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

WORKSHOP DRAFT TEXT OF REGULATION

CATASTROPHE MODELING AND RATEMAKING: INSURER COMMITMENTS TO INCREASE WRITING OF POLICIES IN HIGH RISK WILDFIRE AREAS

June 12, 2024 **REG-2023-00010**

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

Adopt Section 2644.4.8. Distressed Areas; Insurer Commitments.

An insurer that opts to make, fulfill and document the fulfillment of its insurer commitments in the manner specified in this Section 2644.4.8 may use catastrophe modeling as permitted by Section 2644.4.5.

As used in this section, the term "qualifying residential property insurance" shall mean a policy of residential property insurance as defined in Insurance Code section 10087, except that renter's insurance policies do not fall within the meaning of qualifying residential property insurance. Additionally, an HO-6 policy, or its equivalent, is not included within the meaning of qualifying residential property insurance.

(a) Distressed areas, and properties insured by FAIR Plan policies, that are to be used in insurer commitments.

(1) Distressed areas.

For purposes of this section distressed areas shall include the following:

(A) Undermarketed ZIP Codes.

The Commissioner shall publish an initial bulletin containing a list of the Undermarketed ZIP Codes determined pursuant to this subdivision (a)(1)(A). The Commissioner shall by subsequent bulletins update the list of Undermarketed ZIP Codes from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, an Undermarketed ZIP Code shall mean a ZIP Code, as determined by the Commissioner, which at least partially overlaps a high or very high fire hazard severity zone as shown on a map published by the Department of Forestry and Fire Protection (Cal Fire) and in which ZIP Code:

1. At least 15% of residential properties that are insured under either the voluntary market or the FAIR Plan are insured by the FAIR Plan; or

2. The average premium per $1,000.00 of Coverage A is at least four dollars ($4.00) while the per-capita income of the ZIP Code is no higher than the fiftieth (50th) percentile for California.

(B) Distressed counties.

The Commissioner shall publish an initial bulletin containing a list of the distressed counties determined pursuant to this subdivision (a)(1)(B). The Commissioner shall by subsequent bulletins update the list of distressed counties from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, a distressed county will be determined by the Commissioner as follows:

A county is a distressed county if in the aggregate greater than twenty percent (20%) of the dwelling units that are situated in that county are classified as high or very high risk as determined by the Commissioner. For purposes of this subdivision (a)(1)(B), dwelling units include single family dwellings, condominium units, residential dwelling complexes of two to four units, and mobile homes. Dwelling units exclude residential dwelling complexes of five or more units that are normally written under a commercial policy.

(2) Properties insured by the FAIR Plan exposed to wildfire risk.

Policies insuring properties that the insurer has classified as moderate to very high fire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

(b) Statewide market calculations.

(1) Calculation of statewide market share.

For purposes of this section the Department will calculate an estimate of the number of earned exposures of qualifying residential property insurance statewide based on the most recent experience year reported to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used as the denominator in the calculation of statewide market share for each insurer. The Commissioner shall publish a bulletin with the estimate of statewide earned exposures, no less frequently than once per year.

The numerator to be used in the calculation of each insurer's statewide market share shall be the number of earned exposures of qualifying residential property insurance policies in the most recent 12-month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of this section.

In order to calculate its statewide market share, the insurer shall divide its numerator by the denominator, each as described in this subdivision (b)(1), and the insurer's statewide market share shall be the resulting quotient, rounded to the thousandths place.

(2) Statewide distressed areas earned exposures.

For purposes of this section the Department will calculate an estimate of the total number of earned exposures of qualifying residential property insurance in both the voluntary market and the FAIR Plan inside the distressed areas of the state based on the most recent experience year/dataset reporting such relevant information to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used in the calculation of each insurer's residential commitment inside the distressed areas pursuant to subdivision (d) below. The Commissioner shall publish a bulletin that includes the estimate of statewide distressed areas earned exposures, no less frequently than once per year.

(c) The insurer shall, as part of a complete rate application filing, submit an insurer commitment as set forth in subdivision (d), (f) and/or (j) of this section.

(d) Insurer commitments with respect to qualifying residential property insurance.

The insurer shall commit in writing to achieving no later than two years (730 days) after the approval of its rate filing (the insurer's "performance date" hereinafter), or maintaining, the insurer's earned exposure commitment in the distressed areas of the state as follows:

(1) Eighty-five percent standard.

(A) The insurer shall commit to write in distressed areas a number of policies equivalent to no less than the product of (1) the insurer's statewide market share, as calculated pursuant to subdivision (b)(1), (2) 0.85, and (3) the number of statewide qualifying residential property insurance policies inside distressed areas as stated in subdivision (b)(2) of this section; or

(B) In the event the insurer already meets or exceed the eighty-five percent standard set forth above in subdivision (d)(1)(A) of this section at the time of its rate application, the insurer shall commit to maintaining at least the same number of earned exposures in the distressed areas as it reported in the rate application filing pursuant to subdivision (c), for at least three years (1,095 days) after the approval of the rate application.

