

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

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**SCOPE OF PRIOR APPROVAL
PROPOSED REGULATION TEXT¹**

1. PROPOSED REGULATION TEXT LIMITING THE DEPARTMENT'S APPROVAL OF A RATE OR CLASS PLAN TO THOSE MATERIALS AN INSURER SUBMITS IN A SPECIFIED PORTION OF THE FILING

§ 2632.11. Submission of Class Plans, Symbols, and Implementation Data.

(a) Every insurer offering or selling a policy of private passenger automobile insurance shall submit a class plan which complies with this subchapter to the Commissioner for review. If the Commissioner concludes that an insurer's submission does not meet the requirements of Division 1, Part 2, Chapter 9 of the Insurance Code, including the requirements of this subchapter, he may reject the class plan. The following shall apply to all class plans submitted in accordance with this subchapter:

(1) A class plan shall be considered to have been received by the Commissioner on the date that it is received by the Department's Rate Filing Bureau in San Francisco.

(2) Within 15 working days of receipt, the Commissioner shall review filings submitted pursuant to this subchapter for completeness. If the Commissioner determines that the class plan is not complete, notice stating the grounds for incompleteness will be given to the insurer within the 15 working day period and the filing of the class plan will be rejected.

(3) Rejection of the filing of a class plan for incompleteness shall not relieve any insurer of the duty to file a complete class plan.

~~(b) Class plans submitted for review shall contain a completed class plan application, in a form prescribed by the Commissioner, and underwriting guidelines.~~

(b) A class plan shall consist of two parts, Part I and Part II. In approving a class plan, the Commissioner approves only materials submitted in Part I of the filing.

(1) Part I – the portion of the class plan submitted for approval. Only materials submitted in Part I are considered for approval by the Commissioner. Every insurer shall include items (A) through (C) below in Part I. An insurer may include other information for approval as described in part (D). The Commissioner shall specify which components, if any, that are

¹ Proposed additions to existing regulation text are in underline; proposed deletions to existing regulation text are in ~~strikethrough~~.

included in item (D) have been approved at the time the class plan is approved. Every insurer shall include the following materials in Part I:

(A) The rating factors and a breakdown of the categories for each rating factor and the proposed relativities used by the insurer;

(B) Symbols and associated values and relativities;

(C) A document exhibiting and demonstrating the revenue impact of the class plan.

(D) Those underwriting guidelines, eligibility criteria, rating rules or other materials that an insurer submits for approval by the Commissioner. Any materials submitted by an insurer in accordance with this subdivision shall include a detailed explanation of the reason(s) the insurer is seeking approval of the materials. Materials submitted by an insurer in accordance with this subdivision shall also include a memorandum which details the manner in which the materials will affect insurance applicants, policyholders and the overall operation of the class plan. If the Commissioner concludes that an insurer's submission does not meet the requirements of this subdivision, he may reject the class plan for incompleteness at any time before he approves the class plan pursuant to subdivision (e).

(2) Part II – the portion of the class plan not submitted for approval. Materials submitted in Part II are necessary for review in conjunction with a class plan filing but are not considered for approval by the Commissioner. The Commissioner shall not be deemed to approve any materials submitted in Part II. Every insurer shall include the following materials in Part II:

(A) Filing memorandum;

(B) Insurer group multi-company filing;

(C) Submission data sheet;

(D) Sequential analysis data source information;

(E) Sequential analysis methodology;

(F) Factor weights calculation;

(G) Market dislocation information;

(H) Filing history;

(I) An explanation of data availability in accordance with section 2632.9;

(J) A complete copy of the rate manual and a detailed description of how the various components in the rating rules and rate pages are combined to develop the final premium;

(K) Rating examples as detailed in the filing instructions;

(L) Good driver discount guidelines;

(M) A complete set of underwriting guidelines;

(N) A complete set of policy forms; and

(O) Any other information proffered by the insurer or determined by the Commissioner to be necessary in order to perform a complete analysis of the class plan application.

[...]

