

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

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

ANNUITY NONFORFEITURE REGULATIONS

DATE: February 6, 2012

REGULATION FILE: REG-2007-00039

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that a public hearing will be held regarding the adoption of a new Article 10.2 to be set forth in Title 10, Chapter 5, Subchapter 3 of the California Code of Regulations (“CCR”). (All references to CCR sections in this Notice are references to sections in CCR Title 10.) The proposed new Article 10.2, titled “Annuity Nonforfeiture,” consists of new Sections 2523, 2523.1, 2523.2, 2523.3, 2523.4, 2523.5, and 2523.6.

The proposed regulations implement, interpret, and make specific the provisions of Insurance Code Section 10168.25, which regulates annuity nonforfeiture amounts. With some exceptions, the proposed regulations generally follow the provisions of the National Association of Insurance Commissioners (“NAIC”) Model Regulation # 806 (“NAIC Model # 806” or “the Model”) and incorporate them into California law.¹

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes the adoption of California Code of Regulations Title 10, Chapter 5, Subchapter 3, Article 10.2, Sections 2523, 2523.1, 2523.2, 2523.3, 2523.4, 2523.5, and 2523.6 pursuant to the authority vested in him by Insurance Code Subsection 10168.25(f) and Insurance Code Section 10168.92. The proposed regulations will implement, interpret and make specific the provisions of Insurance Code Section 10168.25.

HEARING DATE AND LOCATION

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

Date and time: April 24, 2012

¹ The NAIC is an organization comprised of the chief insurance regulatory officials from all 50 states, the District of Columbia, and five U.S. territories. One of the NAIC's many activities is to assist regulators with financial and market conduct regulation by fostering the development of NAIC model regulations. Individual states incorporate provisions of NAIC model regulations into their own laws to promote uniformity between the states and to incorporate new developments in insurance industry regulation into their own regulations.

10:00 a.m.

**Location: Department of Insurance
Administrative Hearing Bureau Hearing Room
45 Fremont Street, 22nd Floor
San Francisco CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted or 5:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. **The public comment period will end at 5:00 p.m. on April 24, 2012.** Please direct all written comments to the following contact person:

Nancy Hom, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

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

Eugene Stuart, Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4147

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at her address listed above, **no later than 5:00 p.m. on April 24, 2012.** Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: Homn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Nancy Hom and sent to the following facsimile number: (415) 904-5729. **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 deadline set forth above for written comments.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
45 Fremont Street, 24th Floor
San Francisco, CA 94105
(415) 538-4129

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Policy Statement Overview

Existing California Insurance Code Section 10168.25 is derived from and based upon an NAIC Model law, the Standard Nonforfeiture Law for Individual Deferred Annuities, NAIC Model # 805. The purpose of Insurance Code Section 10168.25 is to regulate annuity nonforfeiture amounts. In general terms this means that any paid-up annuity, cash surrender, or death benefits available under an annuity contract subject to the statute must have a certain minimum value, which serves to protect consumers who purchase these products. The statute sets forth requirements for calculating minimum nonforfeiture amounts for annuities and for documenting the calculations for the Commissioner. The statute contains provisions applicable to annuities with equity indexed benefits as well as to annuities without equity indexed benefits. Subsection 10168.25(f) authorizes the Commissioner to adopt regulations to implement the statute, as does Insurance Code Section 10168.92.

After the NAIC adopted NAIC Model # 805, the NAIC adopted Annuity Nonforfeiture Model Regulation, NAIC Model # 806 (“NAIC Model # 806” or “the Model”). The purpose of NAIC Model # 806 is to implement, interpret and make specific the requirements of Section 4 of the

Standard Nonforfeiture Law for Individual Deferred Annuities, NAIC Model # 805. NAIC Model # 806 establishes more specific rules for calculating minimum nonforfeiture amounts for annuities subject to NAIC Model # 805 and for providing documentation of the calculations to the Commissioner.

