

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

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San Francisco, CA 94105

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TITLE 10. INVESTMENTS
CHAPTER 5. INSURANCE COMMISSIONER
SUBCHAPTER 3. INSURERS

FINAL STATEMENT OF REASONS

UPDATED INFORMATIVE DIGEST

Subsequent to the initial Informative Digest, there have been no changes to existing statutory law relating to the proposed regulations, no changes to the purpose or policy of the proposed regulations that implement and make specific those statutes, and no changes to comparable federal law. However, this updated informative digest is required because the Department has made numerous changes to the form and detail of the original proposed regulations.

First, although the Initial Statement of Reasons and original Informative Digest refer to documents incorporated by reference, the final proposed regulations do not incorporate any documents by reference. Instead, the language in the initial incorporated documents are now included in the final regulation text. This change was publicly noticed and subject to a 15-day public comment period in May 2009.

As provided in the initial informative digest, the Department proposes to enact sections 2355.1 and 2355.2. However, the Department is now also proposing to renumber existing section 2359.4 to become new section 2355.3, and to make further amendments to that section as described below in the Update of Initial Statement of Reasons. This change was publicly noticed and subject to a 15-day public comment period in May 2009.

Also, although the Department was initially proposing to delete only some portions of existing section 2359.5, the Department is now proposing to delete the entire section. This change is discussed below under the subheading "Sufficiently Related Changes." This change was publicly noticed and subject to a 15-day public comment period in May, 2009.

Other changes from the initial Informative Digest are as follows. The initial Informative Digest refers to a Balance Sheet, but the final proposed regulations do not contain a Balance Sheet. Also, although the initial Informative Digest provides that the regulations require reporting for

two prior years, the final proposed regulations require reporting for only one prior year, except that in the initial reporting year there is no prior year reporting requirement.

The changes described above are the only changes to the information contained in the initial Informative Digest. However, there are many other specific changes to the form and detail of the proposed regulations. All changes, including those described above, are described below in the Update of Initial Statement of Reasons.

UPDATE OF INITIAL STATEMENT OF REASONS

The Department received many comments both during and subsequent to the initial 45-day public comment period. The comments presented were both written and oral. Oral comments were provided, and transcribed, at the August 14, 2008 public hearing. The Department also received comments during a 15-day public comment period ending May 22, 2009. All comments, including those received subsequent to the 45-day period, are summarized and responded to in this Final Statement of Reasons.

In response to the comments, the Department made many changes to the originally proposed regulations. All changes were “sufficiently related” as that term is used in California Code of Regulations, Title 1, section 42 and Government Code section 11346.8. All changes are described below under the subheading “Sufficiently Related Changes.”

The Department publicly noticed these changes for a 15-day public comment period beginning May 7, 2009. The Department received public comments regarding the changes. All of these comments are summarized and responded to in this Final Statement of Reasons document.

In response to the comments received during the 15-day comment period, the Department has made several “nonsubstantial” changes. Pursuant to California Code of Regulations, Title 1, section 40 and Government Code section 11346.8, these changes were not publicly noticed. All of these changes are described below under the subheading “Nonsubstantial Changes.”

Sufficiently Related Changes

In the originally noticed list of sections proposed to be repealed, only certain portions of section 2359.5 were proposed to be repealed. However, after further consideration and as indicated in the final list of sections proposed to be repealed, the Department is proposing to repeal section 2359.5 in its entirety. This section regulates charges for unusual risks or services, including a requirement for the format and timing of disclosures of such charges. It implements Insurance Code section 12401.8. The deletion of this regulation is reasonably necessary because, while the statute will continue to effectively regulate charges for unusual risks and services, the regulation imposes more mandates on the format and timing of disclosures services than is necessary. This is the only change from the initial list of sections to be repealed.

The proposed regulation no longer incorporates any documents by reference. The formerly incorporated “Instructions” document is now part of the text of proposed regulation section 2355.2. All language regarding incorporation by reference which was in the initially proposed section 2355.2 has been deleted. These changes are reasonably necessary to provide clarity and avoid the cumbersome and possibly confusing incorporating procedure.

The Certification Page and the Signature Page – both formerly incorporated documents – have been combined and are now part of proposed regulation text section 2355.2(a). They have been combined because they were somewhat duplicative. They are now in the text rather than incorporated to provide clarity and avoid the cumbersome and possibly confusing incorporating procedure.

