American Property Casualty Insurance Association℠
INSURING AMERICA apci.org

State of Washington Office of the Insurance Commissioner
302 Sid Snyder Ave., SW
Olympia, WA 98504
Attention: **Michael Walker**

Sent via email to: rulescoordinator@oic.wa.gov.

August 3, 2022

Re: APCIA COMMENTS ON STATE OF WASHINGTON R 2022-01
Insurance Underwriting Transparency, Second Draft dated
July 20, 2022

Dear Commissioner Kreidler:

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions – protecting families, communities, and businesses in the U.S. and across the globe. APCIA members write 45.9 percent of the property casualty insurance issued in the State of Washington.

As you know, APCIA has previously urged you, in letters submitted on March 1, 2022, and on June 14, 2022, to withdraw R 2022-01 and to work cooperatively with the industry to identify opportunities to improve transparency for consumers in the spirit of the legislature's directive set forth in RCW 34.05.310.[1] We remain willing to work cooperatively with you on a cost-effective approach that would deliver useful information to consumers while protecting proprietary information, supporting competition, and encouraging innovation. We again, urge you to withdraw R 2022-01 as it remains fatally flawed on legal, technical, efficiency, and other grounds and has the potential to create, rather than combat, consumer confusion.

APCIA appreciates the opportunity to submit these comments and will below outline several

[1] The second draft of the proposed rule ignores the invitation to work cooperatively and neither acknowledges nor addresses the suggestion that a focus group composed of consumers, and possibly other stakeholders such as insurance agents, could help explore whether there is a need for additional transparency and help identify what type of information consumers believe would be most helpful, and in what form.

continuing concerns with the second draft of proposed Rule R 2022-01 *Insurance Underwriting Transparency* (proposed Rule.)

The Proposed Rule Raises Significant and Fundamental Legal Issues

The proposed Rule, even as amended, fails to set forth a sufficient justification for the rulemaking. The commissioner's general authority, found at RCW 48.02.060, provides that the commissioner has authority to *"(b) [c]onduct investigations to determine whether any person has violated any provision of this code."* This proposed rulemaking does not derive from an investigation conducted pursuant to RCW 48.02.060.

RCW 48.02.060 does not authorize the commissioner to skip the step of "*investigat[ing] to determine whether 'any person' has violated*" a provision of the insurance code. The statute allows the commissioner to investigate individual companies if concerned about potential unfair practices but does not contemplate nor authorize sweeping pronouncements of purported industry-wide failings which the commissioner summarily deems to be unfair or deceptive.

The broad, unsubstantiated representation that the commissioner has been provided with "[i]nsurance information" in the form of "consumer complaints and industry responses" that "demonstrate[] policyholders have not received sufficient...transparency from insurers" lacks necessary specifics and, as a rationale for the rule, exceeds the commissioner's authority. The proposed Rule also fails to show that the number or frequency of alleged complaints in the context of overall insurance transaction volume merits rulemaking based on accepted standards governing the commencement of regulatory proceedings and fails to explain how imposing onerous new requirements on insurers will benefit policyholders.

While the commissioner has some authority to define certain acts or practices as unfair under RCW 48.30.010:

> *(2) In addition to such unfair methods and unfair or deceptive practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.*

that authority is specifically limited, including by paragraph 3(b), which requires that the commissioner provide a "*detailed description of the facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive*…"

The proposed Rule lacks any detailed description of alleged consumer complaints and fails to set forth any factual foundation that supports defining the failure to provide a "Premium Change Notice" as an unfair or deceptive practice.

