MEMORANDUM

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Rate Enforcement Bureau
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From: Rex Frazier, President
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RE: Notice of Informal Workshop - Principally At-Fault Regulations
10 C.C.R. 2632.13

The Personal Insurance Federation of California (PIFC) greatly appreciates the opportunity to submit comments in anticipation of the California Department of Insurance's (CDI) informal workshop to discuss the principally at-fault regulations. These are important regulations implementing key provisions of Proposition 103 and deserve considerable attention.

Discussion of these regulations is particularly timely given the looming CDI mandate of 100% compliance with the new auto rating factors (ARF) regulations in summer, 2008. It is likely that the new ARF regulations will, in many cases, mandate carriers to inflate artificially the role of first mandatory rating factor (driver safety record) and to deflate artificially the role of optional rating factors (such as frequency and severity of loss by garaging address).

Given this need to improve accuracy of the first mandatory rating factor, it is important to modernize the principally at-fault regulations. These regulations undermine carriers' ability to produce accurate auto rates under the ARF regulations. We urge the CDI to consider ways to make driver safety record a more accurate rating factor. Doing so would reduce the likelihood of "pumping" the weight of driver safety record and "tempering" the optional rating factors when the ARF regulations are fully implemented in summer, 2008. Reducing the amount of "pumping" and "tempering" is consistent with Proposition 103's mandate to avoid arbitrary insurance rates.

<u>"Principally At-Fault" Relates to the Good Driver Discount</u>

The current principally at fault regulations are too broad in scope and unduly restrict use of the driver safety record rating factor. The current regulations apply the concept of "principally at-fault" to both the Proposition 103 "good driver discount" as well as the First Mandatory Factor (driver safety record) under the ARF regulations. The principally at-fault regulations should only govern the Proposition 103 "good driver discount."

Proposition 103 introduced the concept of "principally at-fault" only with respect to "Good Driver Discount policies." Insurance Code Section 1861.025 uses the concept of "principally at-fault" for purposes of qualifying for a Good Driver Discount policy. Under this concept, a driver's status as a "good driver" is only determined based upon crashes in which the driver is at least 51% at fault. A crash in which the driver is 50% or less at fault could not be used to determine "good driver status."

However, the current principally at-fault regulations also apply the "principally at-fault" concept to calculation of a driver's safety record for purposes of calculating auto rates. But nowhere does Proposition 103 link the concept of "principally at-fault" with driver safety record. Insurance Code Section 1861.02(a)(1), which mandates that insurers use driver safety record as a rating factor, fails entirely to mention the concept of "principally at-fault." Nonetheless, the CDI has grafted the concept of "principally at-fault" onto the First Mandatory Factor and limited the carriers' ability to explore more accurate methods of determining the weight of the driver safety record.

An Opportunity to Improve the Accuracy of Driver Safety Record

To address concerns about implementing the ARF regulations in 2008, we respectfully request that the CDI consider removing reference to driver safety record in the principally at-fault regulations. We propose modifying 10 CCR 2632.13(a) as follows:

> (a) In determining a driver's qualification to purchase a good driver discount policy pursuant to California Insurance Code Section 1861.025, an insurer shall determine the driver's violation points and principally at-fault accidents as set forth in this section. ~~This section shall also apply in determining whether a driver was principally at-fault in an accident for the purpose of determining the driver's safety record (First Mandatory Factor).~~

Such an amendment would retain Proposition 103's mandate that the "good driver" discount be determined with respect to "principally at-fault" accidents while increasing the potential to develop a more accurate determination of driver safety record.

Making such a change would be most important because of the current impact of two "exceptions" in the principally at-fault regulations. Under the principally at-fault regulations, at 10 CCR 2632.13(d), there are seven exceptions preventing a driver from being considered "principally at-fault" even if an insurer determines, through an investigation, that they are in fact 51% or more at fault.

Based upon our member company research, two of these exceptions stand out as undermining the predictive value of driver safety record. The first exception is the "lawfully parked" exception (10 CCR 2632.13(d)(1)). Under this exception, a driver who parks and opens the car door into traffic cannot be considered "principally at-fault" even if the driver is, in reality, 100% at fault. The second exception is the "solo vehicle accident" exception (10 CCR 2632.13(d)(7)). Under this exception, a driver choosing to drive in hazardous conditions but who loses control of the vehicle due to unseen road hazards (i.e. "black ice") cannot be considered "principally at-fault" when the driver is, in reality, 100% at fault.

The current principally at-fault regulations provide these exceptions from fault for not only the "good driver" discount but also for driver safety record. We respectfully request that the CDI eliminate driver safety record from the principally at-fault regulations.

Concept for Future Discussion

Eliminating driver safety record from the scope of the principally at-fault regulations also opens up the possibility of further refinements in the accuracy of the driver safety record rating factor. PIFC requests that the CDI also consider future discussions about the possibility of changing the ARF regulations to allow driver safety record to account for crashes in which a driver bears some percentage of fault less than 51%. With such a modification, carriers would have an incentive to make more accurate determinations of fault following a crash and develop auto rates based upon the overall spectrum of fault.

Such a change would be consistent with Insurance Code Section 491, which prohibits an auto insurer's rating plan from providing for a premium increase based on an accident when the insured is not at fault in any manner[1]. Section 491 explicitly allows for rating plans to account for auto crashes in which the insured bears some percentage of fault, even a percentage below 51%.

PIFC would be interested in exploring jointly with the CDI whether at fault determinations of less than 51% could become part of an insurer's class plan for purposes of driver safety record. If the CDI is open to such a discussion, we would be grateful for an opportunity to explore whether the predictive value of driver safety record could be increased.

With such a change, an insurer would still bear the burden of proving how a crash involving less than 51% at fault should impact the driver safety record rating factor in the class plan it files with the CDI. If a carrier would fail to carry this burden, then the CDI could preserve the current 51% system.

To accomplish such a change, the CDI would need to amend the ARF regulations. One possible approach could be to change 10 CCR 2632.5(c)(1)(B) as follows:

> (B) ~~the principally at-fault~~ accidents in which the driver was at fault, in some manner, consistent with Insurance Code Section 491, as determined pursuant to the methodology approved by the Commissioner in the insurer's class plan ~~section 2632.13~~;.

We appreciate this opportunity to consider important regulatory changes.

[1] Insurance Code Section 491 provides in full: "The rating plan of a motor vehicle liability insurer shall not provide for an increase in the premium if based upon an accident in which the insured is not at fault, in any manner, as determined by either the accident report or the insurer. In the event the insurer determines that its insured is at fault contrary to an accident report's specific finding that the insured is not at fault, the insurer shall reach its conclusion only after an investigation."