The Commissioner now proposes to adopt the provisions of NAIC Model # 806 (with some modifications) to implement, interpret, and make specific the provisions of Insurance Code Section 10168.25.

Existing law (Insurance Code Section 10168.25) sets forth general requirements but it does not address, and it was never intended to address, a number of issues that have arisen in the implementation of the statute. Insurance Code Section 10168.25 provides that the minimum values of any paid-up annuity, cash surrender, or death benefits available under an annuity contract subject to that section must be calculated based on the minimum nonforfeiture amounts as defined in Section 10168.25. The statute contains terms which are not fully defined and which could be interpreted in more than one way, for example terms such as “basis” and “equity indexed benefit.” The statute does not specify whether or not the method used to calculate the nonforfeiture rate at contract issue must be filed with the Commissioner, or whether or not this “initial method” can be changed for new contracts issued, or whether or not this “initial method” or the “redetermination method” as defined in the proposed regulations must be disclosed in the contract. In addition, if the nonforfeiture rate is to be redetermined, the statute does not specify whether changes to this “redetermination method” are allowed for new contracts issued.

Although the statute permits an additional reduction of up to 100 basis points in the calculation of the nonforfeiture interest rate for annuity contracts which provide substantive participation in an equity indexed benefit, it does not explain what constitutes “substantive participation.” The statute requires that the present value of the additional reduction shall not exceed the market value of the equity indexed benefit, and that the Commissioner may require a demonstration of this, but it does not provide any guidance on how to calculate the market value of the benefit or guidance as to whether or not the insurer should prepare a demonstration for the Commissioner. The statute also specifies that “lacking a demonstration that is acceptable” the Commissioner may disallow or limit the additional reduction, but it does not specify what would be considered a demonstration that is acceptable. It also does not detail whether or how insurers should certify that their calculations are in compliance with applicable law. The statute is silent on the extent to which insurers should maintain their work papers and it does not detail the Commissioner’s options if the Commissioner determines that an additional reduction of up to 100 basis points for equity-indexed benefits has been inappropriately taken. Finally, the statute provides no examples or illustrations of how its provisions should be implemented.

Because Insurance Code Section 10168.25 sets forth general requirements that can be interpreted in more than one way, insurers could calculate nonforfeiture interest rates in various ways and they might not always provide sufficient detail to explain their calculations. In addition, they have sometimes been uncertain how to provide a suitable demonstration to support the additional reduction permitted by Insurance Code Section 10168.25(e).

The broad objective of the proposed regulations is to implement, interpret, and make specific the requirements of Insurance Code Section 10168.25, so that these issues are addressed and the statute is interpreted and applied clearly and uniformly.

For the most part, the text of the proposed regulations follows the language of NAIC Model # 806, with only nonsubstantive changes in grammar, format, and numbering. In instances where substantive language has been added or deleted the changes were necessary in order to comply with or avoid conflict with California law, to avoid redundancy, and/or to clarify the meaning of the proposed regulations.

The Commissioner anticipates that the benefit of adopting the proposed regulations will be increased certainty, clarity, and uniformity in the implementation of Insurance Code Section 10168.25. Specifically, the Commissioner anticipates that adoption of the proposed regulations will promote uniformity with NAIC Model # 806 and with that of the law of any other state that adopts the provisions of the Model; foster a more uniform implementation of Section 10168.25; promote fairness and increased clarity in that insurers making the calculations required by Insurance Code Section 10168.25 will know what is expected under the statute; promote more transparency in government in that insurers will have more specific information on what they need to provide to the Commissioner; and increase efficiency in the preparation of documents that must comply with Section 10168.25. In addition, NAIC Model # 806 and the Commissioner's adoption of the proposed regulations reflect advances in regulatory law as developed by the NAIC. The proposed regulations also protect consumers because they help to ensure that annuities subject to Insurance Code Section 10168.25 comply with the nonforfeiture requirements of the statute, which is beneficial to the welfare of California residents.

