

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814**

REVISED WORKSHOP DRAFT TEXT OF REGULATION

**MITIGATION IN RATING PLANS
AND WILDFIRE RISK MODELS**

October 11, 2021

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Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8. Review of Rates
Article 4. Determination of Reasonable Rates

Adopt: Section 2644.9. Consideration of Mitigation Factors; Wildfire Risk Models.

- (a) An insurer shall not use a rate that is developed with, determined by or relies upon, in whole or in part, a rating plan or wildfire risk model that does not comply with this Section 2644.9. If a rate that is developed with, determined by or relies upon a rating plan or wildfire risk model that complies with this section is approved, in whole or in part, and thereafter such rating plan or wildfire risk model is replaced, or modified in any manner, including but not limited to, the inclusion of new factors, or different criteria or algorithms, the insurer shall, prior to implementing the new or modified rating plan or wildfire risk model, file a new rate application, which shall include the new or modified rating plan or wildfire risk model. No new or modified rating plan or risk model shall be used unless and until the new rate application is approved. Nothing in this section shall be construed to require the use of a wildfire risk model.
- (b) Pursuant to Insurance Code section 1861.05, subdivision (b), any wildfire risk model, as defined in subdivision (c) of this section, that is used, in whole or in part, in an insurer's rating plan shall be provided to the Commissioner as part of an insurer's complete rate application.
- (c) As used in this section, the term "wildfire risk model":
 - (1) Means any tool, instrumentality, means or product, including but not limited to a map-based tool, a computer-based tool or a simulation, that is used by an insurer,

in whole or in part, to measure or assess the wildfire risk associated with a residential or commercial structure for purposes of

- (A) classifying individual structures according to their wildfire risk, or
 - (B) estimating losses corresponding to such wildfire risk classifications; and
- (2) Does not include models used for purposes of projecting aggregate losses under Section 2644.4 or 2644.5.
- (d) Use of Mandatory Factors.
- (1) No insurer shall use a rating plan or wildfire risk model that does not take into account and reflect the following mandatory factors:
- (A) Community-level mitigation efforts: The rating plan, or any wildfire risk model's output, shall reflect, and the rate offered to the applicant or insured shall be based in part on, the reduced wildfire risk resulting from community-level mitigation efforts. Specifically, the rating plan and any wildfire risk model shall take into account:
 - 1. Whether a particular community has a Fire Safe Council, participates in or is certified by another nonprofit fire safety organization, or employs a defensible space program including, but not limited to, a program developed by the Office of the State Fire Marshal.
 - 2. Whether and the extent to which the community uses firebreaks, fire-watch efforts or other measures that may reduce individual exposure to wildfire loss.
 - 3. Whether and the extent to which any community-wide wildfire mitigation standards issued by the State of California have been implemented by the community in question.
 - 4. Whether and the extent to which building codes implement wildfire mitigation measures in wildfire-prone areas, and the extent to which there is widespread adherence to such building codes in the community in question.
 - (B) Property-level mitigation efforts: The rating plan, or wildfire risk model's output, shall reflect, and the rate offered to the applicant or insured shall be based in part on, the reduced wildfire risk resulting from property-level wildfire risk mitigation efforts undertaken with respect to an individual

property being assessed for risk. Individual property risk mitigation efforts include, at a minimum:

