



Comments of Consumer Watchdog on 6/15/22 Amended Text of Regulation

California Department of Insurance Rulemaking on Mitigation in Rating Plans and Wildfire Risk Models REG-2020-00015

July 1, 2022

Consumer Watchdog submits these comments in response to the amended text of regulation issued by the California Department of Insurance (the “Department” or “CDI”) on June 15, 2022, regarding mitigation in rating plans and wildfire risk models.¹

The CDI’s June 15 regulation amendments *fail to close the nonrenewal loophole that will allow insurance companies to refuse to sell or renew a policy in order to avoid giving homeowners the mitigation discounts that are required by the proposed regulation.* In our testimony at the April 13 hearing and joint written comments submitted on that date, Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California specifically urged the Commissioner to close this loophole *by requiring that mitigation efforts undertaken by homeowners and their communities to reduce the threat of wildfire losses to their property be reflected in the wildfire risk scores that insurance companies use in their decisions to sell and renew coverage, and not just in their pricing.*

Without this crucial amendment, thousands of homeowners will continue to face the same fate as former Commissioner Steve Poizner, who wrote about his personal experience in a Los Angeles Times Op-Ed piece published prior to the April 13 hearing. Mr. Poizner’s homeowners insurance was abruptly nonrenewed without consideration of the tens of thousands of dollars he spent on wildfire mitigation efforts that had been previously *required* by his

¹ The June 15 amended regulation text was issued after public comments were submitted in connection with the April 13, 2022, rulemaking hearing and proposed regulation. That regulation was issued following two prior investigatory hearings convened by the Commissioner on October 19, 2020, regarding homeowners’ insurance availability and affordability and December 10, 2020, regarding home hardening standards and wildfire catastrophe modeling (REG-2020-00016), and a workshop on proposed draft regulations to address mitigation in rating plans and wildfire risk models held by the Department on November 10, 2021 (REG-2020-00015).

insurance company as a condition of coverage. Because mortgage lenders require homeowners insurance, the only options Mr. Poizner and other consumers who have endeavored to protect their homes are left with are to purchase a more expensive, less-regulated, more bare-bones policy through the FAIR Plan or the non-admitted insurance market. To remedy this flawed system, as Mr. Poizner urged: “The department should require insurers to base eligibility, renewal and non-renewal decisions on the actual risk presented by an individual home and the steps an owner takes to secure the home, and not on broad geographical areas that arbitrarily deprive hundreds of thousands of Californians of insurance.”²

As consumer groups have repeatedly pointed out, the Commissioner clearly has the legal authority under Proposition 103 to not only require mitigation discounts, but to require insurers to take community and property-level mitigation efforts into account in their eligibility and renewal criteria, to file and publicly disclose wildfire risk models and related documentation used for determining eligibility and renewal, and to provide consumers with notice and the right to appeal wildfire risk scores or classifications used to deny or nonrenew coverage.³ As interpreted and applied by the California Supreme Court:

[Proposition 103] is not limited in scope to rate regulation. It also addresses the underlying factors that may impermissibly affect rates charged by insurers and lead to insurance that is unfair, unavailable, and unaffordable.

As such, the Commissioner undoubtedly has the authority under [Proposition 103] to gather any information necessary for determining whether these factors are impermissibly affecting the fairness, availability, and affordability of insurance.

(State Farm Mutual Automobile Ins. Co. v. Garamendi (2004) 32 Cal.4th 1029, 1041–1042.)

Extending the proposed regulation's wildfire mitigation standards and wildfire model and score disclosure requirements to insurance companies' underwriting decisions is necessary to ensure that the regulation the Commissioner adopts affords policyholders the discounts and the consumer protections that the Department intends. To this end, we urge the Commissioner to adopt our previously proposed amendments to the regulation, which are necessary to enforce Proposition 103's mandates and underlying purposes: ***to prevent excessive and unfairly***

² <https://www.latimes.com/opinion/story/2022-04-12/wildfire-insurance-homeowners-fire-risk>

³ See Legal Memorandum attached as Attachment B to April 13, 2022, Comments of Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California

discriminatory rates and to make insurance more available and affordable. (See Proposed Amendments to Feb. 25, 2022, Regulation text, attached hereto as Attachment A and incorporated by reference.)

In addition to closing the gaping nonrenewal loophole that will lead to more denials and nonrenewals, we also urge you to reconsider and adopt the other critical amendments we previously proposed in our April 13 comments. These amendments would:

- Strengthen the mandatory mitigation factor standards in the proposed regulation with more precise terminology that would ensure full compliance with its stated purpose and intent;
- Clarify in more explicit terms that the insurance companies' wildfire "risk models" are not allowed to be used to project losses when determining overall rates under section 2644.1 et seq.;
- Ensure that any wildfire risk models used by insurers to establish the premiums paid by homeowners are based on the best available scientific information and conform to applicable statutes and regulations and actuarial standards of practice; and
- Clean up and strengthen the wildfire score notice and appeal requirements and make them applicable to the risk scores insurance companies use for underwriting as well as rating.

