

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

FINAL STATEMENT OF REASONS

Date: January 31, 2003

RH399

UPDATE TO THE INFORMATION PRESENTED IN THE INITIAL STATEMENT  
OF REASONS

**Section 2695.1(b)**

This section has been amended to clarify that the regulations do not set forth the exclusive definitions of all unfair claims settlement practices but that other methods, acts or practices not specifically referred to in the regulations may also be unfair claims practices.

**Section 2695.1(f)**

This section has been amended to clarify that policy language relating to the investigation, processing and settlement of claims shall be consistent with or more favorable to the insured than the minimum standards set forth in the regulations.

**Section 2695.2(s)**

This section has been amended to clarify that evidence or documentation in the claimant's possession must be submitted to the insurer in order for it to be considered part of "proof of claim."

**Section 2695.4(a)**

This section has been amended to require disclosure of the enumerated information that may also apply to the claim presented.

**Section 2695.4(a)(1)**

This section has been amended to delete the requirement of

receipt of additional proofs of claim.

**Section 2695.7**

This subsection has been amended to add additional authority under 790.03(h)(12).

**Section 2695.7(b)**

This subsection has been amended to clarify that it does not apply in cases in which the insurer denies the claim in whole.

**Section 2697.7(f)**

This subsection has been amended to add back to the regulations the language that exempts insurance companies from complying with this subsection when a claimant is represented by counsel for the claim at issue.

**Section 2695.7(n)**

This subsection has been amended to clarify that it is not necessary for a policy to contain language allowing an insurer to request a medical examination. It is only required that such request be reasonably necessary.

**Section 2695.7(q)**

This subsection has been amended to clarify that it does not apply in cases in which multiple policies have been issued to insureds covering the same loss and the language of such contracts prescribe alternative subrogation rights. Additionally, this subsection has been amended to clarify that it applies only to lines of insurance other than disability and health. Disability and health insurance deductibles, if any, are not structured in such a way as to allow insurance companies to comply with this subsection.

**Section 2695.7(s)**

This subsection has been amended to clarify that it applies to data used by insurance companies to establish the value of insurance claims. Additionally, the subsection has been amended to clarify that insurers shall not be responsible for the accuracy of data provided by any governmental entity because insurers have no control over such data.

### **Section 2695.8(b)(1)(A)**

This newly adopted subsection has been amended to reflect that other entities exist that can be used to determine salvage value besides a licensed salvage dealer. Such entities include a salvage pool or motor vehicle auction.

### **Section 2695.8(b)(2)**

This newly adopted subsection has been amended to qualify the requirement that an insurer provide the vehicle identification number, stock number, and license plate number "if this information is available" to the insurer or its representative.

### **Section 2695.8(b)(3)**

The newly adopted subsection has been amended to clarify the requirement that the department has the right to access all documents and data used by an insurer in the insurer's valuation of the loss vehicle. The commissioner has experienced significant difficulty in obtaining for review the evidence to support that insurers are reasonably valuing vehicles. Without the ability to review all records that are used to value a vehicle, the commissioner is unable to effectively determine whether values are reasonable and in compliance with law. The commissioner has the statutory authority (California Insurance Code Sections 730 and 734) to examine all books and records of any licensee and any other person or business if the information is material or necessary to the examination of the licensee.

### **Section 2695.8(f)**

This subsection is amended based upon public comment to specify the reasonable timeframe for providing the written notice required by this subsection. This subsection is also amended to specify the content of the written or oral disclosure required by this subsection. The commissioner has found, and based upon evidence presented in a recent Senate Insurance Committee hearing on auto body repair fraud, that most consumers are not provided with the ability to make an informed decision as to whether to use an insurer recommended shop or one of their choosing. Disclosure is necessary in order to protect the consumer's right to choose the repair shop. In order for the claimant to be more adequately informed of his or her rights we propose the amendment to this subsection.

### **Section 2695.8(i)**

Based upon public comment, this subsection is amended to remove the previously adopted language requiring payment be made based upon the "prevailing rate" standard.

**Section 2695.8(i)(2)**

This subsection has been amended to clarify that the written estimate referred to in this subsection is the estimate prepared by or for the "insurer".

**Section 2695.8(1)**

This subsection has been amended to clarify that the standard for adjusting a claim for betterment or depreciation does not apply to prior or unrelated damage to the loss vehicle.

**Section 2695.8(m)**

This subsection has been amended to clarify the differences (in adjusting claims for towing and storage charges) between first party and third party claims.

**Section 2695.85(c)**

This adopted subsection has been amended to clarify that the towing and storage charges payable to an insured must have been incurred to protect the vehicle from further loss.

**Section 3695.9(c)**

This section has been amended to clarify that the insurer cannot require the insured to have the damaged property repaired by a specific individual or entity.

**Section 2695.9(d)**

This section has been amended to clarify that the insurer cannot suggest or recommend that the insured have the damaged property repaired by a specific individual or entity unless certain requirements are met.

**Section 2695.11(e)**

This section has been amended to include the requirement that the reasons for a claim denial (if preauthorization is denied) also be communicated to the insured and medical service provider in writing.

### **Section 2695.12(a)**

Section 2695.12(a)(14) has been added to clarify that, once a violation of the regulations has occurred, reasonable mistakes or opinions should be taken into consideration in determining whether or how much of a penalty should be assessed.

### **Section 2695.14(a)**

This section has been amended to increase the amount of time an insurer has to comply with the amended regulations from 75 calendar days to ninety calendar days after the regulations have been filed with the Secretary of State.

### SUMMARY OF AND RESPONSE TO PUBLIC COMMENT

The Department's summary of and response to public comment is separately included in this rulemaking file and incorporated herein by this reference.

### UPDATE OF MATERIAL RELIED UPON

The Commissioner has not relied upon technical, theoretical or empirical studies or reports in proposing these regulations.

### MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has made a determination that adoption, amendment or repeal of the regulation does not impose a mandate on local agencies or school districts. The regulation has nothing to do with local agencies or school districts; it neither requires nor prohibits action on their part.

### ALTERNATIVES

The Department has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulation. In support of this statement, no alternative was proposed, identified or brought to the attention of the agency during the public comment period. No proposed alternatives were rejected that would lessen the adverse economic impact on small businesses.