The Commissioner has Authority and Responsibility to Assess Compliance with Washington Law

The commissioner is responsible to ensure that rates are adequate, not excessive, and not unfairly discriminatory as required by RCW 48.19.020 . If the goal of the proposed Rule is to ensure that insurers rating practices are sufficiently transparent for a determination of whether they meet that standard, the question should be whether the rating practices are sufficiently transparent for *the commissioner* to make that determination, not each individual policyholder. The proposed Rule completely ignores that the commissioner has prior approval authority and has access, even to confidential proprietary information, for legitimate regulatory purposes if confidential information is protected from disclosure to third parties. And the commissioner already has a broad menu of consumer protection tools, including the ability to hear and act on consumer complaints, up to and including investigations of individual insurers under RCW 48.02.060.

Requiring insurers to deconstruct sophisticated multi-variate rating models to provide a policyholder with an itemized explanation at renewal of any premium increase of ten percent or more, *or upon customer request,* would impose significant programming and implementation challenges for insurers, large and small.

At first glance, the "ten percent or more" threshold for triggering of the Notice requirement seems like a limitation intended to lessen the programming and implementation challenges for insurers. However, any perceived lessening of the burden is erased by the language requiring that a Notice be issued "upon policyholder request." As written, the proposed Rule would require that insurers' systems be able to issue a Notice at renewal specifying the dollar or percentage impact of each factor, from among potentially dozens or hundreds of factors, that individually or in combination with other factors, contributed to an increased premium of ten percent or more. But the "at policyholder request" language would also require that insurers be able to issue such a Notice, not just at renewal but at any time requested by a policyholder, and not just for premium increases of ten percent or more but for any reason. This not only ignores how rating models and multivariate rating processes work, but also ignores that premium changes may be driven by policyholder coverage changes, alone or in combination with insurer-driven changes. The proposed Rule, and the Notice which ostensibly seeks to increase transparency so that individual policyholders can make individual evaluations of rating practices is not *consistent* with Washington law. Determining whether rating practices are fair is the job of the insurance commissioner. In exchange for the legislature granting the commissioner extraordinary power to make such determinations, the legislature permits the commissioner access to extensive information, some of which is protected from public disclosure.

Further, forcing new disclosures on policyholders, many of whom will lack any context for an

understanding of complex actuarial science, would not serve the public interest. Insurance consumers rely upon the commissioner to ensure that rates are fair and compliant with Washington law. Requiring insurers to inundate consumers with even more information at renewal (or upon request) may ultimately lead to increased consumer confusion and misunderstanding. This may occur even though the insurer's rating/underwriting practices have regulatory approval and are entirely compliant with Washington law. Complex rating and underwriting practices of insurers are based on actuarial science that account for demonstrated predictors of risk and are necessary for companies to operate, and to offer the wide array of products and services available to Washington consumers, while ensuring competitiveness and allaying solvency concerns. Policyholders may understandably interpret the new Notices as 'just more paperwork' and not as a tool to improve clarity.

In addition to the foregoing, APCIA continues to disagree with the commissioner's foundational assumption that insurers are not sufficiently transparent to policyholders. In fact, insurers provide significant amounts of information to their policyholders and the public. Insurance rates and rules are publicly filed in Washington and available for scrutiny by any interested policyholder. In addition to written disclosures already required by law, even a cursory review of insurance company websites will show vast amounts of information available to consumers about the companies, their market practices, and helpful advice to consumers on how to reduce their risk of loss.

In addition to the voluminous information that insurers already disclose to policyholders, we note the educational materials which the OIC itself offers to consumers.

https://www.insurance.wa.gov/why-does-auto-insurance-cost-so-much,
https://www.insurance.wa.gov/what-consider-buying-auto-insurance,
https://www.insurance.wa.gov/how-reduce-your-auto-insurance-premiums

The Proposed Rule Implicates Confidentiality Concerns Despite Added Exemptions

Washington general law and insurance law protects certain proprietary information. Although the second draft of the proposed Rule continues to outline certain exemptions[2], the draft dilutes the effectiveness of those exemptions, undermines the protection of insurer trade secrets and intellectual property, and injects new threats to the confidentiality of proprietary information by stating, at the

