

Subject of Proposed Rulemaking

Notice is hereby given that a public hearing will be held regarding the proposed additions to Title 10, Chapter 5, Subchapter 3 of the California Code of Regulations (“CCR”). The California Insurance Commissioner proposes to add Article 22, Sections 2598 – 2598.6 to the CCR.

The proposed regulations are intended to provide guidance and clarity to insurers by listing some of the conditions that the commissioner may consider in determining whether an insurer is operating in a hazardous financial condition. The proposed regulations also list some of the steps that the commissioner may take to make that determination and the actions that the commissioner may order insurers to take to correct, eliminate or remedy the condition(s).

Authority and Reference

The commissioner proposes the adoption of the referenced additions pursuant to authority vested in him by California Insurance Code Sections 720, 700(c), 700.01–700.05, 717(a), 1077.7; 729, et seq., 739, et seq., 900.2, 900.8, 903, 922, 922.2, 923, 923.5, 934, 1011; 1065.1, et seq.; 1215, et seq., 10489.1 – 10489.95, 12107, 12114(b), 12124, 12125, 12381, 12388, 12640.04, 12640.05, 12640.16, 4011, 4012, 4080, 1370.2, 1372, 1322, 12919; 12921.5, 12924, 12926, 12940.

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code Sections 720; 1077.7; 700(c); 729, et seq.; 1011; 1065.1, et seq.; 1215.7; 12919; 900, et seq.; 930, et seq.; 699, et seq.; 12920; 12926.2.

Hearing Date and Location

The commissioner will hold a public hearing to provide all interested persons an opportunity to present statements, either orally or in writing, with respect to the proposed regulations, as follows:

Date and Time	Wednesday, August 7, 2013 11:00 A.M.
Location	Department of Insurance 300 Capitol Mall - San Diego Room, 2nd Floor Sacramento, CA 95814

Presentation of Written and/or Oral Comments; Contact Persons

All persons are invited to submit written comments regarding the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on August 7, 2013**. Please direct all written comments to the following contact person:

Jack K. Hom
Attorney III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, California 94105

(415) 538-4129
(415) 904-5896 (facsimile)
jack.hom@insurance.ca.gov

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

Tomoko Stock
Supervising Insurance Examiner
California Department of Insurance
300 S. Spring Street, 13th Floor
Los Angeles, CA 90013

(213) 346-6182
tomoko.stock@insurance.ca.gov

Deadline for Written Comments

All written materials must be received by the commissioner, addressed to the contact person at the address listed above, **no later than 5:00 p.m. on August 7, 2013**. Any written materials received after that time will not be considered.

Comments Transmitted by E-Mail or Facsimile

Written comments transmitted by e-mail will be accepted only if they are sent to the following e-mail address: jack.hom@insurance.ca.gov. The commissioner will also accept written comments submitted by facsimile only if they are sent to the attention of the contact person at the following **facsimile number: (415) 904-5896**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. **Comments sent by e-mail or facsimile are subject to the 5:00 P.M., August 7, 2013 deadline.**

Access to Hearing Room

The facility to be used for the public hearing is accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person so that special arrangements may be made if necessary.

Informative Digest

Policy Statement Overview

The Insurance Commissioner proposes to add Article 22, Sections 2598 – 2598.6, titled “Hazardous Financial Conditions; Corrective Actions” to Title 10, Chapter 5, Subchapter 3 to the California Code of Regulations.

The proposed regulations are intended to provide guidance and clarity to insurers by listing some of

the conditions that the commissioner may consider in determining whether an insurer is operating in a hazardous financial condition. The proposed regulations also list some of the steps the commissioner may take to make that determination and some of the corrective actions the commissioner may order an insurer to take to correct, eliminate or remedy the condition(s).

The provisions of the proposed regulations were originally developed by the National Association of Insurance Commissioners (“NAIC”) as NAIC Model #385 (“NAIC Model”). Other states are in the process of adopting the provisions of the NAIC Model. At this time, twenty-one states have already adopted the most recent version of the NAIC Model. These proposed regulations conform to the most recent version of the NAIC Model and will ensure that California’s laws are consistent with the other states’ laws in monitoring the financial condition of insurers that are licensed in California and other states.

The California Legislature has stated its intent that it is important for California to work in coordination with the NAIC. For example, in Section 1(a) of Senate Bill 1448 (2011-2012), as chaptered (Ch. 282), the Legislature stated that “In order to improve interstate and international regulation of insurance holding company systems, it is the intent of the Legislature to conform California law to, and to maintain standards consistent with, the National Association of Insurance Commissioners revised model act.” Further, see Sections 923 and 930, et seq., for further evidence that the California Legislature intends that California law should be consistent with standards that the NAIC adopts.