The Interrogatory page is no longer incorporated and is now part of the proposed regulation text section 2355.2(b). This change is reasonably necessary to provide clarity and avoid the cumbersome and possibly confusing incorporating procedure.

The spreadsheet report forms – all formerly incorporated – is no longer part of these proposed regulations. They will ultimately be posted, as amended, on the Department’s website like all other statistical plans and other required reports. The forms do not include any language, responsibilities, requirements or provisions that are not found in the proposed regulation text. Thus, pursuant to Government Code section 11340.9(c), there is no need to promulgate them as regulations. This change is reasonably necessary to improve the quality of information the Department receives by providing clarity and avoiding the cumbersome and possibly confusing incorporating procedure.

The entire Balance Sheet report – which was previously proposed to be incorporated by reference – has been deleted from the proposed regulations’ reporting requirements because most of the information to be reported therein is available elsewhere. This change is reasonably necessary in order to strike a proper balance between providing sufficient information to the Department while avoiding undue burden on the reporting company.

The format of the proposed regulations has been amended so that the reports are no longer arranged in a matrix, or table format. This change only deletes the lines and boxes within which the text appears. The format change is reasonably necessary for publishing in the Barclay’s Code.

The term “Income Statement” was added to the title of proposed section 2355.1. The purpose of the change is to provide clarity. The change is reasonably necessary because the former title, which referred only to a “Statistical Plan,” was not perfectly accurate because the income statement portion of the regulations is not a statistical plan.

Subsection (a) of proposed section 2355.1 was amended to make clear that the proposed regulations only apply to California licensed title insurers. The change is reasonably necessary because the language in the former subsection was overly broad.

The authority cited for proposed section 2355.1 was amended to include California Insurance Code section 12401.8. This change is reasonably necessary to improve the quality of data the Department receives by providing clarity to the instructions.

In subsection (c) of proposed section 2355.1, the Department pushed back the initial reporting requirement from early 2010 to early 2012. The affected companies will now be required to collect information beginning in 2011 for reporting in 2012. This change is reasonably necessary to allow the affected companies sufficient time to update their systems as needed to comply with the regulations.

In subsection (b) of proposed section 2355.2, the Department added two questions to the interrogatory page. The answered questions will provide the Department with valuable information regarding the reporting companies' methods in completing the Escrow Fee Distribution report. The questions are reasonably necessary to provide the Department with information necessary to gain a sufficient understanding of the industry in order to fulfill its legislative mandate to regulate rates.

In subsection (b) of proposed section 2355.2, a provision was added to require reporting companies to inform the Department regarding their income statement accounting methods. The change is reasonably necessary for clarity and to provide the Department with information necessary to gain an understanding of the industry sufficient to regulate rates.

Section 2355.2(c) – the Income Statement instructions – was amended to require only one past year of reporting, rather than two. However, the initial submission, due in 2012, does not require any prior year reporting. The change was reasonably necessary in order to strike a proper balance between providing sufficient information to the Department while avoiding undue burden on the reporting company.

Section 2355.2(c) – the Income Statement instructions – was amended to include uniform reporting standards. The change is reasonably necessary to improve the quality of the data the Department receives by providing clarity.

Many specific line items of the Income Statement instructions were amended in response to comments received from trade groups and individual members of the regulated industry. Generally, the descriptions of the Income Statement line items were amended to conform to NAIC Annual Statement reporting. Some line items were deleted as unnecessary. All the changes – amendments and deletions – were reasonably necessary to improve the quality of data the Department receives by either providing clarity or to striking a proper balance between sufficient information and undue burden.

Section 2355.2(d) – the Summary of Transaction Activities report instructions – has been amended to delay the reporting requirement from early 2010 to early 2012. This change is reasonably necessary to improve the quality of information the Department receives by allowing reporting companies sufficient time to update their information gathering systems.

Section 2355.2(d) – the Summary of Transaction Activities report instructions – has been amended to include definitions of “open,” “closed,” and “cancelled” title and escrow orders. The change is reasonably necessary to improve the quality of data the Department receives by providing clarity.

Section 2355.2(d) – the Summary of Transaction Activities report instructions – has been amended to require only one prior year of reporting, rather than two. Also, no prior year reporting is required in the initial report due in early 2012. These changes are reasonably necessary in order to strike a proper balance between providing sufficient information to the Department while avoiding undue burden on the reporting company.