[2] APCIA acknowledges that the proposed Rule properly exempts, in proposed WAC 284-30A-020 (4)(b), disclosure of the contents of credit-based insurance scoring models, company placement criteria or eligibility rules, and strictly confidential insurance company trade secrets, as defined by RCW 19.108 (Uniform Trade Secrets Act) and recognizes, in proposed WAC 284-30A-020 (4)(c), that information in a filing on "usage-based insurance" and about the usage-based component of the rate must remain confidential pursuant to RCW 48.19.040. We also note the commissioner's acknowledgement in proposed WAC 284-30A-020(5) that the proposed Rule must not contradict or conflict with the Fair Credit Reporting Act (15 USC 1681.) However, the exemptions do not go far enough to protect insurance company trade secrets, intellectual property and other proprietary information from disclosure, especially with the new language added at the end of proposed WAC 284-30A-020 (4)(b) which provides that "*…insurers may need to provide information specific to the policyholder that has been produced through or resulting from these sources to comply with this chapter*."

end of WAC 284-30A-020 (4)(b), that "…*insurers may need to provide information specific to the policyholder that has been produced through or resulting from these sources to comply with this chapter*." This exception defeats the purpose of the overall exemptions and adds to the unworkability of the proposed Rule. This exception language would potentially require disclosure of information that is proprietary to the insurer and/or to third party vendors and/or make such information discernible from the level of detail required to be included in the Premium Change Notice. This could have a detrimental impact on competition. Confidentiality of proprietary information, even beyond the information that falls under the Trade Secrets Act, is necessary to support legislative goals favoring competition and innovation and protecting investment in intellectual property. Regrettably, these legislative objectives would be undermined by the proposed Rule or by any future regulation implementing the proposal set forth in the CR-101 which began this rulemaking process.

The Proposed Rule Would Impose Significant Cost and Implementation Challenges

Washington's prior approval law requires insurers to produce to the commissioner and policyholders more detailed information than required under the laws of many other states. The legislature has authorized the commissioner to to penalize insurers for engaging in conduct defined to be unfair or deceptive. The legislature has not, however, authorized the commissioner to rely on "insurance information" gleaned from some "consumer complaints" to impose broad new disclosure requirements on insurers and to then define failure to comply with those requirements as an unfair or deceptive practice.

The proposed Rule would require insurers to dissect complex rating models, isolate information, and perform intricate and complex calculations to determine factor by factor premium impacts that are not necessary to comply with existing Washington law. Insurance companies employ sophisticated actuarial and statistical models that help to accurately price for risk as is required by law. The ability to accurately price for risk positively impacts insurance availability and affordability. The increased costs that will follow from requiring insurers to expend financial and personnel resources to deconstruct the rates to isolate each factor to be able to fill in the blanks on a newly required "Premium Change Notice" will not serve the public interest.

The proposed Rule would require insurers to create and seek approval for a proprietary "Premium Change Notice" or to use the form included in the proposed Rule. Either option will require system changes that will be costly and could take 12 months or longer to program, which additional time the proposed Rule does not provide. In addition, the requirement to obtain and maintain *Proof of Mailing* for Notices sent by mail imposes an excessive and unnecessary burden on insurers who are currently subject to *Proof of Mailing* requirements only for cancellations and nonrenewals. The requirement that Notices be sent 20 days prior to renewal fails to account for exposure changes that might be reported by policyholders within the last few days before a renewal. Given that the proposed Rule does not differentiate between exposure changes and changes resulting from rating factor changes, companies

could be forced out of compliance with the proposed Rule for matters outside of the insurers control. It is not in the best interest of policyholders to impose new, costly requirements on insurers that will put upward pressure on insurance rates.