(See Attachment A.)

Mitigation discounts are necessary to prevent unfairly discriminatory rates, and as Consumer Watchdog has seen in individual rate challenges, companies are refusing to provide such discounts absent a regulation. While recognizing the need to adopt a regulation quickly, the nonrenewal loophole must be closed or else insurers will simply refuse to write policies rather than provide the discounts. We once again urge the Commissioner to incorporate the crucial consumer protections we have proposed in our comments and move forward swiftly with adopting a final regulation so that homeowners and communities can finally realize the savings they deserve from their wildfire mitigation efforts and not be unfairly denied or nonrenewed coverage when they undertake such costly mitigation measures to protect their homes.

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<p>Section 2644.9. Consideration of Mitigation Factors; Wildfire Risk Models.</p> <p>(a) Applicability.</p> <p>(1) An insurer that promulgates a rate that is developed with, determined by or relies upon, in whole or in part, a rating plan that segments, creates a rate differential, or surcharges the premium based upon a policyholder or applicant’s wildfire risk shall comply with this Section 2644.9. If a rate that is developed with, determined by or relies upon a rating plan that complies with this section is approved, in whole or in part, and thereafter such rating plan 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, file a new rate application, which shall include the new or modified rating plan. No such new or modified rating plan shall be used unless and until the new rate application is approved.</p> <p>(2) A rating plan shall satisfy the requirements of subdivision (d)(1) of this Section 2644.9 only if the rating plan taken as a whole, including the</p>	<ul style="list-style-type: none"> • It is unclear in subdivision (a)(1) what is meant by “promulgates a rate”; the prior 10/11/21 draft text was clearer by stating that an insurer “shall not use a rate” that doesn’t comply with this section. • The terms “segment” and “rating differential” are undefined, and together with the use of the term “rate” could be misinterpreted to mean determination of overall rates applied to a subset of policyholders. • The regulation should also apply to underwriting rules based on wildfire risk for eligibility and nonrenewal determination. Whether such underwriting rules rely on a wildfire risk model or other data, insurers should have to consider the reduced risk resulting from mitigation efforts, file and publicly disclose any wildfire risk models and data underlying the rules, and provide applicants and policyholders notice and the right to appeal wildfire risk scores or classifications used to determine eligibility and nonrenewal. This change should be made consistently in other subdivisions below. 	<p>Section 2644.9. Consideration of Mitigation Factors; Wildfire Risk Models.</p> <p>(a) Applicability</p> <p>(1) An insurer that promulgates <u>shall not use a rate, rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria based upon a policyholder or applicant’s wildfire risk</u> that is developed with, determined by or relies upon, in whole or in part, a rating plan that segments, creates a rate differential, or surcharges the premium or <u>Wildfire Risk Model based upon a policyholder or applicant’s wildfire risk</u> shall <u>unless the insurer complies with this Section 2644.9. If an application containing any rate, rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria</u> that is developed with, determined by or relies upon a rating plan <u>or Wildfire Risk Model</u> that complies with this section is approved, in whole or in part, and thereafter such rating plan <u>or Wildfire Risk Model</u> 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</p>

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<p>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. Nothing in this section shall be construed to require the use of a Wildfire Risk Model.</p>	<ul style="list-style-type: none"> • There should be an express statement in the regulation that this Section 2644.9 does not alter the requirements of Section 2644.4, which permits the use of complex catastrophe models for projected losses and defense cost containment expenses only for the earthquake line and fire following earthquake exposure in other lines. • The use in subdivision (a)(2) of the terms “takes into account and reflects” doesn’t provide a clear standard for compliance with subdivision (d)(1). 	<p>implementing the new or modified rating plan <u>or Wildfire Risk Model</u>, file a new rate application, which shall include the new or modified rating plan <u>or Wildfire Risk Model</u>. No new or modified rating plan or <u>Wildfire Risk Model</u> shall be used unless and until the new rate application is approved.</p> <p>(2) A rating plan <u>and, if applicable, a Wildfire Risk Model</u> shall satisfy the requirements of subdivision (d)(1) of this Section 2644.9 only if the rating plan, and 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 <u>and its output, and the rate or premium offered to the applicant or insured fully accounts for the reduced wildfire risk resulting from the factors described in subdivisions (d)(1)(A) and (d)(1)(B) of this section. Nothing in this section shall be construed to require the use of a Wildfire Risk Model. <u>Nothing in this section is intended to modify the requirements of Section 2644.4(e) governing the use of complex catastrophe models for projected losses and defense cost and containment expenses as permitted only for the earthquake line of</u></u></p>