(d) Any class plan change approved by the Commissioner shall be implemented no later than 90 days after the date the plan is approved by the Commissioner. Implementation, as referred to herein, shall apply to both the issuance of new policies and renewals, and the implementation shall not result in unfair discrimination between insureds that are issued new and renewal policies.

(e) The Commissioner shall approve, order a hearing on, or reject a class plan submitted by an insurer within 90 days of the date a completed class plan application is received by the Commissioner.

(f) An insurer whose class plan has been rejected by the Commissioner may, within 30 days of the date of ~~such~~ rejection, request a hearing before the Commissioner. ~~Such~~The hearing shall be conducted in compliance with California Insurance Code section 1861.08, and the insurer requesting ~~such the~~ hearing shall have the burden of proving that the rejected class plan complied with all applicable statutes and regulations.

(g) Any change to an approved class plan or values assigned to the rating factors, and any change to the values assigned to the make, model, value, cost of repair, or auto symbol for the insured vehicles requires the prior approval of the Commissioner. Proposed changes must be submitted with a class plan application.

[...]

§ 2648.4. ~~Complete Application.~~ Timelines and Procedures for Rate Filings.

(a) In order to be complete, a rate application must ~~include the following forms, exhibits, data and documentation~~ comply with the rate application instructions, which are incorporated by reference ~~:- application for approval (form CA-RA1, 5-1-96 ed.), duplicate of form CA-RA1 for return copy, self-addressed envelope with sufficient postage to return the duplicate copy of CA-RA1, Rate/Rule/Underwriting Rule Submission Data Sheet (form CA-RA2, 5-1-96 ed.), Line of Business (form CA-RA3, 5-1-96 ed.), Filing Checklist (form CA-RA4, 5-1-96 ed.), Ratemaking Data (form CA-RA5, 5-1-96 ed.), Reconciliation Report (form CA-RA6, 5-1-96 ed.), Additional Data Required by Statute (form CA-RA7, 5-1-96 ed.), Miscellaneous Data (form CA-RA8, 5-1-96 ed.), Filing History (to be labeled Exhibit 1), Rate Level History (to be labeled Exhibit 2), Premium Adjustment Factor (to be labeled Exhibit 3), Premium Trend Factor (to be labeled Exhibit 4), Allocated Loss Adjustment Expense (to be labeled Exhibit 5), Loss Development Factors (to be labeled Exhibit 6), ALAE Development Factors (to be labeled Exhibit 7), Loss Trend, ALAE Trend, and Expense Trend (to be labeled Exhibit 8), Catastrophe Adjustment (to be labeled Exhibit 9), Policy Term Distribution (to be labeled Exhibit 10), Credibility Adjustment (to be labeled Exhibit 11), Data Availability Report (to be labeled Exhibit 12), Interjurisdictional Expense Allocations (to be labeled Exhibit 13), Unallocated Loss Adjustment Expense (to be labeled Exhibit 14), Other Expense Items (to be labeled Exhibit 15), Ancillary Income (to be labeled Exhibit 16), Federal Income Tax Rate (to be labeled Exhibit 17), Projected Investment Income Ratio (to be labeled Exhibit 18), Loss Reserves, Loss Adjustment Expense~~

Reserves, and Unearned Premium Reserves (to be labeled Exhibit 19), Insurer's Ratemaking Calculations (to be labeled Exhibit 20), Rate Distribution (to be labeled Exhibit 21), Rate Classification Relativities (to be labeled Exhibit 22), New Program (to be labeled Exhibit 23), Group Filing (to be labeled Exhibit 24), rating rules, and rate pages. The application must also contain a summary and explanation of the purpose for the filing. If the Commissioner concludes that an insurer's submission does not meet the requirements of Division 1, Part 2, Chapter 9 of the Insurance Code, including the requirements of this Subchapter, he may reject the rate application. The Filing Instructions (forms CA-IA1-CA-I8, 5-1-96, ed.) for these forms and exhibits are incorporated by reference.

(b) A rate application shall consist of two parts, Part I and Part II. In approving a rate application, the Commissioner approves only materials submitted in Part I of the filing.