Section 2355.2(e) – the Summary of Rate Distribution by Type of Policy report instructions – has been amended to delete the term “Base Rate.” The change is reasonably necessary to improve the quality of the data the Department receives by conforming the instructions to the reporting companies’ rating methods, which do not include base rates as that term was originally proposed to be used.

Section 2355.2(e) – the Summary of Rate Distribution by Type of Policy report instructions – has been amended to delete the refinance and equity policy types. The change is reasonably necessary to improve the quality of information the Department receives by conforming the instructions to the reporting companies’ business practices.

Section 2355.2(e) – the Summary of Rate Distribution by Type of Policy report instructions – has been amended to include reference to “Lender’s Policy Concurrent with Owner’s Policy.” The change is reasonably necessary to improve the quality of information the Department receives by conforming the instructions to the reporting companies’ business practices.

Section 2355.2(e) – the Summary of Rate Distribution by Type of Policy report instructions – has been amended to include definitions of “Personal,” “Commercial,” “Owner’s Policy,” “Lender’s Policy,” and “Lender’s Policy Concurrent with Owner’s Policy.” The change is reasonably necessary to improve the quality of information the Department receives by providing clarity and conforming the instructions to the reporting companies’ business practices.

Section 2355.2(e) – the Summary of Rate Distribution by Type of Policy report instructions – has been amended to slightly revise the dollar increment reporting bands. For instance, instead of reporting policies issued within a band of \$60,000 to \$69,000 the line item will be reported in a band of \$50,001 to \$75,000. The change is reasonably necessary to improve the quality of information the Department receives by providing clarity and conforming the instructions to the reporting companies’ business practices.

Section 2355.2(g) – the Escrow Fee Distribution by Amount of Transaction by County report instructions – has been amended to specify that the county data should be based on the location of the property rather than the location of the escrow office. This requirement is not mandatory and therefore the work “should” is used. The change is reasonably necessary to improve the quality of information the Department receives by providing clarity and uniformity.

Section 2355.2(g) – the Escrow Fee Distribution by Amount of Transaction by County report instructions – has been amended to specify that the information provided shall include transactions marketed directly and through affiliated underwritten title companies. The change is reasonably necessary to improve the quality of information the Department receives by providing clarity.

Section 2355.2(g) – the Escrow Fee Distribution by Amount of Transaction by County report instructions – has been amended to include definitions for “Sales Escrow” and “Loan Escrow.” The change is reasonably necessary to improve the quality of information the Department receives by providing clarity.

Section 2355.2(g) – the Escrow Fee Distribution by Amount of Transaction by County report instructions – has been amended to slightly revise the dollar increment reporting bands. For instance, instead of reporting transactions within a band of \$100,000 to \$200,000 the band is from \$100,001 to \$200,000. The change is reasonably necessary to improve the quality of information the Department receives by providing clarity and conforming the instructions to the reporting companies’ business practices.

Existing regulation section 2359.4 – Disclosure to Consumers of Available Discounts – is proposed to be renumbered as section 2355.3. The change is reasonably necessary so that, if or when the proposed deletions and proposed adoptions take effect, the section numbers are in order.

The language of existing section 2359.4 – Disclosure to Consumers of Available Discounts – (proposed to be renumbered to 2355.3) is proposed to be amended to provide that the disclosure is required before the transaction closes. Also, language requiring a notation was deleted. The first change is reasonably necessary because the disclosure is of much greater use if provided before the transaction is finalized. The second change is reasonably necessary because the deleted language would become moot after the first change.

The language of existing section 2359.4 – Disclosure to Consumers of Available Discounts – (proposed to be renumbered to 2355.3) is proposed to be amended to include language specifying that the section shall not apply to commercial transactions. The purpose is to limit the disclosure requirement to only those parties who may not have financial sophistication on par with the title insurer or underwritten title company. This is reasonably necessary because it limits the burden on complying companies where the disclosure would be unnecessary while maintaining the benefits of the disclosure when needed.

The language of existing section 2359.4 – Disclosure to Consumers of Available Discounts – (proposed to be renumbered to 2355.3) is proposed to be amended to include language specifying that no disclosure is required if the insurer’s rate filing does not include discounts. Although it should be understood that the disclosure is not required if the rate filing doesn’t include discounts, the change makes this exception explicit and is reasonably necessary to provide clarity.