1. Defensible space measures, including but not limited to brush clearance;
 2. Implementation of building standards recommended by the Office of the State Fire Marshal; and
 3. Other building or structure fortification and construction measures intended to suppress fire, including but not limited to retrofits that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading from adjacent structures or vegetation and to protect vegetation from fires spreading from adjacent structures.
- (2) A rating plan and, if applicable, a wildfire risk model shall satisfy the requirements of subdivision (d)(1) of this Section 2644.9 if and only if the rating plan taken as a whole, including the operation of any wildfire risk models that may be incorporated into the rating plan, takes into account and reflects the factors described in subdivisions (d)(1)(A) and (d)(1)(B) of this section.
- (3) No later than one hundred eighty days following the date this section is filed with the Secretary of State, each insurer shall file a rate application that incorporates a wildfire risk model that directly incorporates, or rating plan that includes, the factors described in subdivision (d)(1) of this section.
- (e) An insurer may use a rating plan or wildfire risk model which incorporates other factors that the insurer demonstrates are substantially related to risk of wildfire loss, and do not result in rates that are excessive, inadequate or unfairly discriminatory. These optional factors may include, but are not limited to:
- (1) Fuel: This factor shall take into account the various types of combustible materials, and the density of those materials, in the vicinity of the structure in question, including the location of trees, grass, brush, and other vegetation relative to the structure. The fuel factor shall take into account the fact that different fuels burn at different rates and intensities, resulting in different levels of wildfire risk. If used, this factor shall reflect the historic and estimated impact on losses related to fuel, as described in this subdivision (e)(1).
 - (2) Slope: This factor shall take into account the position of the structure in question on a slope relative to potential sources of ignition, and the steepness of the slope between those potential sources of ignition and the structure. If used, this factor shall reflect the historic and estimated impact on losses related to slope, as described in this subdivision (e)(2).

- (3) Access: Access reflects the ease or difficulty with which firefighting personnel and equipment can reach structures at risk of wildfire. The access factor shall include consideration of the presence of dead end roads, road width, shoulders, and availability of multiple access points with respect to the structure in question. If used, this factor shall reflect the historic and estimated impact on losses related to access, as described in this subdivision (e)(3).
 - (4) Distance to other high risk areas: When the structure is not in a high risk area, the model may take into account the distance to the nearest high risk area, which can increase or decrease a property's exposure to wildfire. If used, this factor shall reflect the historic and estimated impact on losses related to distance to other high risk areas, as described in this subdivision (e)(4).
 - (5) Aspect: The aspect factor shall reflect the direction the slope upon which the structure in question is located faces. If used, this factor shall reflect the historic and estimated impact on losses related to aspect, as described in this subdivision (e)(5).
 - (6) Structural characteristics: The structural characteristics factor shall reflect the materials used in the construction, and may reflect such items as the design, of the structure in question. If used, this factor shall reflect the historic and estimated impact on losses related to structural characteristics, as described in this subdivision (e)(6).
 - (7) Wind: The wind factor shall take into account the degree to which wind speed and direction in the vicinity of the structure in question may impact a wildfire's progression. If used, the wind factor shall reflect the historic and estimated impact on losses related to wind, as described in subdivision (e)(7).
 - (8) Other community-level or property-level mitigation efforts not specified in subdivision (d) of this section as recommended by a state or local fire safety agency or organization as reducing wildfire risk.
- (f) Any rating plan, or wildfire risk model submitted to the Commissioner in connection with a complete rate application pursuant to subdivision (b), or any additional documentation relating to such rating plan or model as may be requested by the Commissioner during the review of any such application, including any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or wildfire risk model used by the insurer which is provided to the Commissioner, shall be available for public inspection pursuant to Insurance Code sections 1861.05, subdivision (b), and 1861.07, regardless of the source of such information, or whether the insurer or the developer of the rating plan or wildfire risk model claim the rating plan or wildfire risk model is confidential, proprietary, or trade secret. Pursuant to Insurance Code section 1855.5, subdivision (a), a wildfire risk model as defined in subdivision (c) of this section that is made available by an advisory organization to its members for use in California shall be filed with the Commissioner and made available for public inspection.