The Legislature of the State of California has enacted two statutes, Insurance Code Subsection 10168.25(f) and Insurance Code Section 10168.95, which grant express rulemaking authority to the Commissioner to implement, interpret, and make specific Insurance Code Section 10168.25. Insurance Code Subsection 10168.25(f) grants the Commissioner rulemaking authority for Insurance Code Section 10168.25. Insurance Code Section 10168.92 grants the Commissioner general rulemaking authority for Article 3B of Division 2, Part 2, Chapter 1 of the Insurance Code, of which Section 10168.25 is a part.

Summary of Existing Law; Effect of Proposed Action

Section 2523. Purpose

Section 2523 provides that the purpose of Article 10.2, which sets forth the proposed regulations, is to implement, interpret, and make specific the provisions of Section 10168.25 of the Insurance Code. The effect of Section 2523 is to clarify the purpose of the proposed regulations and to identify the provisions of the Insurance Code being implemented, interpreted, and made more specific. Section 2523 along with the following proposed regulations address the specificity, clarity, and uniformity problems that arise in the implementation of Section 10168.25. The Commissioner anticipates that Section 2523 will be beneficial because it will clarify the purpose of the proposed regulations. There is no comparable provision in existing law.

Section 2523.1. Definitions

Existing law does not define a number of terms necessary to implement, interpret, and make specific Insurance Code Section 10168.25. The effect of Section 2523.1 will be to define the words “basis,” “equity-indexed benefits,” “index term,” “initial method,” “initial nonforfeiture rate,” “minimum nonforfeiture amount,” “nonforfeiture rate,” “redetermination method,” and “redetermination nonforfeiture rate” for purposes of clarity, so that any reader of the proposed regulations may understand exactly what is meant by these terms. These terms are either used in Insurance Code Section 10168.25 or used in the proposed regulations in order to implement, interpret, and make the statute specific. The Commissioner anticipates that Section 2523.1 will be beneficial because it will clarify terms used in Insurance Code Section 10168.25 and/or the proposed regulations so that they can be understood and implemented in a uniform manner.

Section 2523.2. Initial Method

The effect of Section 2523.2 is to specify that the initial method shall be filed with the Commissioner in accordance with applicable filing and approval requirements. It also clarifies how often changes to the initial method may be made, to what contracts changes in the method would apply, and whether the initial method, the initial nonforfeiture rate, and the minimum nonforfeiture parameters must be disclosed in the insurance contract. These specifics are not set forth in Insurance Code Section 10168.25 or existing law. All of these specifics are reasonably necessary to clarify and implement Insurance Code Section 10168.25 in a uniform way. The effect of the proposed regulation will be greater clarity and uniformity in the implementation and interpretation of Insurance Code Section 10168.25, which is the anticipated benefit.

Section 2523.3. Redetermination Method

The effect of Section 2523.3 is to set forth disclosure requirements for use of the redetermination method and establishes when changes in the redetermination method are allowed, subject to California filing and approval requirements. These requirements are not set forth in Insurance Code Section 10168.25 or existing law. The effect of the proposed regulation is to clarify and implement Insurance Code Section 10168.25 in a uniform way, which is the anticipated benefit.

Section 2523.4. Nonforfeiture Rate and Minimum Nonforfeiture Amount

The effect of Section 2523.4 is to specify requirements applicable to the nonforfeiture rate and the minimum nonforfeiture amount for an annuity contract (or certificate), depending on whether or not the product provides an equity-indexed benefit. Although existing law (Insurance Code Section 10168.25) applies to both types of contracts, the statute sets forth general requirements. It does not address a number of more specific issues that arise in determining the nonforfeiture rate and the minimum nonforfeiture amounts – those issues are addressed in the proposed regulation. The effect of Section 2523.4 is to clarify and implement the statute in a uniform way.

Section 2523.4(a) of this section clarifies that at any point in time a contract (or certificate) without an equity-indexed benefit will have just one nonforfeiture rate and one nonforfeiture amount applicable to the entire contract that is determined in compliance with Insurance Code

Section 10168.25. This is not expressly stated in Insurance Code Section 10168.25 or existing law.

