

**DEPARTMENT OF INSURANCE****Legal Division, Rate Enforcement Bureau**

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**NOTICE OF WORKSHOP REGARDING PROPOSED REGULATIONS:  
SCOPE OF PRIOR APPROVAL**

OV-2011-00076

September 14, 2012

Pursuant to California Government Code section 11346.45, the California Department of Insurance ("Department") invites all interested persons to attend a workshop to discuss potential changes to the Department's existing prior approval regulations, as more specifically set forth below. The workshop is scheduled to be held as follows:

October 15, 2012 -- 10:30 a.m.  
California Department of Insurance  
45 Fremont Street, 22nd Floor Hearing Room  
San Francisco, CA 94105

A copy of the proposed changes for discussion at the workshop is attached. Changes are proposed to sections 2632.2, 2632.11, and 2648.4 of the California Code of Regulations ("CCR"). New CCR sections 2632.20 and 2648.5 are proposed. Proposed additions to the existing regulations are indicated in underline; proposed deletions are indicated in ~~strikeout~~.

Following this workshop, the Department anticipates beginning the formal regulation adoption process in accordance with the procedures set forth in California Government Code section 11346 *et seq.*

The purpose of the workshop is to discuss the following proposed regulations:

**1. Proposed regulation limiting the Department's approval of a rate or class plan to those materials an insurer submits in a specified portion of the filing**

*CCR sections amended: 2632.11; 2648.4*

Over the course of a given year, the Department approves hundreds, and sometimes thousands, of rate and class plan filings. Each filing can contain hundreds of documents and records, including attachments and exhibits, some of which may not have been disclosed to the public. Despite the Department's best efforts to review the file to ensure that it complies with California law, the Department may nonetheless approve a filing that contains practices that do not comport with California law. Where an unlawful practice is part of an approved filing, the question becomes whether the Department's approval of the filing also constitutes an approval of the unlawful practice.

The Department invites participants to discuss a proposed regulation requiring insurers to put any critical underwriting rules or other materials for which they are requesting approval in a particular part of the rate or class plan filing. The proposed regulation provides that the Department approves only that part of the filing specifically designated for approval.

**2. Proposed regulation specifying that all materials an insurer submits as part of a rate or class plan filing are public, but if the insurer shows 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**

*CCR sections amended: 2632.11; 2648.4*

Insurance Code section 1861.07 requires that “[a]ll information provided to the commissioner pursuant to [Proposition 103] shall be available for public inspection...” Historically, however, some insurers have been reluctant to publicly share their underwriting guidelines, eligibility criteria and other rating rules. Some insurers have argued that these materials constitute trade secrets of the company that cannot be disclosed to the public.

The Department invites participants to discuss a proposed regulation specifying that all materials an insurer submits as part of a rate or class plan filing are public, but if the insurer meets a high burden to show that some particular rule or document is a trade secret, the materials will be released only to representatives of the public who comply with certain requirements designed to protect confidentiality.

**3. Proposed regulation requiring that prior to implementing a rating method an insurer must receive Department approval for a class plan that fully describes the rating method**

*CCR sections added: 2632.20; 2648.5*

Currently, the Department’s rate and class plan approval letters provide, in part: “This approval does not constitute an approval of underwriting guidelines nor the specific language, coverages, terms, covenants and conditions contained in any forms, or of the forms themselves. Policy forms and underwriting guidelines included in this filing were reviewed only insofar as they relate to rates contained in this filing or currently on file with the California Department of Insurance...The Commissioner may at any time take any action allowed by law if he determines that any underwriting guidelines, forms or procedures for application of rates, or any other portions of the application conflict with any applicable laws or regulations.”

The Department invites participants to discuss a proposed regulation specifying that prior to implementing a rating method an insurer must receive Department approval for a class plan that fully describes the rating method. The proposed regulation defines “rating method” as any rating rule, rating factor, underwriting rule, eligibility guideline, coverage form with an impact on losses, or other change that has an impact on rates or losses.

**4. Proposed regulation clarifying the meaning of CCR section 2632.2(a) regarding the adoption of automobile rating factors**

*CCR section amended: 2632.2*

California Code of Regulations section 2632.2(a) currently defines a “rating factor” 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.” The purpose of section 2632.2(a) is to ensure that an insurer discloses in its class plan anything that affects rates and premiums. Section 2632.2(a) is not, however, intended to supplant the requirements of Insurance Code section 1861.02(a), which prohibits the use of any automobile rating factors except three mandatory factors and “[t]hose other factors that the commissioner may adopt by regulation...”

The Department invites participants to discuss a proposed regulation designed to prevent confusion about the difference between an authorized and an unauthorized rating factor by making clear that no insurer may use a rating factor unless it has been filed with the Commissioner and complies with the requirements of Insurance Code section 1861.02(a).

The Department invites all interested participants to present oral or written comments at the workshop to address the proposed regulations. Submission of written comments in advance of the workshop, preferably by e-mail, is encouraged.

The Department maintains a service list for this proceeding. Any person who would like to be added to the e-mail service list for this matter will have an opportunity to designate an e-mail address on the sign-in sheet which will be provided at the workshop. Alternatively, any person who would like to be added to the e-mail service list may send an e-mail request to Bryant Henley at the e-mail address printed below.

Any questions regarding this Notice, and any written comments submitted, should be directed to:

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