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		<u>business and for the fire following earthquake exposure in other lines.</u>
<p>(b) Definitions.</p> <p>As used in this section, each of the following terms has the meaning set forth below:</p> <p>(1) Building Being Evaluated.</p> <p>The term “Building Being Evaluated” means the residential or commercial structure in question, and includes decks that are attached to or abut the structure.</p> <p>(2) Class-A Fire Rated Roof</p> <p>A “Class-A Fire Rated Roof” is a roof that receives a Class A rating when tested in accordance with ASTM E108 or UL 790.</p> <p>(3) Enclosed Eaves.</p> <p>“Enclosed Eaves” are roof eaves that have either (1) boxed-in roof eave soffits with a horizontal underside or (2) an exterior covering applied to the underside of the rafter tails supporting the eaves, which covering is sloped corresponding to the slope of the rafter tails. Enclosed Eaves are thus distinguishable from open roof eaves, whose rafter tails are exposed.</p>	<ul style="list-style-type: none"> • The definition of “Wildfire Risk Model” would allow insurance companies to use any conceivable technique or technology to discriminate among homeowners in setting rates and premiums without clear standards as to their reliability or accuracy. A standard for reliability of the model should be specified, as we have proposed, similar to the one required for models used to project aggregate losses under section 2644.4 so that the model must be based on the best available scientific information to assess wildfire risk and conform to actuarial standards of practice. • Subdivision (b)(7)(b) does not make explicitly clear that this regulation is not intended to allow the use of wildfire risk models to project aggregate losses under Section 2644.4. We have proposed language to be added to subdivision (a) that does make this clear. Subdivision (b)(7)(b) could also be misinterpreted to mean 	<p>(b) Definitions.</p> <p>As used in this section, each of the following terms has the meaning set forth below:</p> <p>(1) Building Being Evaluated.</p> <p>The term “Building Being Evaluated” means the residential or commercial structure in question, and includes decks that are attached to or abut the structure.</p> <p>(2) Class-A Fire Rated Roof</p> <p>A “Class-A Fire Rated Roof” is a roof that receives a Class A rating when tested in accordance with ASTM E108 or UL 790.</p> <p>(3) Enclosed Eaves.</p> <p>“Enclosed Eaves” are roof eaves that have either (1) boxed-in roof eave soffits with a horizontal underside or (2) an exterior covering applied to the underside of the rafter tails supporting the eaves, which covering is sloped corresponding to the slope of the rafter tails. Enclosed Eaves are thus distinguishable from open roof eaves, whose rafter tails are exposed.</p>

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<p>(4) Fire-Resistant Vents.</p> <p>“Fire-Resistant Vents” are vents, including but not limited to ventilation openings for enclosed attics, enclosed eave soffit spaces, enclosed rafter spaces formed where ceilings are applied directly to the underside of roof rafters, and underfloor ventilation openings, that are fully covered with wildland flame and ember resistant vents approved and listed by the California State Fire Marshal or with vents listed to the ASTM E2886 standard.</p> <p>(5) Firewise USA Site in Good Standing.</p> <p>A “Firewise USA Site in Good Standing” is a community that, at the time the Building Being Evaluated is rated, is recognized as such by the National Fire Protection Association, a Massachusetts 501(c)(3) corporation.</p> <p>(6) Shelter-in-Place Community.</p> <p>A “Shelter-in-Place Community” is a community designed, built and maintained to reduce the risks from heat and flames that result from an approaching wildfire, and is designated as such by the local fire district with jurisdiction in that area. Characteristics of a Shelter-in-Place Community include driveway and</p>	<p>that such models used for projecting aggregate losses under Section 2644.4 do not have to be filed with a rate application or publicly disclosed.</p>	<p>(4) Fire-Resistant Vents.</p> <p>“Fire-Resistant Vents” are vents, including but not limited to ventilation openings for enclosed attics, enclosed eave soffit spaces, enclosed rafter spaces formed where ceilings are applied directly to the underside of roof rafters, and underfloor ventilation openings, that are fully covered with wildland flame and ember resistant vents approved and listed by the California State Fire Marshal or with vents listed to the ASTM E2886 standard.</p> <p><u>(5) Fire Safe Council Community.</u></p> <p><u>A Fire Safe Council Community is a community with an active Fire Safe Council, Citizens Organized to Prepare for Emergencies Chapter, or other organization routinely and actively assisting residents with brush reduction and home hardening.</u></p> <p>(5) Firewise USA Site in Good Standing.</p> <p>A “Firewise USA Site in Good Standing” is a community that, at the time the Building Being Evaluated is rated, is recognized as such by the National Fire Protection Association, a Massachusetts 501(c)(3) corporation.</p> <p>(6) Shelter-in-Place Community.</p>

