

**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: October 14, 2011**

**Regulation File: REG-2011-00020**

**SUBJECT OF PROPOSED RULEMAKING**

The Insurance Commissioner proposes to adopt amendments to California Code of Regulations (“CCR”) Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(b), 2202(c), 2202(d) and 2202(e) after considering comments from the public. (All references to the CCR in this Notice are references to sections in CCR Title 10.) The Commissioner proposes to amend these sections under the authority granted by California Insurance Code (“CIC”) sections 742.43, 779.21, 10168.92, 10192.3, 10234, 10327, 10506, 10506.3, 10704, and 12973.9.

The Commissioner proposes to amend sections 2202(b), 2202(c), and 2202(d) to adjust the fees he charges insurance providers for processing, indexing and maintaining copies of documents defined in CCR section 2201(a) and 2202(a). In addition, the Commissioner proposed to amend section 2202(e) to allow the Commissioner the flexibility to adjust a fee, when circumstances warrant, in a manner that is not necessarily uniform with fee adjustments in other filing circumstances.

**PUBLIC HEARING**

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

<b>Date and time:</b>	<b>December 1, 2011, 10:00 a.m.</b>
<b>Location:</b>	<b>Department of Insurance Administrative Hearing Bureau Hearing Room 45 Fremont Street, 22nd Floor San Francisco, CA 94105</b>

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

**PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS**

All persons are invited to submit written comments on the proposed amendments to the regulations during the public comment period. The public comment period will end at **5:00 p.m.**

on **December 1, 2011**. Please direct all written comments to the following contact person:

Jennifer Chambers, Senior Staff Counsel  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4145

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:

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

#### **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 December 1, 2011**. 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: [chambersj@insurance.ca.gov](mailto:chambersj@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Jennifer Chambers and sent to 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 deadline set forth above for written comments.**

#### **ACCESS TO HEARING ROOMS**

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

#### **AUTHORITY AND REFERENCE**

The Insurance Commissioner proposes the adoption of amendments to Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(a), 2202(b), 2202(c), 2202(d) and 2202(e) pursuant to the

rulemaking authority vested in him by Insurance Code sections 742.43, 779.21, 10168.92, 10192.3, 10234, 10327, 10506, 10506.3, 10704 and 12973.9.

The Commissioner's proposed amendments to CCR section 2202 will implement, interpret, and make specific the provisions of Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10163.35, 10168.93, 10192.15, 10192.19, 10205, 10225, 10231.2, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658, 12250, and 12973.9.

## **INFORMATIVE DIGEST**

### **SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW**

Under existing law, when the Insurance Code requires that a document (defined by CCR sections 2201(a) and 2202) be filed with, submitted to, or approved by the Commissioner, "fees as provided for by [CIC section 12973.9] shall be paid to the commissioner to cover the expenses of processing and indexing the same and maintaining copies of the same." Insurance Code section 12973.9. The fees which the Commissioner may charge for actions on documents submitted to him are set forth in CCR sections 2202 and 2203.

On March 29, 2010, the Office of Administrative Law ("OAL") approved the Commissioner's regulations designed to rectify a shortfall between the fees collected (revenue) and the Commissioner's direct and indirect costs associated with processing, indexing and maintaining copies of the filings. (See Regulation File: REG-2009-00023). These regulations were required due to an imbalance in expenses associated with processing document filings made pursuant to CCR sections 2202 and 2203 and the Commissioner's revenue derived from filing fees. In measuring the revenue obtained by the Department following the fee increases, however, it became clear that the Commissioner was not fully rectifying the shortfall between costs and revenue and a closer look at the methodology used to calculate the fee increases was required. For example, for Fiscal Year (FY) 2010-11, there is currently a \$3.7 million shortfall in the revenue collected by the Commissioner for review of filings pursuant to CCR sections 2202 and 2203. Other revenue sources of the Department of Insurance, primarily general fees and license revenue, will be required to cover this shortfall. This is on top of the revenue shortfall of \$4.4 million for FY 2009-10 despite the implementation of the new fee schedule in the second half of the fiscal year.

The proposed amendments to sections 2202(b), (c) and (d) follow a thorough review of the Commissioner's methodology and are designed to address the structural misalignment between revenue and expenses with respect to the processing of documents.