(1) Part I – the portion of the rate application submitted for approval. Only those materials submitted in Part I will be the subject of review for approval by the Commissioner. Every insurer shall include item (A) in Part I. An insurer may include other information for approval as described in item (B). Part I consists of the following:

(A) The base rates;

(B) Those underwriting guidelines, eligibility criteria, rating rules or other materials that an insurer submits for approval by the Commissioner. Any materials submitted by an insurer in accordance with this subdivision shall include a detailed explanation of the reason(s) the insurer is seeking approval of the materials. Materials submitted by an insurer in accordance with this subdivision shall also include a memorandum which details the manner in which the materials will affect insurance applicants, policyholders and the overall operation the rate application.

(2) Part II – the portion of the rate application not submitted for approval. Materials submitted in Part II are required for review in conjunction with a rate application but are not considered for approval by the Commissioner. The Commissioner shall not be deemed to approve any materials submitted in Part II. Every insurer shall include the following materials in Part II:

(A) Property and liability filing submission data sheet;

(B) Rate making data and template;

(C) Reconciliation of direct earned premium;

(D) Relativities for all rating factors;

(E) Relativities or numerical values for all other factors or fees, which have any potential impact on the premium charged, including but not limited to: increased limit factors, deductible relativities, individual rating premium modifications, and schedule rating plans.

(F) Additional data required by statute;

(G) Miscellaneous fees and other charges;

(H) Proposed changes in forms and rules;

(I) Rate impact of proposed changes in forms and rules;

- (J) Excluded expenses;
- (K) Projected yield and federal income tax rate on investment income;
- (L) Filing memorandum
- (M) Printed rate and rule manual pages;
- (N) Underwriting guidelines and eligibility criteria;
- (O) Reinsurance agreements, reinsurance premium and recoverables;
- (P) Premium adjustment factors;
- (Q) Loss and defense & cost containment expense (DCCE) development
factors;
- (R) Loss and DCCE trend;
- (S) Ancillary income;
- (T) Insurer's ratemaking calculation;
- (U) Super group corporate structure verification;
- (V) Request for a variance;
- (W) Any other information proffered by the insurer or determined by the
Commissioner to be necessary in order to perform a complete analysis of the rate application.

~~(b)-(c)~~ Notwithstanding the completeness determination, the Commissioner may later require the submission of relevant underwriting rules and other relevant documents from an applicant in order to perform a complete analysis of an application.

~~(e)-(d)~~ Requests for variances as authorized by section 2644.27 shall be on the following form:

[...]

2. PROPOSED REGULATION TEXT SPECIFYING THAT ALL MATERIALS AN INSURER SUBMITS AS PART OF A RATE OR CLASS PLAN FILING ARE PUBLIC, BUT IF THE INSURER CAN SHOW THAT SOME PARTICULAR RULE OR DOCUMENT IS TRADE SECRET, THE MATERIAL WILL BE RELEASED ONLY TO REPRESENTATIVES OF THE PUBLIC WHO COMPLY WITH CERTAIN REQUIREMENTS

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[...]

(k) Information submitted to the Commissioner under this section shall be public information. However, information the Commissioner approves for trade secret protection shall be released to the public only as provided in subdivision (q).

(l) If an insurer can demonstrate to the Commissioner by clear and convincing evidence that information it submits in support of a class plan application is trade secret, that information will be released to the public only as provided in subdivision (q). The insurer must clearly identify any purported trade secret information and submit the information in accordance with the following procedures:

(1) Any items of information which, in the insurer's opinion, are trade secrets shall be removed from the body of information submitted with the class plan and submitted in a separate, confidential attachment marked "Trade Secrets" on its cover page. The insurer waives any claim for confidential treatment with respect to any item not submitted in accordance with this subdivision.

(2) A reference number shall be assigned to each item removed for trade secret protection, and the same reference number shall be inserted in the body of the class plan where the item was removed.

(3) Each item removed from the class plan for trade secret protection should be identified by its reference number, the page and line number(s) from where the item was removed, and a detailed explanation as to why the item meets the definition of a trade secret.

