

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

June 17, 2008

REG-2008-00024

INITIAL STATEMENT OF REASONS

INTRODUCTION

California Insurance Commissioner Steve Poizner (Commissioner) will hold a public hearing to discuss the proposed addition of sections 2355.1 and 2355.2 to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations, and the repeal of Subarticles 1, 2, 3, 4, and portions of 5 of Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations. The proposed regulations will implement, interpret and make specific certain provisions of Division 2, Part 6, Chapter 1 of the California Insurance Code, entitled "Title Insurance."

These regulations are authorized by Insurance Code sections 12340.3, 12340.7, 12340.8, 12401, 12401.1, 12401.3, 12401.5, 12401.7, 12401.71, 12401.9, and 12404.1 which require regulated entities to collect, maintain and produce data. The data required relates to title insurance rates and rating systems, is used to generate statistical information and to aid the review and evaluation of individual entities and industry-wide economic performance, financial experience, and operating methods while ensuring that rates and rating systems are fair and reasonable.

These regulations are intended to replace existing financial data reporting regulations which have been deemed inconsistent with the Department's current review and evaluation of financial experience. The proposed regulations are intended to streamline and simplify the existing financial data reporting regulations.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATIONS

Applicable statutory law establishes that entities involved in conducting the business of title insurance must maintain and disclose sufficient data to permit the Commissioner to effectively monitor title insurance and escrow rates. The Commissioner's ability to consider such data and monitor title and escrow rates is directly related to the Commissioner's duty to ensure that rates are fair and reasonable. Existing financial data reporting regulations require more detailed and extensive information than is currently deemed necessary for the proper and efficient review and evaluation of individual rate filings and industry financial experience. The proposed regulations streamline and simplify existing financial data reporting regulations by repealing the existing statistical plan and rate regulation formula and adopting the more tailored and efficient statistical plan financial data reporting.

While it is assumed that all entities conducting the business of title insurance intend to collect, maintain and share data relating to rates and rating systems, it is important for the Commissioner

to prescribe the form and detail of the financial data to be submitted to the Department. The data is required to review and evaluate the economic performance, financial experience, and operating methods of both individual entities and the industry as a whole. The data required by the proposed regulations will promote the public welfare by aiding the Commissioner's determination of fairness and reasonableness of rates, as well as the economic health of the regulated industry.

The proposed regulations will promote competition by narrowly tailoring the financial data reporting requirements for efficient review and evaluation of entities' financial experience. The Commissioner's power to require the collection or reporting of data relating to the business of title insurance can be found within a number of statutes in the Insurance Code. The proposed regulations, therefore, are necessary to implement, interpret and make specific the Commissioner's powers as they relate to title and escrow data maintenance, collection and reporting. The proposed regulations are also necessary, by repeal and adoption, to ensure the collection of only that information which is deemed necessary for efficient review and evaluation. The specific purpose and necessity of each proposed adoption, including those documents incorporated by reference, and each proposed deletion (repeal), is set forth below.

Section 2355.1 Statistical Plan General Provisions

The purpose of this section is to clarify which entities may be affected by these regulations and which Insurance Code sections are being interpreted and made specific by these regulations.

This section is necessary to put those affected entities on notice and to clarify to those entities that are not sure whether the regulations may apply to them that they may indeed be affected depending on whether they are within the statutory definition of potentially affected entities.

Section 2355.2 Statistical Plan Financial Data Reporting Requirements

This purpose of this section is to specifically identify which sector of affected entities is to report the required data to the Department and to incorporate by reference each data report that the affected entity is required to report. The purpose is also to identify each document by title and publication date so that it may be easily referenced.

It is necessary that the financial data reports (the "Statistical Plan") are incorporated by reference rather than published in the California Code of Regulations as regulation text because they are in chart, graphical, or matrix form and published in Excel spreadsheet format on the Department's public website and the forms and formats are not well represented as published in Barclay's Official California Code of Regulations. This section lists eighteen (18) documents as incorporated by reference and lists each by title and date of publication. Those eighteen documents are set forth below.