This rulemaking also makes proposed changes to section 2202(e). Specifically, as currently worded, this provision generally requires a uniform percentage for any increase or decrease in the fees for filings under CCR sections 2202 and 2203. However, it also contains a confusing series of purported exceptions to this rule. Moreover, while it makes sense as a general proposition for the Commissioner to raise or lower rates on a uniform basis, the fundamental goal of exacting fees is to capture to the extent possible the processing costs

associated with each filing classification. Thus, it makes much more sense for the Commissioner to have the flexibility to adjust a fee, albeit in a manner not always uniform with other fee changes, to allow for any variation in the expenses associated with that specific filing classification.

#### **EFFECT OF PROPOSED ACTION**

The proposed amendments amend the fees set forth in CCR sections 2202(b), 2202(c), and 2202(d) in order to cover the cost of processing insurer filings. The data and methodology have since been thoroughly reviewed and corrected and the fees in the proposed regulation are expected to come into full alignment with the Commissioner's expenses. The proposed fee increase requires a uniform percentage increase for all fees in CCR sections 2202(a), (b) and (c), except for the class of forms referenced in sections 2202(a) (12) and 2202(a) (13). The latter forms include the categories of "Life Insurance Policies and Annuity Contracts Subject to Nonforfeiture Laws" and "Grants and Annuities." After thorough analysis, the Commissioner determined that some types of filings in these classes actually merited a decrease.

The proposed amendments correct fee levels so that fees charged more accurately reflect the actual costs incurred in processing, indexing, and maintaining documents as required by law. The fee changes do not exceed the amounts calculated by the Department of Insurance's Budget Office as necessary to cover all direct and indirect costs of the unit(s) for the next succeeding fiscal year or years thereafter. There are no other moneys received or projected to be received for the unit(s) processing the documents subject to such fees. The effect of the amendments will be to stop the unsustainable cash flow imbalance currently taking place.

The proposed amendment to CCR section 2202(e) will clarify existing 2202(e) which is at present very awkwardly worded, and will also allow the Commissioner the flexibility to modify fees at a rate other than a uniform rate with respect to CCR sections 2202 and 2203, to allow for any variation in the expenses associated with a specific type of filing.

#### **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 STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS 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.

## **ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE**

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

The Commissioner has considered performance standards, but the Commissioner has identified no performance standards which would be as effective as the proposed amendments to address the issue of cost recovery.

The Commissioner has not considered other proposed alternatives which would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

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

## **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Commissioner has made an initial determination that the adoption of the proposed amendments will result in overall costs to insurers who make document filings under CCR sections 2201 and 2202 of approximately 3.7 million dollars (\$3,700,000) per year. The cost for each of the approximately 1,300 insurers who make such filings is estimated to be, in the aggregate, approximately two thousand eight hundred dollars (\$2,800) per year on average. The Commissioner is not aware of any cost impacts that a representative private person or business, other than the insurers described above, would necessarily incur in reasonable compliance with the proposed action.

## **EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above, but he invites interested parties to comment on this issue.

## **FINDING OF NECESSITY**

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

## **IMPACT ON HOUSING COSTS**

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

## **ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **IMPACT ON SMALL BUSINESS**

The Commissioner has made an initial determination that the adoption of the proposed amendments will not affect small businesses because insurers are not small businesses under Government Code section 11342.610(b) (2). However, the Department invites public comments on the question of economic impact on small businesses.

## **COMPARABLE FEDERAL LAW**

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

## **TEXT OF REGULATIONS AND STATEMENTS OF REASONS**

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

The file for this proceeding, which includes a copy of the express terms of the proposed amended regulations, the Initial 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 by prior appointment 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 the proposed amended regulations and this Notice, including the Informative Digest, which contains the general substance of the proposed amendments to the regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

## **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. To access them, 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 "Policy Form Processing Cost Recovery" link, and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter the Department's regulation file number for the regulations in the search field. Alternatively, search by keyword ("cost recovery" for example). Then, click on the 'Submit' button to display links to the rulemaking documents online.

## **MODIFIED LANGUAGE**

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