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<p>roadway widths that facilitate evacuations and firefighting efforts, and a communitywide landscape and vegetation plan that is approved by the local fire district and that is not allowed to be altered without approval from the fire district. Further, each dwelling in such a community is required to maintain the fire-resistant design features specified for the structure at the time the community was designated a Shelter-in-Place Community.</p> <p>(7) Wildfire Risk Model.</p> <p>(A) The term “Wildfire Risk Model” 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:</p> <ol style="list-style-type: none"> 1. Classifying individual structures according to their wildfire risk; or 2. Estimating losses corresponding to such wildfire risk classifications. 		<p>A “Shelter-in-Place Community” is a community designed, built and maintained to reduce the risks from heat and flames that result from an approaching wildfire, and is designated as such by the local fire district with jurisdiction in that area. Characteristics of a Shelter-in-Place Community include driveway and roadway widths that facilitate evacuations and firefighting efforts, and a communitywide landscape and vegetation plan that is approved by the local fire district and that is not allowed to be altered without approval from the fire district. Further, each dwelling in such a community is required to maintain the fire-resistant design features specified for the structure at the time the community was designated a Shelter-in-Place Community.</p> <p>(7) Wildfire Risk Model.</p> <p>(A) The term “Wildfire Risk Model” 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</p>

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<p>(B) The term “Wildfire Risk Model” does not include models used for purposes of projecting aggregate losses under Section 2644.4 or 2644.5.</p>		<p>commercial structure for purposes of:</p> <ol style="list-style-type: none"> 1. Classifying individual structures according to their wildfire risk; or 2. Estimating losses corresponding to such wildfire risk classifications. <p>(B) The term “Wildfire Risk Model” does not include models used for purposes of projecting aggregate losses under Section 2644.4 or 2644.5. <u>Any such Wildfire Risk Model shall conform to the standards of practice as set forth by the Actuarial Standards Board and the insurer shall have the burden of proving, by a preponderance of the evidence, that the model is based upon the best available scientific information, and that any rating, eligibility, or nonrenewal criteria derived from the model meets all applicable statutory and regulatory standards.</u></p>
<p>(c) Wildfire Risk Models to be provided to the Commissioner.</p> <p>Pursuant to Insurance Code section 1861.05, subdivision (b), any Wildfire Risk Model, as defined in subdivision (b)(7) of this section, that is used, in</p>	<ul style="list-style-type: none"> • The regulation should also apply to underwriting rules based on wildfire risk for eligibility and nonrenewal. Whether such underwriting rules rely on a wildfire risk model or other data, insurers should have to consider the 	<p>(c) Wildfire Risk Models to be provided to the Commissioner.</p> <p>Pursuant to Insurance Code section 1861.05, subdivision (b), any Wildfire Risk Model, as defined in subdivision (b)(7) of this section, that is used, in</p>

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<p>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.</p>	<p>reduced risk resulting from mitigation efforts, file and publicly disclose any wildfire risk models and data underlying the rules, and provide applicants and policyholders notice and the right to appeal wildfire risk scores or classifications used to determine eligibility and nonrenewal. This change should be made consistently in other subdivisions below.</p>	<p>whole or in part, <u>to develop or determine any rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria</u> in an insurer’s rating plan shall be provided to the Commissioner as part of an insurer’s complete rate application.</p>
<p>(d) Mandatory factors.</p> <p>(1) No insurer shall use a rating plan that does not take into account and reflect the following mandatory factors:</p> <p>(A) Community-level mitigation efforts: The rating plan 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. At a minimum the rating plan shall take into account whether the Building Being Evaluated is located in:</p> <ol style="list-style-type: none"> 1. A community listed by the Board of Forestry as a Fire Risk Reduction Community 	<p>(d)(1):</p> <ul style="list-style-type: none"> • Mitigation efforts should also be required to be incorporated into any wildfire risk models and rules used for underwriting, eligibility, and nonrenewal determinations; otherwise insurers could deny or nonrenew coverage for property owners that have taken significant steps at substantial expense to fortify their homes and other structures against wildfire risk to avoid giving them mitigation discounts or for other unfairly discriminatory reasons. • Terms like “take into account” and “reflect” will allow insurers to evade the requirement that “risk” and “mitigation efforts” be reflected in the 	<p>(d) Mandatory Factors.</p> <p>(1) No insurer shall use a rating plan or <u>Wildfire Risk Model that does not take into account and reflect to develop or determine any rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria unless the rating plan, or any Wildfire Risk Model and its output, and the rate or premium offered to the applicant or insured fully accounts for the reduced wildfire risk resulting from</u> the following mandatory factors:</p> <p>(A) Community-level mitigation efforts, <u>including, at a minimum:</u> The rating plan shall reflect, and the rate offered to the applicant or insured shall be based in part on, the reduced wildfire risk resulting</p>

