

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

File No. REG-2008-00019

Date: September 8, 2008

NOTICE OF PROPOSED RULEMAKING

**Proposed Adoption of Sections 2308.1, 2308.2, and 2308.3
Filing of Financial Statements**

SUBJECT OF RULEMAKING

Notice is hereby given that Insurance Commissioner Steve Poizner (“Commissioner”) proposes to adopt California Code of Regulations Section 2308.1, 2308.2, and 2308.3 pertaining to financial statements of insurers required to be filed with the Commissioner.

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Government Code Section 11346.8(a). The request for a hearing must be received by the contact person designated below no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Any questions regarding this notice should be directed to:

Cathleen S. Chapman, Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4458
Facsimile: (415) 904-5896
chapmanc@insurance.ca.gov

The backup contact person for these inquiries is:

Susan J. Stapp, Assistant Chief Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4403
Facsimile: (415) 904-5896
stapps@insurance.ca.gov

WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner via electronic or U.S. mail, personal delivery or facsimile. Comments shall be transmitted to Cathleen Chapman (see above contact information) by one method only.

The written comment period closes at **5:00 p.m. on November 4, 2008**. Any materials *received* after that time will not be considered.

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 California Code of Regulations, Title 10, Subchapter 4.9 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
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

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

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code Sections 733, 900, 903, 903.5, 923, 924, 931, and 934. Insurance Code Sections 733, 900, 923, 931, as well as *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805 and *20th Century Insurance Company v. Garamendi* (1994) 8 Cal. 4th 216, provide the authority for this rulemaking.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Insurance Code requires insurers to provide certain financial statements to the Commissioner and/or the National Association of Insurance Commissioners (“NAIC”), an organization composed of the chief insurance regulatory officials from all 50 states, the District of Columbia, and five U.S. territories. Existing law provides the Insurance Commissioner with the authority to prescribe “in the number, form, and by the methods” which insurers make and file such statements. Pursuant to this authority, the Commissioner proposes to adopt rules outlining the procedures for filing financial statements and related documents with the NAIC or the Commissioner.

For more than ten years, the NAIC has collected and stored financial data from insurance companies writing policies in California and across the United States. Currently, insurers must provide annual and quarterly financial data electronically to the NAIC via the organization's Web site or by submitting a diskette. The NAIC no longer accepts paper copies of insurance company financial statement filings.

The policy objectives of this rulemaking are the following: to transition insurers to electronic filings; to eliminate unnecessary and duplicative paper filings by insurers; and to improve the efficiency of the Department of Insurance.

Section 2308.1 (Electronic Filing of Annual and Quarterly Statements)

Section 2308.1 is proposed to be added to set forth the procedures for all insurers to file annual and quarterly financial statements electronically with NAIC. The new section designates the NAIC to accept such filings on behalf of the Commissioner and provides that such statements are considered filed when received by the NAIC. It also requires foreign and alien insurers to provide the Commissioner with a paper original of a properly executed Jurat page from the related NAIC statement blanks as confirmation of each NAIC electronic filing, unless a paper original of such properly executed Jurat page is on file with its domestic regulator, and to file in paper directly with the Commissioner when any document required to be filed with the NAIC is not accepted by it.

Section 2308.2 (Paper Filing of Domestic Insurers' Annual and Quarterly Statements)

Section 2308.2 is proposed to be added to require all domestic insurers to file annual and quarterly financial statements also in paper form directly with the Commissioner.

Section 2308.3 (Paper and Electronic Filing of California Supplemental Financial Statements)

Section 2308.3 is proposed to be added to require all insurers to file California supplemental financial statements in paper and electronic form directly with the Commissioner.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commissioner has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with California Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The Commissioner has made an initial determination that the adoption of the proposed regulations will not 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 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.

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

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination: The matters proposed herein will affect insurance companies and, therefore, will not affect small business. (California Government Code section 11342.610(b)(2).)

Related Federal Law: There are no federal regulations or statutes comparable to the proposed regulations.

ALTERNATIVES

In accordance with California Government Code section 11346.5(a)(13), 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 the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed action at the scheduled hearing or during the written comment period.

INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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 as well as the express terms of the proposed action. Upon request, the proposed text and 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.

The file for this proceeding, which includes a copy of the proposed amendment, 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, 24th 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 Cathleen Chapman, the contact person listed above.

AVAILABILITY OF MODIFIED TEXT OF AMENDMENT

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45-days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to Cathleen Chapman, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will be posted on the Department's Web site.

AUTOMATIC MAILING

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

WEB SITE POSTINGS

Documents concerning this proceeding are available on the Department's Web site, <http://www.insurance.ca.gov>. As of the date of this notice, the steps required to access these documents are as follows. In the "Quick Links" section, go to "Online Services" and select "Search for Proposed Regulations." When the "Search" screen appears, enter the Department's regulation file number for this proceeding in the "Search for" field. In the alternative, you may select "Browse All Regulations" and locate relevant documents by using the subject matter list.

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