Documents Incorporated by Reference:

Instructions for Completing the Title Insurance Statistical Plan; June 27, 2008

The purpose of this section is to explain how each of the statistical plan financial data reports, and accompanying documents as set forth below, are to be completed. That is, the instructions

reference each report, and each subpart of each report, and explain what kind of data the Department is seeking in each report and each subpart of each report.

The instructions are necessary to ensure that the Department receives the data it is seeking and to allow the affected entities to avoid guessing at exactly what data is to be reported. This helps to ensure that the data is consistent across regulated entities so that the Department is not comparing apples to oranges, so to speak.

Signature Page; June 27, 2008

The purpose of the signature page is to require a company officer to sign under penalty of perjury that the information reported is honest and complete. Another purpose is to serve as a cover page that identifies the reporting entity and the appropriate contact person within the entity.

The signature page is necessary to ensure accurate and honest reporting by introducing penalties for incomplete and dishonest reporting. Without this step it is possible that the affected entities' could consider the statistical plan a perfunctory exercise rather than the vitally important function it provides. Obtaining the appropriate contact person is necessary to ensure efficient processing and communication channels.

Certification; June 27, 2008

The purpose of the certification page is to augment the sworn statements required in the signature page. This document formalizes the data reporting process to ensure accurate reporting.

It is necessary to make the data reporting a solemn process in order to impart to reporting entities that partial, incomplete, or inaccurate data will not be sufficient. This is so because the data is invaluable to the Commissioner's statutory duties.

Interrogatory; June 27, 2008

The purpose of the Interrogatory is to determine whether the reporting entity has a subsidiary, or more specifically, a "controlled escrow company", whose data should be either consolidated with the reporting entity or reported separately.

Making this determination is necessary because otherwise the Department may not get a complete picture of the reporting entities' finances, which would hinder the Department's review of the entity's and the industry's financial experience, as required by statute.

CATI-R1: Balance Sheet; June 27, 2008

The purpose of the balance sheet is to obtain the reporting entity's California and countrywide assets, liabilities, and equity for the most recent three years. This information is further delineated into multiple subcategories.

This information is required to evaluate and assess the reporting entity's financial experience. More specifically, the Department needs the data to determine how solvent, or how financially healthy the entity is at any given time. This can be compared to other entity's data or industry-

wide data to help the Department determine the entity's financial experience, as required by statute.

CATI-R2: Income Statement; June 27, 2008

The purpose of the income statement is to obtain the reporting entity's California and countrywide revenue and expenses for the most recent three years. This data is reported in multiple lines. That is, it is further delineated into multiple subcategories.

This information is necessary to help the Commissioner determine that rates are not excessive, inadequate, or unfairly discriminatory. This determination is required by statute. The information assists the Department's assessment of whether an entity or a portion of an entity is profitable or unprofitable in any given time period. This information can be correlated with other data to assist the Commissioner's determination of the reasonableness of regulated entities' rates and rating systems.

CATI-R3: Summary of Transaction Activities

This document asks for the reporting entity's California and countrywide title and escrow activities for the most recent two years. More specifically, it asks for information regarding title orders, escrow orders, and combined title and escrow orders. It asks for the number of orders opened, closed, and cancelled.

This information is necessary for various reasons. One reason is to get a general idea of how the business operates. Another reason is to apprise whether entities may be asked to provide some services without expectation of payment, which assists the Department's determination of the reasonableness of rates. It also is necessary to gauge market cycles over time.

CATI-R4 Parts 1-8, and Total: Summaries of Rate Distributions by Type of Policy, and aggregate total

These eight data reports ask for the same information (base rate, number of policies written, total premium and average premium), but regarding each of the eight different types of title insurance policies. (commercial or personal -- owners, lenders, refinance or equity.) The purpose is to compile enough rate data on each regulated entity for the Department to develop industry averages.

This information, the industry averages, is necessary to assist the Department in its review and evaluation of rates to determine that they are not excessive, inadequate or unfairly discriminatory. This determination is a statutory duty.