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<p>pursuant to Public Resources Code section 4290.1;</p> <ol style="list-style-type: none"> 2. A Shelter-in-Place Community; or 3. A Firewise USA Site in Good Standing. <p>(B) Property-level mitigation efforts.</p> <p>The rating plan 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:</p> <ol style="list-style-type: none"> 1. Measures addressing the immediate surroundings of the Building Being Evaluated, including: <ol style="list-style-type: none"> a. Clearing of vegetation and debris from under decks, b. Clearing of vegetation, debris, mulch, stored combustible materials, and any and all movable combustible objects, from the area within five (5) feet 	<p>rates and premiums that people pay. Put another way, this section should impose objective requirements that can be enforced by the commissioner or a court. Otherwise, insurance companies will be able to ignore the rest of this regulation and overcharge consumers.</p> <ul style="list-style-type: none"> • The industry has repeatedly ignored these factors when nonrenewing. If they merely need to be “taken into account,” their use is not required, and cannot be enforced. 	<p>from community-level mitigation efforts. At a minimum the rating plan shall take into account whether the Building Being Evaluated is located in:</p> <ol style="list-style-type: none"> 1. A community listed by the Board of Forestry as a Fire Risk Reduction Community pursuant to Public Resources Code section 4290.1; 2. A Shelter-in-Place Community; or 3. A Firewise USA Site in Good Standing; or 4. <u>A Fire Safe Council Community.</u> <p>(B) Property-level mitigation efforts-</p> <p>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 including, <u>at a minimum:</u></p> <ol style="list-style-type: none"> 1. Measures addressing the immediate surroundings of the

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<p>of the Building Being Evaluated,</p> <p>c. Incorporation of only noncombustible materials into that portion of any improvements to the property on which the Building Being Evaluated is located, including fences and gates, which is situated within five (5) feet of the Building Being Evaluated,</p> <p>d. Removal or absence of combustible structures, including sheds and other outbuildings, from the area within thirty (30) feet of the Building Being Evaluated or, in the event that the applicant or insured does not control the entirety of the area extending thirty feet from the Building Being Evaluated, removal of combustible structures from as much of such area as is under the control of the applicant or policyholder, and</p> <p>e. Whether the property upon which the Building Being Evaluated is situated</p>		<p>Building Being Evaluated, including:</p> <p>a. Clearing of vegetation and debris from under decks,</p> <p>b. Clearing of vegetation, debris, mulch, stored combustible materials, and any and all movable combustible objects, from the area within five (5) feet of the Building Being Evaluated,</p> <p>c. Incorporation of only noncombustible materials into that portion of any improvements to the property on which the Building Being Evaluated is located, including fences and gates, which is situated within five (5) feet of the Building Being Evaluated,</p> <p>d. Removal or absence of combustible structures, including sheds and other outbuildings, from the area within thirty (30) feet of the Building Being Evaluated or, in the event that the applicant or insured does not control the entirety of</p>

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<p>complies with Section 4291 of the Public Resources Code, and any applicable local ordinances, governing defensible space; and</p> <p>2. Building hardening measures, including provision of the following:</p> <ul style="list-style-type: none"> a. Class-A Fire Rated Roof, b. Enclosed Eaves, c. Fire-Resistant Vents, d. Multipane windows, including dual pane windows, or functional shutters, which when closed, cover the entire window and do not have openings, and e. At least six (6) inches of noncombustible vertical clearance at the bottom of the exterior surface of the building, measured from the ground up. <p>(2) 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 rating plan that</p>		<p>the area extending thirty feet from the Building Being Evaluated, removal of combustible structures from as much of such area as is under the control of the applicant or policyholder, and</p> <ul style="list-style-type: none"> e. Whether the property upon which the Building Being Evaluated is situated complies with Section 4291 of the Public Resources Code, and any applicable local ordinances, governing defensible space; and <p>2. Building hardening measures, including provision of the following:</p> <ul style="list-style-type: none"> a. Class-A Fire Rated Roof, b. Enclosed Eaves, c. Fire-Resistant Vents, d. Multipane windows, including dual pane windows, or functional shutters, which when closed, cover the entire window and do not have openings, and

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<p>includes, the factors described in subdivision (d)(1) of this section.</p>	<p>(d)(2):</p> <ul style="list-style-type: none"> The filing requirement for rate applications should require any wildfire risk model or rating plan to be updated to include the mandatory factors. 	<p>e. At least six (6) inches of noncombustible vertical clearance at the bottom of the exterior surface of the building, measured from the ground up.</p> <p>(2) No later than one hundred eighty days following the date this section is filed with the Secretary of State, each <u>residential and commercial property insurer shall file a rate application that incorporates includes a rating plan, and any Wildfire Risk Model used to develop or determine any rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria, that comply with</u> includes, the factors described in subdivision (d)(1) of this section.</p>
<p>(e) Optional factors.</p> <p>An insurer may use a rating plan 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:</p> <p>(1) Fuel: This factor shall take into account the various types of</p>	<ul style="list-style-type: none"> This subdivision (e) (and subdivisions (h)-(k) below) adopt and permit, for the first time via a regulation, the current status quo of allowing insurance companies to use a system of wildfire risk “scores” and associated relativities (premium discounts/surcharges) using FireLine or other wildfire risk models. The current regulations are silent on this practice, so there is wide variation in what has been allowed. Some insurers 	<p>(e) Optional factors.</p> <p>An insurer may use a rating plan <u>or Wildfire Risk Model</u> 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:</p>