(4) The following statement, signed by the insurer's representative, shall accompany each submission of purported trade secret information: "I certify, under penalty of perjury, that I believe each and every piece of information contained herein is a trade secret subject to protection under the laws of the State of California and is filed in accordance with California Code of Regulations, title 10, section 2632.11." The statement shall be accompanied by the name of the insurer, the name and title of the insurer's representative submitting the statement, and the date of signature.

(5) If claiming trade secret protection, the insurer shall submit the following statement immediately after the cover page for the submitted class plan: "Information claimed confidential on the basis of its falling within the scope of the definition of trade secret has been removed to a confidential appendix, and is cited by cross-reference number within the body of the submitted class plan." The statement will be accompanied by a reasonably detailed summary of the removed information.

(6) The insurer shall narrowly excise trade secret information and not indiscriminately mark non-trade secret information for confidential treatment.

(7) If the Commissioner concludes that an insurer's submission does not meet the requirements of this subdivision, he may reject the class plan.

(m) Information will not receive trade secret protection unless the insurer demonstrates to the Commissioner by clear and convincing evidence that the information constitutes a trade secret. The Commissioner's determination as to whether information constitutes trade secret information may be made at any time before the Commissioner approves the class plan pursuant to subdivision (e).

(n) If the Commissioner rejects an insurer's request to designate certain information as trade secret information, the Commissioner shall not thereafter release for inspection any designated information until 10 days after transmitting to the insurer the decision rejecting the insurer's trade secret designation. During this period, the insurer may request a hearing in front of the Administrative Hearing Bureau as defined in section 2561.1(a). The hearing will be conducted in accordance with sections 11445.10 through 11445.60 of the Government Code. The failure of the insurer to request a hearing within 10 days after transmittal of the decision rejecting the insurer's trade secret designation for certain information shall constitute a waiver of any claim of confidentiality for that information. If the rejection of the trade secret designation stands, the Commissioner shall have discretion to do any of the following: (1) allow the insurer to remove the information from the class plan; (2) allow the insurer to withdraw the class plan in its entirety; or (3) require the insurer to move the information into the public portion of the class plan.

(o) For purposes of this section, "trade secret" shall have the same meaning as that set forth in section 3426.1(d) of the California Civil Code.

(p) Any person at any time may initiate or intervene in a proceeding concerning an insurer's request to designate information as trade secret or the Commissioner's decision concerning such a request. Any hearing conducted pursuant to this subdivision shall be conducted by the Administrative Hearing Bureau in accordance with sections 11445.10 through 11445.60 of the Government Code. Notwithstanding the foregoing, after the Commissioner notices a rate hearing or grants a rate hearing pursuant to section 2653.5 any challenge to the insurer's request for trade secret designation shall be determined within the rate hearing and in accordance with Subchapter 4.9, entitled: "Rules of Practice and Procedure for Rate Proceedings."

(q) If the Commissioner determines that an item of information is a trade secret, the information will be made available for public inspection only under the following conditions:

(1) The Commissioner determines that the party seeking to inspect the trade secret information is a representative of the public. For purposes of this subdivision, a representative of the public is a party that represents the interests of individual insurance consumer[s], or is a group organized for the purpose of consumer protection as is demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings. A party that represents, in whole or in part, any entity regulated by the Commissioner is not a representative of the public for the purposes of this subdivision.

(2) The party seeking to inspect the trade secret information signs a confidentiality agreement attesting that the party shall not disclose the trade secret information to any other party and shall protect the trade secret information from unauthorized use unless disclosure of the trade secret information is authorized by the insurer who submitted the trade secret information, or is required by law.

(3) The Commissioner shall not release the trade secret information for inspection until 10 days after transmitting notice of the request for inspection to the insurer who submitted the trade secret information. Within 10 days of the Commissioner's transmittal of the notice of the request, the insurer may object to the request. If the insurer objects to the request, the Commissioner shall provide the requesting party with notice of the objection and shall allow the requesting party 10 days from the transmittal of the notice of the objection to reply to any allegation in the objection. The Commissioner shall consider any objections and replies submitted in accordance with this subdivision before granting or denying the request to inspect the trade secret information.

