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October 25, 2010

Alec Stone  
Staff Counsel  
California Department of Insurance  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814

Sent via email to: [alec.stone@insurance.ca.gov](mailto:alec.stone@insurance.ca.gov)

**RE: Proposed REG-2010-00013, Concerning the Governing Procedure for Noncompliance Hearings—*Written Comments from the Personal Insurance Federation of California (PIFC)***

Dear Mr. Stone:

The Personal Insurance Federation of California ("PIFC") appreciates the opportunity to submit comments to the California Department of Insurance ("the Department") in response to the Modifications to the Proposed Text of the Governing Procedure for Noncompliance Hearings Regulation ("proposed regulation").

PIFC member companies provide home, auto, flood and earthquake insurance for millions of Californians. Our member companies, State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury, write more than 60 percent of the home and auto insurance sold in this state. In addition, the National Association of Mutual Insurance Companies (NAMIC) is an associate member.

PIFC submits that the proposed regulation, specifically the change to Section 2614.13, Prepared Testimony, is contrary to the goal of the overall regulation, is in conflict with other provisions of the regulation and violates the due process rights of insurers.

**The effect of the proposed regulation will be in conflict with the Department's own statement as set forth in the Initial Statement of Reasons:**

*"The PDT requirement was intended to expedite hearings by: Providing a period for prehearing evaluation of complex testimony involving rating, underwriting,*

*economic and actuarial matters, of both percipient and expert witnesses, by hearing officers, opposing counsel, and experts retained by opposing counsel; Allowing motions to strike to be heard before the evidentiary hearing."*

The above statement references the complex nature of the testimony involved and the need for evaluation by the parties and the hearing officer. The current regulation, justifiably, allows the parties the time to examine the testimony, make appropriate objections, if necessary, and prepare for the hearing. The very goal intended by Prepared Direct Testimony ("PDT"), as stated above, will not be served if the proposed regulation is adopted and certain parties are permitted to submit direct testimony and evidence orally, for the first time, for consideration by the hearing officer and other parties at the time of the evidentiary hearing. Additionally, delays in the process are inevitable due to motions to strike needing to be resolved at the hearing rather than prior to, as is current practice.

**Section 2614.6 clearly establishes the burdens on the Department or intervenor challenging the conduct or actions of an insurer:**

*"(a) The Department or intervenor has the burden of proving, by a preponderance of the evidence, every fact necessary to show in what manner and to what extent noncompliance is alleged to exist."*

*"(b) In addition to its burden of proof, the Department or intervenor shall have the **burden of presenting its evidence and witnesses first.**" (emphasis added).*

This proposed regulation creates an administrative end-run by the Department to avoid having to disclose key elements of their case-in-chief prior to the hearing. Insurers will be disadvantaged by not having the ability to respond appropriately to the Department and intervenor arguments.

Specifically, through the proposed regulation, the Department and intervenor will be able to introduce initial direct testimony from witnesses and evidence during an evidentiary hearing – at which time a company will have already been required to submit its own prepared direct testimony. The result will be that a company will have presented its witness testimony *prior to the Department and intervenor* in direct conflict with the requirement of Section 2614.6 (b) that states the Department or intervenor present evidence and witnesses *first*.

PIFC respectfully requests the Department reconsider the proposed regulation.

Thank you for your time and consideration. Please feel free to contact PIFC's General Counsel, Kimberley Dellinger Dunn at 916.442.6646 or at [kdellingerdunn@pifc.org](mailto:kdellingerdunn@pifc.org), if you have any questions about PIFC's written comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberley Dunn', with a stylized flourish at the end.

Kimberley Dellinger Dunn  
General Counsel, PIFC