

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

WORKSHOP DRAFT TEXT OF REGULATION

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

February 23, 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 based, in whole or in part, on a rating plan or wildfire risk model that does not comply with this Section 2644.9. If a rate that uses 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 modified to include new factors or different criteria or algorithms, the insurer shall, prior to implementing the changed rating plan or modified wildfire risk model, file a new rate application, which shall include the modified rating plan or wildfire risk model. The modified rating plan or risk model shall not be used unless and until the new rate application is approved. A rating plan which incorporates use of a wildfire risk model that complies with this section shall be deemed to comply with this section.

- (b) Pursuant to Insurance Code section 1861.05, subdivision (b), any wildfire risk model, as defined in subdivision (c) of this Section 2644.9, that is used in developing rates or as part of an insurer's rating plan shall be provided to the Commissioner as part of an insurer's complete rate application. The Commissioner shall analyze rating plans and wildfire risk models in connection with the rate review process to evaluate the reasonableness of the insurer's proposed rates and premiums in relation to the specific risks to be insured against and coverages to be offered, and to determine whether the insurer's proposed rates are excessive, inadequate or unfairly discriminatory pursuant to Insurance Code section 1861.05, subdivision (a).

- (c) For purposes of this section, "wildfire risk model" means any computer-based, map-based, or other measurement or simulation tool used by an insurer to segment rates, create a rate differential, or determine the premium discount or surcharge for residential or commercial structures.

- (d) Use of Mandatory Factors.
- (1) No insurer shall use a rating plan or wildfire risk model that does not consider and take into account the following mandatory factors:
- (A) Community-level mitigation efforts: The rating plan's, or any wildfire risk model's, output shall reflect the reduced wildfire risk resulting from community-level mitigation efforts. Specifically, the rating plan and any wildfire risk model shall take into account:
1. To the extent applicable, the fact that 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. The degree to which the community uses firebreaks, fire-watch efforts or other measures that may reduce individual exposure to wildfire loss.
 3. Any community-wide wildfire mitigation standards issued by the State of California and implemented by the community in question.
 4. The degree to which building codes implementing wildfire mitigation measures in wildfire-prone areas are stringent, 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 output shall reflect 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 defensible space, including but not limited to brush clearance, implementation of building standards recommended by the Office of the State Fire Marshal, and 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) No later than January 1, 2023 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 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 accord consideration to the fact that different fuels burn at different rates and intensities, resulting in different levels of wildfire risk.
 - (2) Slope: This factor shall take into account the extent to which the structure in question is located uphill from potential sources of ignition, and the steepness of the slope between those potential sources of ignition and the structure.
 - (3) Access: Access reflects the ease or difficulty with which firefighting personnel and equipment can reach properties at risk of wildfire. The access factor shall include consideration of dead end roads, road width, shoulders, and availability of multiple access points.
 - (4) Distance to other high risk areas: When the property 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.
 - (5) Aspect: The aspect factor shall reflect the direction of the slope upon which the property resides faces.
 - (6) Structure characteristics: The structure characteristics factor shall reflect such items as materials used in the construction of the property and type of roof.
 - (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.
- (f) Any rating plan or wildfire risk model at any time submitted to the Commissioner in connection with an initial rate application, a rate change application or the Commissioner's 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 subject to 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. Upon the written request of the Department, the insurer shall provide the Department with access to all records, data, algorithms, computer programs, or any other information used in connection with the wildfire risk model or rating plan used by the insurer, 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 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 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 procedure to provide, in writing, to each such policyholder or applicant for property insurance at application, at each renewal, and at any 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 ensure that the policyholder or applicant is notified in writing of this right to appeal the wildfire risk model score or other factor, whenever such score or factor is provided to the policyholder or applicant as required by subdivision (h). 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 five 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.
- (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 broker or agent shall identify to the policyholder or applicant, in writing, the specific wildfire risk model score or other specific factor in an insurer's rating plan used by the insurer to segment, create a rate differential, or surcharge the premium. In that instance, 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.

- (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, broker, or agent shall also:
 - (1) State in writing the range of such scores or factors that could possibly be assigned to any policy holder or applicant;
 - (2) State in writing 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) Provide 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.
- (l) When the 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.

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.