The proposed regulations are modeled after the NAIC Model and necessarily include all the substantive provisions of the NAIC Model. The proposed regulations are almost verbatim the same as the NAIC Model, but there are some non-substantive changes in grammar and format. Also, the proposed regulations include some changes from the NAIC Model that reflect California law.

Existing Law

Existing law provides that after insurers receive their Certificate of Authority, they must continue to comply with the requirements set forth in the Insurance Code.

Existing law provides authority for the commissioner to examine the financial condition of insurers doing business in California.

Existing law requires insurers to file an Annual Statement with the commissioner.

Existing law provides that the commissioner, upon determining that an insurer is operating in a hazardous condition, may tailor an order to require that the insurer take specific steps to correct, eliminate or remedy the condition(s). The commissioner reviews an insurer’s Annual Statement and financial examination results as part of the process of determining whether an insurer is operating in a hazardous condition.

However, existing law does not enumerate the condition(s) that the commissioner may consider when making a determination about whether an insurer is operating in a hazardous condition.

Existing law does not enumerate the steps the commissioner may take in the process of determining whether an insurer is operating in a hazardous condition.

Existing law does not enumerate the actions the commissioner may order an insurer to take after the commissioner has determined that an insurer is operating in a hazardous condition.

The proposed regulations enumerate specific conditions the commissioner may use for identifying whether an insurer is operating in a hazardous condition.

The proposed regulations enumerate steps the commissioner may take in the process of determining whether an insurer is operating in a hazardous condition.

The proposed regulations enumerate the specific steps the commissioner may order an insurer to take to correct, eliminate or remedy the condition(s).

The proposed regulations also permit an opportunity for the insurer to meet with the commissioner regarding the commissioner's order.

Comparable Federal Law

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

Anticipated Benefits of the Proposed Action

The benefits of the proposed regulations to the health and welfare of California residents are that insurers doing business in California will have guidance and clarity as to what conditions the commissioner may consider in the process of determining whether the insurer is operating in a hazardous condition. This will allow the insurer to identify and then take corrective action earlier than it might otherwise be able to do. This will improve the financial stability of insurers, which is a benefit to all California residents.

Consistency or Compatibility with Existing State Regulations

The proposed regulations are not inconsistent or incompatible with any existing state regulations.

Mandates on Local Agencies or School Districts

The proposed regulations do not impose any mandates on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

Cost Savings to Any State Agency, Local Agency or School District or in Federal Funding

The commissioner has determined that the proposed regulations will result in no cost or savings to any state agency and no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code. There are no nondiscretionary costs or savings imposed on local agencies and no cost or savings in federal funding to the State.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete

The commissioner has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The full text of the commissioner's assessment is set forth in the Economic Impact Assessment, a copy of which is included in the rulemaking record.

Statement of the Results of the Economic Impact Assessment

The commissioner is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California; to assess the creation of new businesses or the elimination of existing businesses within the State of California; to assess the expansion of businesses currently doing business within the State of California.

The commissioner has determined that the proposed regulations will have no effect on (1) possible changes in employment (the creation or elimination of jobs within the State of California); (2) the creation of new businesses or the elimination of existing businesses with the State of California; (3) the expansion of businesses currently doing business within the State of California.

The benefits of the proposed regulations to the health and welfare of California residents are that insurers doing business in California will have guidance and clarity as to what conditions the commissioner may consider in the process of determining whether the insurer is operating in a hazardous condition. This will allow the insurer to identify and then take corrective action earlier than it might otherwise be able to do. This will improve the financial stability of insurers, which is a benefit to all California residents.

The full text of the commissioner's assessment is set forth in the Economic Impact Assessment, a copy of which is included in the rulemaking record.

Cost Impact on Representative Private Person or Business

The commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Finding of Necessity

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

Impact on Housing Costs

The proposed regulations will have no significant impact on housing costs.

Alternatives

The commissioner must determine that no reasonable alternative considered by the commissioner or that has otherwise been identified and brought to the attention of the commissioner would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The commissioner invites public comment on alternatives to the regulations.

Impact on Small Business

The commissioner has determined that the proposed regulations will not affect small business. The proposed regulations only affect insurance companies. Per Government Code section 11342.610(b)(2), insurance companies are not small businesses.

Text of Regulations and Statement of Reasons

The commissioner has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding

should be directed to the contact person listed above.

In additions, the file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Such requests should be directed to the contact person listed above.

Automatic Mailing

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

Website Posting

Documents concerning these proposed regulations are available on the CDI's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the link to 'Hazardous Conditions' and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter "REG-2013-00005" (the CDI's regulation file number for these regulations) in the search field. Alternatively, search by keyword (e.g., "hazardous condition"). Then, click on the 'Submit' button to display links to the various filing documents.

Modified Language

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

Final Statement of Reasons

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

June 21, 2013