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<p>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).</p> <p>(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).</p> <p>(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</p>	<p>use these factors and some use others to develop wildfire risk “scores” that they use to surcharge, refuse to write, or non-renew homeowners, but as drafted, the text would do nothing to improve current insurance company practices or incentivize homeowners to pursue mitigation to lower their wildfire risk scores.</p> <ul style="list-style-type: none"> • Terms “take into account” “reflect” “accord consideration” and “include consideration” are used inconsistently. Need to use one term/phrase consistently throughout. 	<p>(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 <u>reflect</u> 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).</p> <p>(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).</p> <p>(3) Access: Acess reflects the ease or difficulty with which firefighting personnel and equipment can reach</p>

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<p>question. If used, this factor shall reflect the historic and estimated impact on losses related to access, as described in this subdivision (e)(3).</p> <p>(4) 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)(4).</p> <p>(5) 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. The structural characteristics factor shall not reflect the construction materials or any other item the insurer is required to take into account pursuant to subdivision (d) of this section. If used, the structural characteristics factor shall reflect the historic and estimated impact on losses related to structural characteristics, as described in this subdivision (e)(5).</p> <p>(6) 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</p>		<p>properties 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).</p> <p>(4) 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)(4).</p> <p>(5) Structural characteristics: The structural characteristics factor shall reflect the materials used in the construction, and which may reflect such items as the design, of the structure in question. If used, the structural characteristics this factor shall reflect the historic and estimated impact on losses related to structural characteristics, as described in this subdivision (e)(5).</p>

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<p>and estimated impact on losses related to wind, as described in this subdivision (e)(6).</p> <p>(7) 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.</p>		<p>(6) 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, this the wind factor shall reflect the historic and estimated impact on losses related to wind, as described in subdivision (e)(6).</p> <p>(7) Other community-level or property-level mitigation efforts not specified in subdivision (d) as recommended by a state or local fire safety agency or organization as reducing wildfire risk.</p>
<p>(f) Availability for public inspection.</p> <p>Any rating plan, or Wildfire Risk Model submitted to the Commissioner in connection with a complete rate application pursuant to subdivision (c) of this section, 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</p>	<ul style="list-style-type: none"> Section 1861.07 of Proposition 103 requires full public disclosure of information necessary for the Commissioner to determine whether rates are justified or if the insurance company is otherwise in violation of the law. This is a core transparency requirement mandated by the voters. Insurance companies have sought to avoid or narrow this requirement for decades in the courts and unsuccessfully sponsored legislation in 2020 to do so. This provision properly requires wildfire risk models submitted with a complete rate 	<p>No proposed edits</p>

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<p>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 claims 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 (b)(7) 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.</p>	<p>application and any additional information as the Commissioner may request during the review of the application to be made publicly available.</p>	
<p>(g) Credible data.</p> <p>Any rate application 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</p>	<ul style="list-style-type: none"> • The term “segment” and “rating differential” are undefined, and could be misinterpreted to mean determination of overall rates applied to a subset of policyholders. • Rather than using optional “if” language, this provision should <u>require</u> the Commissioner to collect and aggregate industry loss data that insurance companies can use if their own data is not fully credible. 	<p>(g) Credible data.</p> <p><u>Any rate or rule application that utilizes a Wildfire Risk Model and/or rating plan as authorized in this section shall incorporate use the insurer’s own California wildfire loss data to the extent that it is credible to support each proposed rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria based on wildfire risk segment, rating differential, or surcharge being</u></p>

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<p>premium surcharge. If the Commissioner aggregates California premium-and-loss data by wildfire risk to create a fire and 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 in connection with a residential property rate application, either directly or as a complement of credibility to the insurer’s own California wildfire loss data.</p>		<p>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 <u>proposed rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria</u> segment, rating differential, or premium surcharge. If <u>Not later than [DATE],</u> the Commissioner <u>shall</u> aggregates California premium-and-loss data by wildfire risk to create a wildfire-exposure-risk manual,a An insurer may rely on the then-current version of the manual as support for each <u>proposed rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria</u> segment, rating differential, or surcharge being requested, either directly or as a complement of credibility to the insurer’s own California wildfire loss data.</p>
<p>(h) Provision of wildfire risk score or other wildfire risk classification to policyholder or applicant.</p> <p>An insurer utilizing a Wildfire Risk Model, or rating factor, to segment, create a rate differential, or surcharge the premium based upon the policyholder or applicant’s wildfire</p>	<ul style="list-style-type: none"> As drafted, this provision requires insurers to “implement a procedure” for providing applicants and policyholders with their wildfire risk score and related information, but does not clearly mandate the procedure. The CDI should mandate a standard procedure. 	<p>(h) Provision of wildfire risk score or other wildfire risk classification to policyholder or applicant.</p> <p><u>(1) An insurer utilizing a Wildfire Risk Model, or rating plan factor, to develop or determine any rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria</u></p>