(2) Five percent increment.

The insurer may instead commit to writing additional policies as specified in subdivision (d)(3) in the voluntary market inside the distressed areas of the state such that, on the performance date, the insurer has increased its number of earned exposures inside the distressed areas by at least the number of policies equal to 5% of its earned exposures in the distressed areas of the state within the most recent 12 month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of the section.

(3) The additional policies written in order to satisfy the requirement of this subdivision (d) shall include only the following:

(A) Policies insuring properties in distressed areas of the state; and/or

(B) Policies insuring properties that the insurer has classified as moderate to very high fire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

(e) Low-premium-volume insurers.

(1) An insurer whose gross California annual premium from qualifying residential property insurance policies is less than $10 million may comply with this section without making an insurer commitment pursuant to subdivision (d) of this section, until such time as subdivision (f)(2) is applicable to the insurer.

(2) No later than March 31 of the calendar year immediately following the calendar year during which an insurer described in subdivision (e)(1) of this section determines that it has met or exceeded $10 million of gross California annual premium from qualifying residential property insurance policies, the insurer shall submit a rate application as described in subdivision (c) of this section, which application contains an insurer commitment that conforms to subdivision (d) of this section.

(3) An insurer described in subdivision (e)(1) of this section shall calculate its gross California annual premium from qualifying residential property insurance policies annually.

(f) Insurer commitments with respect to commercial property insurance.

(1) For purposes of this subdivision (f) eligible ZIP Codes shall include all ZIP Codes in the state that at least partially overlap a high or very high fire hazard severity zone, as shown on a map published by Cal Fire.

(2) Insured exposure requirement. At the time of an insurer's first rate application filing subsequent to the effective date of this section, the insurer must commit in writing to increase its writing of policies in the eligible ZIP codes equivalent to five percent of its

total insurable value in eligible ZIP codes no later than two years (730 days) after the approval of the rate filing in which the insurer includes its insurer commitment.

(3) In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment in accordance with section (h)(1)(B)(2).

(g) Documenting the insurer's fulfilment of its insurer commitment.

The insurer shall create and maintain a wildfire risk portfolio. An insured property shall be added to the insurer's wildfire risk portfolio at the time the location and, if applicable, prior FAIR Plan coverage status of the insured property are fully documented pursuant to the provisions of this subdivision (g).

(1) For qualified residential insurer commitment.

(A) In addition to the material called for in subdivisions (g)(3) and (g)(4) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, the county in which the property is situated; the inception date of the policy; and the termination date of the policy, if the policy has terminated.

(B) To document that the FAIR Plan was insuring the property in question immediately prior to the inception, on or after January 1, 2025, of a policy insuring that property that is issued by the insurer seeking to add the property to its portfolio after the effective date of this section, the insurer shall have on file:

1. A carrier discovery report or

2. Other documentation demonstrating that the property had been insured under the FAIR plan immediately preceding the date the insurer issues its policy. Such documentation may include (1) copies of declarations pages from the FAIR Plan, (2) a subscribing loss underwriting exchange report and/or (3) an electronic copy of the entire application completed by the insured and submitted to the insurer, on which application the insured has identified the prior insurer as the FAIR Plan.

(2) For commercial insurer commitment. In addition to the material called for in subdivisions (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property,

including the ZIP Code; the total number of exposures insured under each policy; the inception date of the policy; the property's total insurable value, and the termination date of the policy, if the policy has terminated.

(3) For both qualified residential insurer commitment and commercial insurer commitment.

(A) The Wildfire Risk Portfolio Register shall be maintained as a digital file that is sortable by all fields. The Wildfire Risk Portfolio Register shall be maintained until such time as at least five years have passed since the approval of an insurer's rate application renouncing the insurer's insurer commitment pursuant to subdivision (h)(2) of this section.

(B) Until such time as at least five years have passed since the approval of an insurer's rate application renouncing the insurer's insurer commitment, the insurer shall maintain a digital file for each insured property added to its portfolio, in which file shall be stored an electronic copy of each record necessary for purposes of supporting the property's status of lying within a distressed area of the state for purposes of satisfying the insurer's insurer commitment.

(h) Modification of, or failure to fulfill, insurer commitment.

(1) Modification when insurer loses significant market share.

(A) Residential insurers whose insurer commitment stated in the original rate application filing included an undertaking to write additional policies in distressed areas.