Section 2523.4(b) clarifies that for an annuity contract (or certificate) in which equity-indexed benefits are available the annuity contract (or certificate) may have more than one nonforfeiture rate applicable to the contract (or certificate), subject to the requirements set forth in Subsections 2523.4(b)(1) through (6). Subsections 2523.4(b)(1), (2), and (3) expand on Insurance Code Section 10168.25 by setting forth specifics on how to calculate the nonforfeiture rate and the minimum nonforfeiture amount for contracts (or certificates) in which equity-indexed benefits are available. Existing law does not provide guidance on these points.

Subsection 2523.4(b)(4) specifies how to calculate the minimum nonforfeiture amount when the contract value is transferred in a contract which has equity-indexed benefits. Existing law does not address this subject. In addition, Subsection 2523.4(b)(4) refers the reader to examples in an appendix as a way of clarifying how Section 10168.25 and the proposed regulations should be implemented in particular scenarios. Existing law contains no comparable provision.

Subsection 2523.4(b)(5) specifies how to calculate the minimum nonforfeiture amount when there is a withdrawal from a benefit in which the amount of withdrawal exceeds the benefit's nonforfeiture amount. Existing law does not provide guidance on this subject.

Subsection 2523.4(b)(6) specifies how to allocate any contract charge or premium taxes paid by the company in calculating the minimum nonforfeiture amount. Existing law does not provide guidance on this subject.

Section 2523.5. Equity-Indexed Benefits

Existing law (Insurance Code Section 10168.25(e)) allows insurers to reduce the nonforfeiture rate by up to 100 basis points during the period or term that a contract provides substantive participation in an equity-indexed benefit to reflect the value of that benefit. However, Insurance Code Section 10168.25(e) provides only general guidance on a reduction in the nonforfeiture rate to reflect the value of the equity-indexed benefit.

Existing law (Insurance Code Section 10168.25(e)) also allows the Commissioner to require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit, and it authorizes the Commissioner to disallow or limit the reduction if the demonstration is not acceptable. However, Insurance Code section 10168.25(e) does not explain what would be considered an adequate demonstration. Instead, Insurance Code Subsection 10168.25(f) expressly provides that the Commissioner “may adopt regulations to implement the provisions of subdivision (e) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit....”

The effect of Section 2523.5 is to implement the provisions of Insurance Code Section 10168.25, and in particular those of Subsections 10168.25(e) and (f). Section 2523.5 specifies what insurers have to do to take the additional reduction in the nonforfeiture interest rate calculation

for an equity-indexed benefit and demonstrate that the reduction is in compliance with Insurance Code Section 10168.25(e). Existing law does not provide guidance on this subject. The Commissioner anticipates that the proposed regulation will be beneficial because it will clarify and implement the statute in a uniform way.

More specifically, proposed Section 2523.5(a) provides that if a company chooses to take the additional reduction for an equity-indexed benefit as provided under Subsection 10168.25(e), the company shall prepare a demonstration showing compliance with the requirements in Subsection 10168.25(e). By requiring a demonstration to be prepared by all companies seeking the additional reduction, Subsection 2523.5(a) fairly and uniformly implements the requirements of Section 10168.25 (because the requirement applies to all companies seeking the reduction) and it provides the Commissioner with the information needed to evaluate the reductions. Existing law does not specify whether a demonstration is required. Subsection 2523.5 addresses that issue by creating a clear, uniform requirement

The effect of Section 2523.5(b)(1) is to set forth the steps insurers must use to prepare the demonstration required by Subsection 2523.5(a). The steps are specific instructions to the companies as to how they must calculate the annualized option cost for the equity-indexed benefit. By setting forth the steps the companies must take, the proposed regulation creates certainty where there is now uncertainty. It can save companies time and effort because it tells them what they need to do to prepare the demonstration. Companies need not waste time preparing documentation that is unnecessary or unwanted by the Commissioner. There is no existing law on this subject.