CATI-R5.1 and 5.2: Escrow Fee Distribution by Amount of Transaction (by County) and in summary form

This data report collects escrow fee data. The purpose is to gain an appreciation for that portion of the regulated entities' business. This information is collected because a not insignificant portion of the regulated entities' revenue can come from escrow fees as opposed to title insurance fees.

This information is necessary to assist the Department in its review and evaluation of rates to determine that they are not excessive, inadequate or unfairly discriminatory. This determination is a statutory duty.

Sections to be Repealed

California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 7.1

Article 7.1 is proposed to be almost entirely repealed. More specifically, Subarticles 1, 2, 3, and 4 are proposed to be repealed in their entirety. In Subarticle 5, four of the six sections are to be entirely repealed, and one is to be partially repealed. This leaves one section intact.

This Article comprises the existing Title Insurance Statistical Plan and Related Rules Governing Rates and Charges. It is being repealed because the proposed regulations above, including the documents to be incorporated by reference, are intended to replace it. The Department is proposing to repeal the sections because they have been deemed inconsistent with the Department's current review and evaluation of the regulated entities' financial experience; and by replacing the repealed sections, the proposed regulations are intended to streamline and simplify the repealed sections.

Subarticle 1 is being repealed because the sections either do not pertain to the new statistical plan, and thus will be superfluous, or they are duplicated in the new proposed regulations.

Subarticle 2 is the existing statistical plan and financial data reporting requirements. This is what is being replaced. It is being replaced for the reasons stated above -- that is, it is more detailed and burdensome than is currently necessary for the Department's review and evaluation of the regulated entities' financial experience. Further, it requests data from underwritten title companies. It is presently believed that the Department currently collects sufficient data from underwritten title companies in other reports. Thus, those sections requiring information from underwritten title companies are not necessary.

Subarticle 3 is a maximum rate formula. It prescribes a formula, the product of which is the maximum rate that title insurers may charge. It is a method of determining reasonableness of rates. It is proposed to be repealed because it is a more rigid method of determining the reasonableness of rates than is necessary at this time.

Subarticle 4 is the same as Subarticle 3 with the exception that it addresses escrow rates rather than title insurance rates. It is proposed to be repealed for the same reasons as Subarticle 3.

Subarticle 5 contains the enforcement sections. It is proposed to be repealed because new and improved enforcement sections are proposed for adoption in a sister rulemaking file. (REG-2008-00022) The new enforcement sections will make these superfluous.

SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

REASONABLE ALTERNATIVES

The Commissioner has identified no reasonable alternatives to the presently proposed regulations. The Commissioner has determined that no reasonable alternatives exist to carry out the purpose for which the regulations are proposed. The Commissioner has determined that gathering and reporting information as required in the proposed regulations is necessary to ensure the fairness and reasonableness of rates. The proposed regulations will replace the current financial data reporting regulations which have been deemed inconsistent with the efficient review and evaluation of the fairness and reasonableness of rates. Performance standards were considered but were rejected as an unreasonable and impracticable alternative. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses while remaining effective in the review and evaluation of rates. Nor have any such alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. The proposed regulations are intended to decrease the economic impact of the currently existing financial reporting regulations. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies, or affect escrow or title-related services where the annual gross receipts for the business exceed two million dollars, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

FINDING OF POSSIBLE SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The proposed regulations require the collection and reporting of rate and rating system data to the Commissioner in the established format. The Commissioner recognizes that the proposed regulations may have a significant adverse economic impact for those entities that do not currently collect or report such data in the required format.

Title insurers, underwritten title companies and controlled escrow companies are already statutorily required to report financial data to the Commissioner. Existing regulations identify uniform standards and categories of data for collection and reporting in the future. The proposed regulations are designed streamline and simplify existing regulations regarding data collection and reporting. Because the proposed regulations are less burdensome, they will have less economic impact than existing financial reporting regulations. To the extent regulated entities currently collect such data, the economic impact should be minimal.

It is assumed that most entities engaged in the business of title insurance can expect some economic impact due to the adaptation of current data collecting systems in order to comply with the proposed regulations. The Commissioner, therefore, has determined that the proposed regulations may have a significant adverse economic impact on businesses subject to the proposed regulations.