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[...]

(e) Information submitted to the Commissioner under this section shall be public information. However, information the Commissioner approves for trade secret protection shall be released to the public only as provided in subdivision (k).

(f) If an insurer can demonstrate to the Commissioner by clear and convincing evidence that information it submits in support of a rate application is trade secret, that information will be released to the public only as provided in subdivision (k). The insurer must clearly identify any purported trade secret information and submit the information in accordance with the following procedures:

(1) Any items of information which, in the insurer's opinion, are trade secrets shall be removed from the body of information submitted with the rate application and submitted in a separate, confidential attachment marked with "Trade Secrets" on its cover page. The insurer waives any claim for confidential treatment with respect to any item not submitted in accordance with this subdivision.

(2) A reference number shall be assigned to each item removed for trade secret protection, and the same reference number shall be inserted in the body of the rate application where the item was removed.

(3) Each item removed from the rate application for trade secret protection should be identified by its reference number, the page and line number(s) from where the item was removed, and a detailed explanation as to why the item meets the definition of a trade secret.

(4) The following statement, signed by the insurer's representative, shall accompany each submission of purported trade secret information: "I certify, under penalty of perjury, that I believe each and every piece of information contained herein is a trade secret subject to protection under the laws of the State of California and is filed in accordance with California Code of Regulations, title 10, section 2648.4." The statement shall be accompanied

by the name of the insurer, the name and title of the insurer's representative submitting the statement, and the date of signature.

(5) If claiming trade secret protection, the insurer shall submit the following statement immediately after the cover page for the rate application: "Information claimed confidential on the basis of its falling within the scope of the definition of trade secret has been removed to a confidential appendix, and is cited by cross-reference number within the body of the submitted rate application." The statement will be accompanied by a reasonably detailed summary of the removed information.

(6) The insurer shall narrowly excise trade secret information and not indiscriminately mark non-trade secret information for confidential treatment.

(7) If the Commissioner concludes that an insurer's submission does not meet the requirements of this subdivision, he may reject the rate application at any time.

(g) Information will not receive trade secret protection unless the insurer demonstrates to the Commissioner by clear and convincing evidence that the information constitutes a trade secret. The Commissioner's determination as to whether information constitutes trade secret information may be made at any time before the Commissioner approves the rate application pursuant to section 1861.05 of the Insurance Code.

(h) If the Commissioner rejects an insurer's request to designate certain information as trade secret information, the Commissioner shall not thereafter release for inspection any designated information until 10 days after transmitting to the insurer the decision rejecting the insurer's trade secret designation. During this period, the insurer may request a hearing in front of the Administrative Hearing Bureau as defined in section 2561.1(a). The hearing will be conducted in accordance with sections 11445.10 through 11445.60 of the Government Code. The failure of the insurer to request a hearing within 10 days after transmittal of the decision rejecting the insurer's trade secret designation for certain information shall constitute a waiver of any claim of confidentiality for that information. If the rejection of the trade secret designation stands, the Commissioner shall have discretion to do any of the following: (1) allow the insurer to remove the information from the rate application; (2) allow the insurer to withdraw the rate application in its entirety; or (3) require the insurer to move the information into the public portion of the rate application.

(i) For purposes of this section, "trade secret" shall have the same meaning as that set forth in section 3426.1(d) of the California Civil Code.

(j) Any person at any time may initiate or intervene in a proceeding concerning an insurer's request to designate information as trade secret or the Commissioner's decision concerning such a request. Any hearing conducted pursuant to this subdivision shall be conducted by the Administrative Hearing Bureau in accordance with sections 11445.10 through 11445.60 of the Government Code. Notwithstanding the foregoing, after the Commissioner notices a rate hearing or grants a rate hearing pursuant to section 2653.5 any challenge to the insurer's request for trade secret designation shall be determined within the rate hearing and in accordance with Subchapter 4.9, entitled: "Rules of Practice and Procedure for Rate Proceedings."