Nonsubstantial Changes

Proposed section 2355.1(a) provides that only title insurance companies, that is, underwriters, are required to submit reports. This is clear from the opening sentence which refers to “each Title Insurance Company.” However, there was a sentence added at the end of subsection (a) that could have been argued to imply that underwritten title companies were also required to submit reports. It read: “This section shall apply to all entities or persons that conduct the business of title insurance within the meaning of section 12340.3.” Under section 12340.3, the business of title insurance includes transaction performed by underwritten title companies.

While it remains true that the reports submitted by title insurers will include information regarding transactions conducted through their affiliated underwritten title companies, the only entities required to submit reports are the title insurers and not the underwritten title companies.

Thus, the contents of the reports will include information regarding entities “that conduct the business of title insurance within the meaning of section 12340.3,” including underwritten title companies, but the reports will be submitted only by title insurers. Since the meaning and purpose of 2355.1(a) is to inform who is required to report, and not what is in the report, the offending sentence should only refer to title insurers instead of the broader reference to entities conducting the business of title insurance. Omitting the sentence eliminates the potential for any misunderstanding.

For the same reasons stated above, reference to underwritten title companies in section 2355.2(a)(4) was deleted. The sentence previously read as follows: “If a title insurance company or underwritten title company (“UTC”) is submitting reports of a controlled escrow company which is controlled by the reporting title insurance company or UTC, but whose experience is not otherwise included in the reports of the controlling title insurance company or UTC, a separate certification shall be submitted for the controlled escrow company reports.” Since a UTC will never be submitting reports of a controlled escrow company, the reference was superfluous.

Proposed section 2355.2(c) contains the instructions for the Income Statement. There are three line items in the Income Statement instructions which refer to unusual risks or services. Pursuant to Insurance Code section 12401.8, charges which deviate from a company’s rate filing are allowed for unusual risks or services. Currently existing regulation section 2359.5 was promulgated by the Department to make specific Insurance Code section 12401.8.

The three line items in the Income Statement instructions which refer to unusual risks or services (R1.1A.a, R1.1A.d, and R1.2c) had all cited to the regulation rather than the statute. However, the regulation is proposed to be deleted. Therefore, the citation was amended to delete reference to the regulation and instead cite to the statute. The information required by the line item does not change. Nor does the changed wording affect the Department’s authority to collect the information.

Line item R1.2a of the Income Statement instructions (proposed section 2355.2(c)) refers to escrow fees in five places and to “funds” once. The language was amended to delete the one use

of the term “funds” and replace it with “fees.” The term “fees” refers to money received by the company from the consumer for services rendered. It is income. The term “funds” refers to money received by the company from the lender on the consumer’s behalf. It is only temporarily held and is not income and is not to be reported here. Making this amendment will not change the numbers which will be reported in this line item. Although the reporting companies and the Department understood what was to be reported in this line item, amending the instruction language from “funds” to “fees” in this instance will provide greater clarity.

Similarly, line item R1.2b was amended to include the following sentence: “Report sub-escrow fees only for transactions in which the reporting company was the initial recipient of fees.” This sentence is exactly the same as that which appears in the line-item directly above relating to full escrow. While the sentence was previously included in publicly noticed line item 1.2a, the Department had inadvertently omitted this instruction from 1.2b. It was always understood by the department and the reporting companies that for line items 1.2a and 1.2b reporting companies would only report fees for transaction in which the reporting company was the initial recipient of fees. This change will not change the numbers which will be reported by these line items. It only provides clarity.

There were no other “nonsubstantial changes.” There were no other changes which were not publicly noticed.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

While many comments submitted during the rulemaking resulted in revisions to these regulations, no alternatives to the regulation, other than those reflected in the comments, were presented to or considered by the Department.

After a review of the alternatives presented, the Department has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulation. While many suggestions would make the regulations less burdensome, they would have an unacceptably deleterious effect on the regulations’ effectiveness.

The proposed regulations affect only title insurers. The proposed regulations do not affect any “small business” as that term is defined in Government Code section 11342.610. Specifically, section 11342.610(b)(2) explicitly excludes insurance companies from the definition of “small business.”

INCORPORATION BY REFERENCE

In the event that a requirement of Government Code section 11346.9 may be satisfied by a statement made in the Notice of Proposed Action, the Initial Statement of Reasons, or the Notice of Modifications to Proposed Regulations, the aforementioned documents are hereby incorporated by reference within the Final Statement of Reasons.

SUMMARY AND RESPONSE TO COMMENT

The summary and response to comments are organized and bound directly after this page.