In the event that, subsequent to approval of its rate application described in subdivision (c) of this section (hereinafter, the "original application"), an insurer files a new rate application in which the insurer recalculates its insurer commitment as specified in subdivision (d) of this section on the basis that the insurer's statewide market share as calculated pursuant to subdivision (b)(1) of this section is at least five percent (5%) lower than was used for purposes of calculating the insurer commitment contained in the insurer's original rate application, then the new rate application may contain a modified insurer commitment pursuant to subdivision (d) of this section that reflects the recalculated insurer commitment, which insurer commitment shall become effective if and when the new rate application is approved.

(B) Residential insurers whose performance met or exceeded the applicable standard or requirement at the time of initial rate application filing.

An insurer may modify its insurer commitment that was made pursuant to subdivision (d)(1)(B) of this section as follows: The insurer may reduce its earned exposures in distressed areas of the state by up to five percent (5%) below the level reported in the original rate application filing, to the extent that is indicated by the amount of the diminution of the insurer's statewide market share, but in no event below the 85% performance standard set forth in subdivision (d)(1)(B) of this section

(C) Modification of commercial insurer commitments.

An insurer may modify its insurer commitment as follows: In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment accordingly. The insurer may reduce its insurer commitment in eligible ZIP Codes of the state by no more than the decline in its total insurable value reported in the original rate application filing.

(2) Failure to fulfill an insurer commitment.

If at any time an insurer fails to fulfill its insurer commitment, or within a period of two years after the approval of its original application pursuant to subdivision (c), or at any point thereafter, fails to make reasonable progress toward timely fulfilling its insurer commitment, then the insurer shall immediately submit a new rate application renouncing its insurer commitment as described in subdivision (d) or (f) of this section. In this case the new rate application shall not make use of catastrophe modeling as permitted by Section 2644.4.5.

(i) Insurer Attestation.

(1) Attestations by insurers that have fulfilled, or are taking reasonable steps to fulfill, the insurer commitment.

In the event the insurer submits a subsequent rate application two years or more after its initial rate application pursuant to subdivision (c) of this section, the insurer shall include in that subsequent rate application an attestation that insurer has fulfilled or is taking reasonable steps to fulfill its insurer commitment at the time the subsequent rate application is submitted. In the event that a subsequent rate application is submitted less than two years after the approval of the initial rate application pursuant to subdivision (c), the insurer shall include in that subsequent rate application an attestation that the insurer is taking reasonable steps to fulfill its insurer commitment.

(2) Attestations with respect to modified insurer commitments that have been fulfilled.

In the event an insurer's rate application modifying its insurer commitment pursuant to subdivision (h)(1) of this section has been approved, the insurer shall attest in any subsequent rate application submitted two years or more after the approval of the application by which the insurer modified its insurer commitment that the insurer has fulfilled its modified insurer commitment at the time the subsequent rate application is submitted.

(3) Attestations with respect to modified insurer commitments that have yet to be fulfilled.

In the event that a subsequent rate application is submitted prior to the insurer's fulfillment of a modified insurer commitment pursuant to subdivision (h)(1) of this section that has not yet been fulfilled, the insurer shall include in that subsequent rate application an attestation that the insurer is taking reasonable steps to fulfill its modified insurer commitment.

(4) No attestation required subsequent to failure to meet insurer commitment.

In the event an insurer's rate application that includes a statement that the insurer has failed to fulfill its insurer commitment pursuant to subdivision (h)(2) of this section has been approved, and the insurer has not subsequently filed and received approval of a rate application that includes an insurer commitment that complies with the provisions of this section, the insurer need not include in subsequent rate applications an attestation as described in this subdivision (i).

(j) Alternative Commitments.

Any contrary provision of this section notwithstanding, if for any of the reasons stated in subdivision (j)(1) of this section, an insurer is unable, in good faith, to make a commitment as set forth in subdivisions (d) or (f) of this section, then an insurer may propose an alternative commitment in a complete rate application filing pursuant to subdivision (c), as described in subdivision (j)(2) of this section:

(1) An insurer may propose an alternative commitment pursuant to this subdivision (j) on one or more of the following bases:

(A) its size,

(B) its scope of coverages, or

(C) the frequency or severity of recent events impacting the insurer.

(2) Such rate application filing shall include a statement:

(A) setting forth the reason why this subdivision (j) is applicable, and

(B) describing the proposed alternative commitment in sufficient detail to allow the Commissioner to evaluate whether the alternative appropriately depopulates the FAIR Plan and/or increases availability of qualifying residential property insurance and/or commercial property insurance.

(k) Nothing in this section shall be construed as limiting, in any way, an insurer's ability to offer qualifying residential property insurance or commercial property insurance in this state.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company* v. *Deukmejian* (1989) 48 Cal.3d 805.