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<p>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 the wildfire risk score or other wildfire risk classification used by the insurer to segment, create a rate differential, or surcharge the premium based upon the policyholder or applicant’s wildfire risk. The insurer shall provide to the policyholder or applicant such wildfire risk score or classification at the following times:</p> <p>(1) No later than fifteen days following the submission to the insurer of the applicant’s completed application;</p> <p>(2) At least forty-five days prior to each renewal;</p> <p>(3) At least seventy-five days prior to any nonrenewal; and</p> <p>(4) In the event that the policyholder or applicant has completed a mitigation measure on the subject property since the time of the last application to or renewal by the insurer, no later than thirty days following the submission to the insurer of the policyholder or</p>	<ul style="list-style-type: none"> The regulation should also require insurers to provide notice to applicants and policyholders of wildfire risk scores and related information used for eligibility and nonrenewal. 	<p>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, <u>implement a written procedure to provide, in writing, to each such policyholder or applicant for property insurance the wildfire risk score or other wildfire risk classification used by the insurer to</u> segment, create a rate differential, or surcharge the premium <u>determine the rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria</u> segment, create a rate differential, or surcharge the premium <u>applied to the policyholder or applicant based upon the policyholder or applicant’s wildfire risk and all of the information specified in subdivision (k).</u> The insurer shall also <u>provide the policyholder or applicant with the Department of Insurance toll-free consumer hotline and website address of the Department’s Consumer Complaint Center.</u> The insurer shall provide to the policyholder or applicant such wildfire risk score or classification <u>information</u> at the following times:</p> <p>(1)(a) <u>(a)</u> No later than fifteen days following the submission to the</p>

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<p>applicant’s request that the insurer provide a revised wildfire risk score or wildfire risk classification.</p>		<p>insurer of the applicant’s completed application;</p> <p>(2)(b) At least forty-five days prior to each renewal;</p> <p>(3)(c) At least seventy-five days prior to any nonrenewal; and</p> <p>(4)(d) In the event that the policyholder or applicant has completed a mitigation measure on the subject property since the time of the last application to or renewal by the insurer, no later than thirty days following the submission to the insurer of the policyholder or applicant’s request that the insurer provide a revised wildfire risk score or wildfire risk classification.</p> <p><u>(2) No application or renewal shall be declined or nonrenewed until and unless an insurer complies with this subdivision (h) and subdivision (k).</u></p>
<p>(i) Policyholder or applicant’s right to appeal.</p> <p>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</p>	<ul style="list-style-type: none"> • The “appeal” process places the burden on the consumer to know how rates are determined, how wildfire risk scores work, and what a rating factor is, and to have to time and ability to challenge the insurer, in writing. • Insurance companies have no 	<p>(i) Policyholder or applicant’s right to appeal.</p> <p>The procedure described in subdivision (h) of this section shall permit a <u>A</u> policyholder under, or applicant for, a policy of property insurance who disagrees with the assignment of a wildfire risk score, or other wildfire</p>

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<p>other wildfire risk classification, 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 policyholder or applicant in writing of this right to appeal the wildfire risk score or other wildfire risk classification, whenever such score or classification 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 classification, 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, upon request by the Department, forward a copy of the appeal, and the insurer’s response, to the Department.</p>	<p>obligation other than to “reconsider” and respond within thirty days, at which point the consumer is free to contact the CDI’s complaint hotline (under proposed subd. l), where they will be told that the commissioner “approved” as a “reasonable” the scoring system.</p> <ul style="list-style-type: none"> • A nearly identical process requiring consumers to bring complaints to their insurance company was enacted in 1947 (see former §§ 1858 – 1859.1) and amended by the Legislature in 1987 to permit complaints directly to the Commissioner. It proved useless for individual consumers, which is why Prop 103 changed the law to allow consumers to challenge insurance company practices in court – a right the insurance industry is now challenging in court. 	<p>risk classification, used by the insurer in its Wildfire Risk Model or rating plan, shall have the right to appeal orally or in writing that assignment directly to the insurer. The insurer shall notify policyholder or applicant in writing of this right to appeal the wildfire risk model score or other wildfire risk classification, 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 classification, 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, upon request by the Department, forward a copy of the appeal, and the insurer’s response, to the Department.</p>
<p>(j) Representation by broker or agent. 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</p>	<ul style="list-style-type: none"> • While the policyholder or applicant may choose to appeal to their agent or broker, the obligation to notify a policyholder or applicant of their wildfire risk score should remain with 	<p>(j) Representation by broker or agent. <u>In addition to an insurer’s obligation to notify a policyholder or applicant under subdivision (h) and the</u></p>