Existing law does not say what constitutes “substantive participation” in an equity-indexed benefit under Insurance Code Section 10168.25(e). “Substantive participation” can be interpreted in more than one way. It is reasonably necessary to define what constitutes “substantive participation” in an equity-indexed benefit in order to determine whether a product qualifies for the reduction allowed by Subsection 10168.25(e). The effect of Subsection 2523.5(b)(2) is to address this issue by stating how much the equity-indexed benefit must cost in order for it to meet the “substantive participation” requirement in the statute.

The effect of Subsection 2523.5(b)(3) is to require that companies prepare and file an actuarial certification as set forth in Section 2523.6 Appendix C with their demonstration, certifying that the reduction complies with the minimum requirements of California’s annuity nonforfeiture statutes and the proposed regulations. The effect of Subsection 2523.5(b)(4) is to require that companies prepare and file an actuarial certification as set forth in Section 2523.6 Appendix D with their annual statements, with regard to ongoing compliance with the proposed regulations. Existing law does not contain actuarial certification requirements that pertain to the implementation of Insurance Code Section 10168.25 in particular.

The actuarial certification requirements are beneficial because without them anyone could certify that a filing complies with applicable requirements, whether they are qualified to do so or not. The effect of the new subsections requiring certification by a member of the American Academy of Actuaries is to require that the filings be certified by someone who has had extensive actuarial education and who is subject to professional standards of practice. These requirements help to

ensure that the calculations and data supplied to the regulator are thorough, accurate, and in compliance with applicable requirements. In addition, the actuarial certification requirements protect consumers by increasing the likelihood that the insurer is complying with statutory requirements, which exist in part to protect consumers. The actuarial certification requirements foster greater uniformity in regulatory standards.

A drafting note from NAIC Model # 806 has been incorporated into the proposed regulation as Subsection 2523.5(b)(5), with substitution of the word “shall” for “should” to require uniform compliance. By requiring companies to maintain demonstrations and work papers for submission to the Commissioner if requested, the effect of this subsection is to help ensure that companies have the documentation necessary for the Commissioner to evaluate the adequacy of a demonstration. Existing law does not have a comparable requirement. The anticipated benefit is to ensure that companies maintain the documents that the Commissioner would need to review in order to decide upon the adequacy of a demonstration.

Existing law gives the Commissioner the authority to disallow or limit the additional reduction permitted by Insurance Code Section 10168.25(e), but it does not specify exactly how this might occur. The effect of Subsection 2523.5(c) is to make the general language of the statute specific by stating that if the Commissioner determines that the additional reduction of up to 100 basis points for equity-indexed benefits has been inappropriately taken, the Commissioner may require the recalculation of all values for all affected policyholders without all or part of the additional reduction. Subsection 2523.5(c) creates a standard by which both the companies’ and the Commissioner’s actions will be guided. The Commissioner anticipates that this will promote fairness, uniformity, and predictability in the review process.

Section 2523.6. Appendices A to D

Proposed Section 2523.6 is comprised of four appendices.

The effect of the first two appendices is to implement, interpret, and make specific Insurance Code Section 10168.25 by illustrating how the proposed regulations apply in particular situations. Appendix A illustrates indexing methods dependent upon changes in CMT levels by way of four examples that apply the proposed regulations to various scenarios. Appendix B shows a demonstration of how the minimum nonforfeiture amount is to be transferred in an equity-indexed annuity under proposed regulation Section 2523.4. Existing law does not contain any provisions that illustrate how Insurance Code Section 10168.25 should be implemented under the circumstances set forth in Appendices A and B. Appendix A and Appendix B clarify how the proposed regulations apply to common scenarios, which is the anticipated benefit.

