

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**Proposed Amendments to Title 10, California Code of  
Regulations, Chapter 5, Subchapter 4.7, Section 2632.5  
[Pay-Drive (Usage Based Auto Insurance)]**

**Publication: September 5, 2008**

**File No. REG-2008-00020**

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

**SUBJECT OF HEARING**

Notice is hereby given that Insurance Commissioner Steve Poizner ("Commissioner") proposes to adopt regulations amending California Code of Regulations (CCR), Title 10, Chapter 5, Subchapter 4.7, Article 3, Section 2632.5 (Section 2632.5) after considering comments from the public.

California Insurance Code (CIC) Section 1861.02(a), added by Proposition 103, provides that rates and premiums for an automobile insurance policy shall be determined by applying three mandatory auto rating factors and various optional auto rating factors. The number of miles the insured drives annually is the second mandatory rating factor. The auto rating factors are currently implemented by CCR Section 2632.5. The second mandatory rating factor is currently implemented by CCR Section 2632.5(c)(2). These regulations will amend the implementation of the auto rating factors by amending Section 2632.5 and will improve the correlation between automobile premiums and the actual number of miles an insured drives pursuant to the second mandatory rating factor.

Although the proposed regulation text is limited to verification of mileage pursuant to the second mandatory rating factor, the Commissioner may consider additional changes relating to auto rating factors in this rulemaking. Potential changes to CCR section 2632.5 governing the other rating factors are expressly within the scope of this notice.

**AUTHORITY AND REFERENCE**

The Commissioner proposes to amend California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 3, Section 2632.5 under the express authority of CIC Section 1861.02(e). The proposed amendments implement, interpret, and make specific CIC Section 1861.02(a).

These regulations are also authorized by *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805 [258 Cal.Rptr. 161], *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216 [32 Cal.Rptr.2d 807], and *Spanish Speaking Citizens Foundation, Inc. v. Low* (2000) 85 Cal.App.4<sup>th</sup> 1179, 1214-17 [103 Cal.Rptr.2d 75].

## **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 these regulations as follows:

**Date and time:**                      **October 20, 2008 - 10:00 a.m.**

**Location:**                              **Department of Insurance Hearing Room**  
**45 Fremont Street, 22<sup>nd</sup> 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 oral and/or written comments at the scheduled hearing. Written comments can also be submitted before the hearing. Send written comments to the Department's contact person for this regulation listed below:

Daniel Goodell  
California Department of Insurance  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4191  
[PubComments.2008-020@insurance.ca.gov](mailto:PubComments.2008-020@insurance.ca.gov)

You may address questions regarding the hearing, comments, or the substance of the proposed action to the above contact person. If the above contact person is unavailable, inquiries may be made to Sara Urakawa at (415) 538-4121.

## **DEADLINE FOR WRITTEN COMMENTS**

All written materials, unless submitted at the hearing, must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on October 20 2008**. Any materials received after that time will not be considered.

## **COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION**

The Commissioner will accept written comments transmitted by e-mail to the following e-mail address: [PubComments.2008-020@insurance.ca.gov](mailto:PubComments.2008-020@insurance.ca.gov). Email attachments in the following formats are acceptable: Adobe Acrobat (PDF), MS Word (DOC). Other formats may not be acceptable. As an alternative, the Commissioner will also accept written comments transmitted by facsimile if directed to the attention of Daniel Goodell at the following fax number: (415) 904-5490. **Do not send comments by both email and facsimile. 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 for written comments set forth above.**

## **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 (listed above) for this 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 Subchapter 4.5, Title 10, of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
45 Fremont St, 21st floor  
San Francisco, CA 94105  
415-538-4190

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

## **INFORMATIVE DIGEST**

### **Summary of Existing Law**

California Insurance Code Section 1861.02(a), added by Proposition 103, provides that rates and premiums for an automobile insurance policy shall be determined by applying three mandatory rating factors and various optional factors. The second mandatory factor is the number of miles driven annually.

CCR Section 2632.5(c)(2) provides that, pursuant to CIC section 1861.02(a)(2), the number of miles driven annually means “the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy.”

CCR Section 2632.5(c)(2)(A) through (H) list the types of information an insurer can request or require from an insured for the purpose of determining estimated annual mileage, and set forth other rules regarding compliance with the second mandatory rating factor listed in CIC Section 1861.02(a).

CCR Section 2632.5(d) lists the optional auto rating factors that the Commissioner has approved for use pursuant to 1861.02(a)(4).

CCR Section 2632.5(e) specifies that the three mandatory auto rating factors may not be combined with any other factor except as provided in this subdivision.

### **Effect of Proposed Action**

The proposed amendments to CCR Section 2632.5 will further the implementation of Proposition 103 and the auto rating factors. This will be accomplished primarily by expanding the use of actual number of miles an insured drives as opposed to estimated number of miles, and by improving the correlation between automobile premiums and the actual number of miles an insured drives.

### **Policy Objective**

The Commissioner's objective in amending CCR Section 2632.5 is to more fully implement the secondary mandatory auto rating factor and make automobile premiums more closely reflect the actual number of miles an insured drives annually. The Commissioner's further policy objective is to make automobile premiums more accurately reflect the risk associated with providing insurance to a particular individual.

### **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

Pursuant to Government Code Section 11346.45, and California Code of Regulations, title 10, section 2646.3, the California Department of Insurance held a publicly noticed workshop on the topic of this regulation on June 23, 2008. Insurers and other parties who would be subject to the proposed regulation were invited and many attended the workshop.

### **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630**

These 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**

The Commissioner has initially 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 non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

### **ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES**

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 not considered proposed alternatives that would lessen any adverse economic impact on business and invites members of the public to submit proposals. Submissions may include the following considerations:

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

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

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

### **EFFECT ON JOBS IN CALIFORNIA**

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

### **FINDING OF NECESSITY**

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

### **IMPACT ON HOUSING COSTS**

The matters proposed herein 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 purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites the public to propose alternatives. No reasonable alternative to the proposed regulations is currently apparent.

### **IMPACT ON SMALL BUSINESS**

These regulations may change the way some or all insurance companies determine the number of miles an insured drives annually. Insurance companies are by definition not small businesses, pursuant to Paragraph (b)(2) of Government Code section 11342.610. However, the Commissioner has determined that if insurance companies choose to use insurance agents to check odometers of insureds in response to this regulation then, to the extent insurance agents are small businesses, these regulations would have an impact on small business. Other than this potential impact on insurance agents, the Commissioner has determined that these regulations will not affect small business.

## **COMPARABLE FEDERAL LAW**

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

## **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. The Commissioner also has available all the information upon which this proposed action is based, and the express terms of 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 after it has been prepared.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact person listed above.

## **FINAL STATEMENT OF REASONS**

A final statement of reasons will be prepared at the conclusion of this proceeding. You can access the final statement of reasons on the Department's website by following the instructions under "WEBSITE POSTINGS" below. Alternatively, upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

## **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list. Additionally, a copy of the proposed text of the regulations and a copy of the initial statement of reasons is available on the department's website as described in the next section.

## **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. One way to access them is to enter the following address in a web browser:

<http://www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/proposed-regulations.cfm>

Then click on the link labeled "Search for Proposed Regulations."

When the search field appears, enter “**REG-2008-00020**” (the Department’s regulation file number for these regulations).

Alternatively, on the same page, instead of entering the file number, you can click on a link to browse through a list of proposed regulations. Click on the regulation labeled “**PAY-DRIVE (USAGE-BASED AUTO INSURANCE)**.”

### **AVAILABILITY OF MODIFIED TEXT OF REGULATION**

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