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<p>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 score or other wildfire risk classification, 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, upon request by the Department, forward a copy of the appeal, and the insurer’s response, to the Department.</p>	<p>the insurer, not the agent or broker.</p> <ul style="list-style-type: none"> The insurer should be required to forward a copy of the appeal and response to the Department in all instances, not just upon request of the Department. How would the Department even know to request a copy of the appeal and response unless contacted by the policyholder or applicant? 	<p><u>policyholder or applicant’s right to appeal under subdivision (i).</u> 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 score or other wildfire risk classification, 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 <u>to</u> 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, upon request by the Department, forward a copy of the appeal, and the insurer’s response, to the Department.</p>

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<p>(k) Explanation of wildfire risk score or other wildfire risk classification.</p> <p>Whenever a wildfire risk score, or other wildfire risk classification used by the insurer to segment, create a risk differential or surcharge the premium for a particular policyholder 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:</p> <p>(1) The range of such scores or classifications that could possibly be assigned to any policyholder or applicant;</p> <p>(2) The relative position of the score or classification assigned to the policy holder or applicant in question within that range of possible scores or classifications, and the impact of the score or classification on the rate or premium; and</p> <p>(3) A detailed written explanation of why the policy holder or applicant received the assigned score or classification; the explanation shall make specific reference to the features of the property in question that influenced the assignment of the score or classification.</p>	<ul style="list-style-type: none"> • Consumers should have the same rights of notice and right to appeal wildfire risk scores that are used for eligibility and nonrenewal criteria. 	<p>(k) Explanation of wildfire risk score or other wildfire risk classification.</p> <p>Whenever a wildfire risk score, or other wildfire risk classification used by the insurer to <u>determine any rating factor, premium discount or surcharge, or eligibility or nonrenewal criteria</u> segment, create a risk differential or surcharge, the premium for applied to a particular policyholder 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:</p> <p>(1) The range of such scores or factors that could possibly be assigned to any policyholder or applicant;</p> <p>(2) The relative position of the score or factor assigned to the policyholder or applicant in question within that range of possible scores or factors, and the impact of the score or factor on the <u>policyholder's or applicant's</u> rate or premium; and</p> <p>(3) A detailed written explanation of why the policyholder or applicant received the assigned score or factor; the explanation shall make specific reference to the features of the</p>

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<p>The insurer shall provide, in addition, the following information:</p> <p>(A) Which mitigation measure or measures can be taken by the policyholder or applicant to lower the wildfire risk score or classification; and</p> <p>(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.</p>		<p>property in question that influenced the assignment of the score or classification.;</p> <p>The insurer shall provide, in addition, the following information:</p> <p>(A)(4) Which mitigation measure or measures can be taken by the policyholder or applicant to lower the wildfire risk score or classification.;</p> <p>and</p> <p>(B)(5) 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.</p>
<p>(l) Notification to policyholder or applicant of right to contact Department in connection with insurer’s response to appeal.</p> <p>When an insurer responds to the applicant or policyholder in connection with an appeal pursuant to subdivision (i) or (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</p>	<ul style="list-style-type: none"> • Contacting the Department of Insurance has also proven to be an ineffective remedy for many consumers over the last fifty years, which is why we recommend that insurers notify insureds of their right to seek independent legal assistance. 	<p>(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 applicant or policyholder disagrees with the insurer’s written reconsideration and decision <u>or seek the assistance of a private attorney.</u> In any event, the insurer shall provide the policyholder or applicant with the Department of Insurance toll-free consumer hotline</p>

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<p>the policyholder or applicant with the Department of Insurance toll-free consumer hotline and web address of the Department’s Consumer Complaint Center.</p>		<p>and web address of the Department’s Consumer Complaint Center.</p>
<p>(m) No curtailment of applicant or policyholder’s rights.</p> <p>Nothing in this section shall be construed to limit the right of an applicant or policyholder to complain directly to the Commissioner at any time or to pursue any other remedy or other action allowed under California or federal law.</p>	<ul style="list-style-type: none"> • This provision appropriately provides that applicants and insureds are not limited to pursuing the remedies in this section, but may pursue any other remedy or action allowed under California or federal law. 	<p>No proposed edit</p>
<p>(n) Inapplicability to certain commercial policies.</p> <p>This section shall not apply to a commercial policy insuring multiple locations, none of whose wildfire risk is considered in rating the policy.</p>		<p>No proposed edit</p>