(k) If the Commissioner determines that an item of information is a trade secret, the information will be made available for public inspection only under the following conditions:

(1) The Commissioner determines that the party seeking to inspect the trade secret information is a representative of the public. For purposes of this subdivision, a representative of the public is a party that represents the interests of individual insurance consumer[s], or is a group organized for the purpose of consumer protection as is demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings. A party that represents, in whole or in part, any entity regulated by the Commissioner is not a representative of the public for the purposes of this subdivision.

(2) The party seeking to inspect the trade secret information signs a confidentiality agreement attesting that the party shall not disclose the trade secret information to any other party and shall protect the trade secret information from unauthorized use unless disclosure of the trade secret information is authorized by the insurer who submitted the trade secret information or is required by law.

(3) The Commissioner shall not release the trade secret information for inspection until 10 days after transmitting notice of the request for inspection to the insurer who submitted the trade secret information. Within 10 days of the Commissioner's transmittal of the notice of the request, the insurer may object to the request. If the insurer objects to the request, the Commissioner shall provide the requesting party with notice of the objection and shall allow the requesting party 10 days from the transmittal of the notice of the objection to reply to any allegation in the objection. The Commissioner shall consider any objections and replies submitted in accordance with this subdivision before granting or denying the request to inspect the trade secret information.

3. PROPOSED REGULATION TEXT REQUIRING THAT PRIOR TO IMPLEMENTING A RATING METHOD AN INSURER MUST RECEIVE DEPARTMENT APPROVAL FOR A CLASS PLAN THAT FULLY DESCRIBES THE RATING METHOD

§ 2632.20. Materials with Rate Impact.

(a) Before an insurer may implement a rating method, an insurer must receive approval from the Commissioner for a class plan that fully describes the rating method.

(b) Notwithstanding any other provision of law, an insurer's use of any unfiled rating method shall constitute a violation of Insurance Code sections 1861.01 and 1861.05.

(c) For purposes of this section "rating method" shall mean any rating rule, rating factor, underwriting rule, eligibility guideline, coverage form with an impact on losses, or any other change that has an impact on rates or losses.

§ 2648.5. Materials with Rate Impact.

(a) Before an insurer may implement a rating method, an insurer must receive approval from the Commissioner for a rate application that fully describes the rating method.

(b) Notwithstanding any other provision of law, an insurer's use of any unfiled rating method shall constitute a violation of Insurance Code sections 1861.01 and 1861.05.

(c) For purposes of this section "rating method" shall mean any rating rule, rating factor, underwriting rule, eligibility guideline, coverage form with an impact on losses, or any other change that has an impact on rates or losses.

4. PROPOSED REGULATION TEXT CLARIFYING THE MEANING OF CCR SECTION 2632.2 REGARDING THE ADOPTION OF AUTOMOBILE RATING FACTORS

§ 2632.2. Rating Factors.

(a) The term “rating factor” is defined as any factor, including discounts, used by an insurer which establishes or affects the rates, premiums, or charges assessed for a policy of automobile insurance. No insurer may use a rating factor unless it has been filed with the Commissioner and is in compliance with the requirements set forth in Insurance Code section 1861.02. Except as provided in section 2632.6, any use of a rating factor not authorized by Insurance Code section 1861.02(a) shall constitute the use of an illegal rate in violation of Insurance Code sections 1861.01 and 1861.05.

(b) Notwithstanding subsection (a), the following matters are not rating factors and nothing in this section shall prevent or limit an insurer from considering such matters, with the prior approval of the Commissioner, in the development of rates and premiums:

(1) type or limits of coverage or deductibles;

(2) for automobile collision coverage, as described in California Insurance Code Section 660, the value, the cost of repair, or the auto symbol of the insured vehicles. The term “auto symbol” as used in these regulations means any symbol based on vehicle price, repair cost, or damageability which is used to calculate any rate or premium for private passenger automobile insurance;

(3) for automobile physical damage coverage, as described in California Insurance Code Section 660, or comprehensive coverage, as described in California Insurance Code Section 11580.07, the make, model, value, cost of repair, or the auto symbol of the insured vehicles.