The effect of Appendices C and D is to implement the provisions of Insurance Code Section 10168.25 by setting forth the texts of the actuarial certifications required by proposed regulation Subsections 2523.5(b)(3) and 2523.5(b)(4), respectively. Existing law does not set forth the content of any actuarial certifications evidencing compliance with the proposed regulations or Insurance Code Sections 10168 to 10168.10 in particular. The Commissioner anticipates a number of benefits from the adoption of Appendix C and Appendix D. Appendix C and Appendix D foster compliance with the statute and clarify what companies are required to

prepare and file in order to comply with Subsections 2523.5(b)(3) and 2523.5(b)(4) of the proposed regulations. In addition, Appendix C and Appendix D make the proposed regulations clearer. Without these Appendices companies would not know what language the Commissioner expects to see in the actuarial certifications. They also make it easier for companies to comply with the actuarial certification requirement because they are fill-in-the-blank-type forms that have just four blanks (Appendix C) and five blanks (Appendix D). The information required to complete the blanks, such as the actuary's name, professional designation, and the name of the insurer submitting the form is readily available. In addition, the standardized nature of Appendices C and D fosters greater uniformity in regulatory standards.

COMPARABLE FEDERAL LAW

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

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

The proposed regulations implement, interpret, and make specific the provisions of Insurance Code Section 10168.25. There are currently no regulations that do so. 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 mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO 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, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that there is a very low probability that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies.

The Commissioner expects that the proposed regulations will either create no cost impact or that they will actually reduce insurers' costs overall. This is because it is the Commissioner's

experience that in general insurers are already complying with the substance of the proposed regulations voluntarily. In addition, the proposed regulations may create efficiencies not possible under existing law, which is less well-defined. However, the proposed regulations do require insurers subject to Insurance Code Section 10168.25 to comply with actuarial requirements, document retention requirements, disclosure requirements applicable to contract and certificate forms, and actuarial certification requirements. A small number of insurers may incur increased administrative or actuarial costs as a result of complying with the requirements of the proposed regulations.

The Commissioner has considered proposed alternatives that would lessen any adverse economic impact on business and he invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

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, the creation of new businesses or the elimination of existing businesses within the State of California, the expansion of businesses currently doing business within the State of California, and the benefits of the proposed regulations to the health and welfare of California residents, worker safety, and the state's environment.

The Commissioner has determined that the proposed regulations will have a negligible or insignificant effect on possible changes in employment (the creation or elimination of jobs within the State of California), the creation of new businesses or the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State of California. The Commissioner has determined that the proposed regulations will be beneficial to the welfare of California residents, and that the proposed regulations will not impact the health of California residents, worker safety, or the state's environment.

In addition, the Commissioner is required to consider proposed alternatives to the proposed regulations. The Commissioner has considered two such alternatives. Under Alternative #1 the Commissioner would not adopt the provisions of NAIC Model # 806 or any portion of the Model

as regulations. Under Alternative #2 the Commissioner would adopt a modified version of NAIC Model # 806 that would set forth all provisions of the proposed regulations except for the actuarial certification requirements. The Commissioner has determined that neither of these two alternatives, which are discussed in the Economic Impact Assessment, would be more effective in carrying out the purpose for which the proposed 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 of Insurance Code Section 10168.25.

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.

POTENTIAL COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR ENTITIES/BUSINESSES

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

FINDING OF NECESSITY

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

IMPACT ON HOUSING COSTS

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

ALTERNATIVES

The Commissioner must determine in the Final Statement of Reasons 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 action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any adverse impact on small businesses.

The Commissioner has determined that the proposed regulations will affect insurance companies. Insurance companies are not small businesses pursuant to California Government Code section 11342.610(b)(2).

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department of Insurance has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest, which contains the general substance of the proposed regulations, as well as a copy of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department of Insurance's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right 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 next screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2007-00039" (the Department of Insurance's regulation file number for these regulations) in the search field. Alternatively, search by using a keyword ("nonforfeiture," for example, or "annuity"). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Currently Proposed Regulations" button near the top of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Annuity Nonforfeiture" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department of Insurance differ from those that have originally been made available but are sufficiently related to the action proposed, the full text of the regulations will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.