

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

File No. RH03029826

Date: December 23, 2005

**Proposed Amendment of Sections 2632.8 and 2632.11
Optional Automobile Insurance Rating Factors**

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

SUBJECT OF HEARING

Notice is hereby given that the Insurance Commissioner (“Commissioner”) proposes to amend Title 10, California Code of Regulations, Sections 2632.8 and 2632.11 regarding the weight to be given to an insurer’s automobile rating factors in determining automobile insurance rates and premiums.

Proposition 103 provides that automobile rates must be determined by applying the following rating factors in decreasing order of importance: (1) the driver’s driving safety record, (2) the driver’s annual mileage driven, (3) the number of years of driving experience for the driver, and (4) those optional rating factors which the Commissioner may adopt by regulation. The current regulations provide that all of the optional rating factors, taken on average, cannot weigh more than the third mandatory rating factor. However, because the optional rating factors are averaged, it is frequently the case that an individual optional rating factor, by itself, carries more weight than a mandatory rating factor.

The proposed regulation would require that each optional rating factor, taken individually, cannot weigh more than the third mandatory factor. This method is sometimes referred to as the “individual method.”

A phase-in plan will also be developed during the rulemaking process.

AUTHORITY AND REFERENCE

The Commissioner proposes to amend the proposed regulation under the express authority of California Insurance Code Section 1861.02. The proposed regulation implements, interprets, and makes specific California Insurance Code Section 1861.02.

WORKSHOP DATE AND LOCATION

In addition to the meetings, workshops and town hall meetings previously held, pursuant to the provisions of California Government Code Section Section 11346.45, the Commissioner hereby

invites all interested persons to attend a further workshop to discuss the proposed regulations at the following date, time, and place:

Thursday, January 12, 2006 -- 10:00 a.m.
California Department of Insurance Hearing Room
45 Fremont Street, 22nd Floor, San Francisco. CA 94105

The Commissioner invites all interested parties to present oral or written comments at the workshop. Submission of written comments in advance of the workshop, preferably by e-mail, is encouraged. Comments should be directed to henleyb@insurance.ca.gov.

The Department intends to distribute additional materials for the workshop approximately ten days in advance of the workshop.

HEARING DATE AND LOCATION

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to these regulations at the following date, time, and place:

Friday, February 24, 2006 – 10:00 a.m.
California Department of Insurance Hearing Room
45 Fremont Street, 22nd Floor, San Francisco. CA 94105

SUBMISSION OF COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Bryant Henley
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4111
henleyb@insurance.ca.gov

Questions regarding the hearing and comments on the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Elizabeth Mohr
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4112
mohre@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials submitted in connection with the January 12, 2006, workshop should be received by the Commissioner, in care of the contact person, at the address listed above, by no later than **12:00 noon on Wednesday, January 11, 2006**. However, the Commissioner encourages submission of written comments as soon as possible so they may be fully considered in advance of the workshop.

All written materials for the February 24, 2006, public hearing must be received by the Commissioner, in care of the contact person, at the address listed above, by no later than **5:00 p.m. on , February 27, 2006**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail sent to the following e-mail address: henleyb@insurance.ca.gov or mohre@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person for this proceeding using the following fax number: (415) 904-5490. **Comments shall be transmitted by one method only and for the February 24, 2006, public hearing are subject to the deadline for written comments set forth above.**

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Subchapter 4.9, Title 10, California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking shall also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Summary of Existing Law

California Insurance Code Section 1861.02(a) provides that rates and premiums for an automobile insurance policy shall be determined by application of three mandatory factors and various optional rating factors in decreasing order of importance.

The current regulations require insurers to average all of the optional automobile rating factors. Consequently, it is frequently the case that an individual optional rating factor, by itself, carries more weight than a mandatory rating factor. Various consumer representatives submitted a petition for rulemaking to the Commissioner, alleging that this regulation violated Proposition 103, and requesting that the Commissioner consider two alternatives which they asserted more appropriately implemented the automobile rating provisions of Proposition 103.

In response to the petition, the Commissioner conducted town hall meetings throughout the state, followed by a technical workshop. At the conclusion of the workshop, various insurers conducted a study regarding the premium impact which three alternative proposals could be expected to have on their policyholders. The Commissioner is now proposing a regulation which would require that the weight of each individual optional rating factor be less than the weight of the third mandatory rating factor -- years of driving experience.

The Commissioner intends to adopt a phase-in plan for implementation of this regulation, to be developed during the rulemaking process. The Commissioner will identify the length of the transition period, and the transition process, following discussion during this rulemaking proceeding.

Policy Statement Overview and Effect of Proposed Action

The proposed regulation would implement the provisions of Proposition 103 which require that rates and premiums for an automobile insurance policy shall be based primarily upon an insured's driving record, miles driven annually, and years of driving experience, rather than the area where a policyholder lives. The Commissioner has determined that the existing regulation is not consistent with the stated purposes of Proposition 103 and with the language of Section 1861.02(a). The Commissioner, therefore, is rejecting the existing regulation. The Commissioner believes that the proposed regulation more accurately implements the requirements of Proposition 103 that automobile insurance rates shall be determined primarily by a drivers' safety record and mileage driven, which are to be more important in determining automobile insurance rates than the location of the driver's residence. The existing regulations require that the weight for all of the optional rating factors shall be averaged together. The average cannot be greater than the weight of the third mandatory factor. However, by definition,

this means that an individual optional rating factor can, and frequently does, weigh more than one of the three mandatory factors.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

This proposed regulation does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, and no other nondiscretionary cost or savings imposed on local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Commissioner has made an initial determination that adoption of the proposed regulations will not have a significant impact on reporting requirements, recordkeeping requirements, or other compliance requirements. The Commissioner has made an initial determination that adoption of the proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulation simply clarifies and makes specific the impact of an insurer's optional rating factors on policyholder premiums. Because automobile insurance is generally written based upon the state in which the vehicle is garaged, this regulation does not affect the ability of California insurers to compete with insurers in other states. Moreover, insurers' class plans are revenue neutral, simply reflecting the premium distribution, not the overall premium collected.

Through town hall meetings and workshops, the Commissioner has considered various alternatives to the existing and proposed regulation. However, the Commissioner invites comment on proposed alternatives designed to lessen any adverse economic impact on business while ensuring compliance with all applicable legal requirements.

The types of businesses affected by the proposed regulation are insurers transacting automobile insurance in the State of California.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner is not aware of any cost impacts a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Although some insurers may incur additional costs to revise their existing class plans, insurers routinely make

and file class plan revisions. Moreover, the proposed regulation more appropriately complies with existing law.

The Commissioner intends to develop a phase-in process during the regulation proceedings to minimize any impact on individuals.

BUSINESS REPORT

The proposed regulation does not require a report.

EFFECT ON JOBS/BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulation may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulation will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The proposed regulation will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation. The Commissioner has considered various alternatives to the proposed regulation. However, the Commissioner invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The matters proposed herein will affect insurance companies, and therefore will not affect small business. (Gov. Code Section 11342.610, subd. (b), para. (2).)

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to, or mandating, the proposed regulation.

OTHER STATUTORY REQUIREMENTS

There are no other specific statutory requirements applicable to the proposed regulation.

TEXT OF REGULATION AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based as well as the express terms of the proposed action. Upon request, the proposed text and initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulation, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact person listed above.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's website.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulation, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website, <http://www.insurance.ca.gov>. To search for documents related to this proceeding, enter RH03029826 (the Department's regulation file number for these regulations) in the search field.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

Dated: December 23, 2005

JOHN GARAMENDI
Insurance Commissioner

By: _____
Bryant Henley
Staff Counsel