- (g) The initial rate or rate change application that utilizes a wildfire risk model as authorized in this section and/or rating plan shall incorporate the insurer's own California wildfire loss data to the extent that it is credible to support each segment, rating differential, or surcharge being requested. To the extent the insurer's own California data is not fully credible, the insurer shall credibility-weight its data with an appropriate complement of credibility to support each segment, rating differential, or premium surcharge. If the Commissioner aggregates California premium-and-loss data by wildfire risk to create a wildfire-exposure-risk manual, an insurer may rely on the then-current version of the manual as support for each segment, rating differential, or surcharge being requested, either directly or as a complement of credibility to the insurer's own California wildfire loss data.
- (h) An insurer utilizing a wildfire risk model, or specific rating factor, to segment, create a rate differential, or surcharge the premium based upon the policyholder or applicant's wildfire risk shall, within 180 days after the date this section is filed with the Secretary of State, implement a written procedure to provide, in writing, to each such policyholder or applicant for property insurance no later than fifteen days following the submission to the insurer of the applicant's completed application, at least forty-five days prior to each renewal, and at any other time upon request, the specific wildfire risk model score or other specific factor used by the insurer to segment, create a rate differential, or surcharge the premium based upon the policyholder or applicant's wildfire risk.
- (i) The procedure described in subdivision (h) of this section shall permit a policyholder under, or applicant for, a policy of property insurance who disagrees with the assignment of a wildfire risk score, or other wildfire risk factor, used by the insurer in its wildfire risk model or rating plan, the right to appeal orally or in writing that assignment directly to the insurer. The insurer shall notify the policy holder or applicant in writing of this right to appeal the wildfire risk model score or other wildfire risk factor, whenever such score or factor is provided to the policyholder or applicant, in the manner set forth in subdivision (h) of this section. If a policyholder or applicant appeals a wildfire risk score or other wildfire risk factor, the insurer shall acknowledge receipt of the appeal in writing within ten calendar days of receipt of the appeal. The insurer shall respond to the appeal in writing with a reconsideration and decision within 30 calendar days after receiving the appeal. In the event that an appeal is denied, the insurer shall forward a copy of the appeal, and the insurer's response, to the Department.
- (j) If the policyholder or applicant is represented by a broker, or the insurer is represented by an insurance agent with respect to the policyholder's policy or the applicant's application, the policyholder or applicant may appeal orally or in writing to the agent or broker the assignment of wildfire risk model score or other wildfire risk factor, who shall then forward that appeal to the insurer no later than five calendar days after receiving the appeal from the policyholder or applicant. The insurer shall acknowledge receipt of the appeal in writing to the policyholder or applicant and the agent or broker no later than five calendar days after receipt of the appeal from the broker or agent. The insurer shall respond to the appeal to the policyholder or applicant and the agent or broker with a

written reconsideration and decision of the appeal within 30 calendar days after receiving the appeal from the broker or agent. In the event that an appeal is denied, the insurer shall forward a copy of the appeal, and the insurer's response, to the Department.

- (k) Whenever a wildfire risk factor score, or other factor used by the insurer to segment, create a risk differential or surcharge the premium for a particular policy holder or applicant, is identified or provided to the policy holder or applicant pursuant to subdivision (h) or (j) of this section, the insurer shall also provide in writing:
- (1) The range of such scores or factors that could possibly be assigned to any policy holder or applicant;
 - (2) The relative position of the score or factor assigned to the policy holder or applicant in question within that range of possible scores or factors, and the impact of the score or factor on the rate or premium; and
 - (3) A detailed written explanation of why the policy holder or applicant received the assigned score or factor; the explanation shall make specific reference to the features of the property in question that influenced the assignment of the score or factor.

The insurer shall provide, in addition, the following information:

- (A) Which mitigation measure or measures can be taken by the policyholder or applicant to lower the wildfire risk score or factor, and
 - (B) The amount of premium reduction the policyholder or applicant would realize as a result of performing each such measure under the insurer's rating plan that is in effect at the time.
- (l) When an insurer responds to the applicant or policyholder in connection with an appeal pursuant to subdivision (j) of this section, it shall also notify the policyholder or applicant in writing that the policyholder or applicant may contact the Department of Insurance for assistance if the policyholder or applicant disagrees with the insurer's written reconsideration and decision. In any event, the insurer shall provide the policyholder or applicant with the Department of Insurance toll-free consumer hotline and web address of the Department's Consumer Complaint Center.
- (m) Nothing in this section shall be construed to limit the right of an applicant or insured to complain directly to the Commissioner at any time or to pursue any other remedy or other action allowed under California or federal law.
- (n) This section shall not apply to a commercial policy insuring multiple locations, none of whose wildfire risk is considered in rating the policy.

NOTE: Authority cited: Sections 1858, 1859, 1861.01, 1861.05 and 1861.07, Insurance Code; *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 1851, 1855.5, 1858, 1861.05, 1861.07 and 1861.13, Insurance Code.