The proposed Rule provides that the Premium Change Notice "*must include an itemized list of all rates, coverages, and rating components that have changed when compared to the previous policy term*" and "*contain the dollar or percentage impact each revised variable has on the overall premium, so that one hundred percent of the premium change is clearly explained in certain and listed terms."* This provision fails to exempt from the required disclosure changes to base rates, approved by the commissioner, that affect everyone. This provision also conflicts directly with the exemptions required by Washington law (listed in footnote 2 herein) and makes the proposed Rule internally inconsistent. In addition, requiring disclosure of "*information specific to the policyholder that has been produced through or resulting from"* exempted sources makes the proposed Rule not only internally inconsistent, but it directly conflicts with the protections afforded by the RCW 19.108 (Uniform Trade Secrets Act) and the Fair Credit Reporting Act (15 USC 1681) and potentially with other state and federal laws protecting insurers' and third-party vendors' proprietary information and intellectual property.

The proposed Rule is unnecessary because companies already offer information within the policy's Declarations that shows considerations that would impact rate and eligibility. When the customer amends her policy, she is provided with a coverage changes form, as well, with details on what has been updated both in terms of coverage and cost.

The Notice Raises Substantive Compliance Issues and Is Uniquely Impractical

The proposed Rule, and the Premium Change Notice that it requires, would likely pose significant compliance challenges and burdens for all companies, even the largest companies.

While the *Scope of Applicability* section has been revised, it still lacks clarity. For instance, proposed WAC 284-30A-020 (1)(a) references *Private passenger automobile coverage*. This term is not defined in the proposed Rule and is susceptible of different interpretations. Some might interpret the term broadly to include motorcycles and recreational vehicles; others might interpret the term more narrowly, with such specialty vehicles falling outside of its boundaries.

A final rate may be the result of hundreds of factors and calculations not practically isolated from one another and/or disclosable in a manner that would be useful to consumers. The final rate may result from exposure changes and rate variables, some of which may impact the rate in different directions. The proposed Premium Change Notice requires disclosure of "capping" where used but the proposed Rule lacks clarity on whether the Premium Change Notice is even required if "capping" keeps the premium change below ten percent at renewal.

The proposed Rule drives in a direction inconsistent with the approach of even the most progressive states and the on-going work of NCOIL and NAIC. Disclosure mandates in other states balance the needs

of consumers for information and insurers for protection of intellectual property, but the Proposed Rule, even with the limited exemptions included, does not strike a balance.

- As noted above, insurance rates are generated by sophisticated actuarial and statistical models, which are not intuitive to non-actuaries or non-statisticians. Requiring insurers to deconstruct rates to provide policyholders with the detailed information required by the proposed Rule, even where possible, will not advance the public interest. Imposing upon consumers the task of evaluating mathematical and statistical methodology is likely, instead, to create confusion. Insurance rates and rating models are already subject to review and approval by the insurance commissioner; consumers are entitled to rely on the commissioner to ensure that rates are adequate, not excessive, and not unfairly discriminatory.
- Premium increases may result from exposure changes and/or rate changes that may move premium in opposite directions. It is difficult, if not impossible, to isolate exposure changes from rate changes. In addition, there may be multiple interacting variables, some of which are exempt from disclosure, and there may also be applicable offsets that flatten the impacts of a factor change.
- Developing a system procedure to itemize premium impact in ways not required under existing law would be costly, especially for companies that have several systems maintaining multiple programs. As noted above, imposing these additional costs on insurers will eventually put upward pressure on rates and not serve the public interest.

The Commissioner Should Work with the Industry to Explore a Better Alternative

As noted above, and in our prior letters, APCIA remains willing to work with the OIC to explore potential alternatives to address the commissioner's goal of achieving greater underwriting transparency, his stated goal. This offer to work together furthers the legislature's directives set forth in RCW 34.05.310, which the commissioner purports to implement via this rulemaking. The statute states in relevant part:

> **Prenotice inquiry—Negotiated and pilot rules.**
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> (1)(a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rulemaking under RCW **34.05.320**.
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> …
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> (2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:
>
> (a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rulemaking, including, where appropriate, county and city

representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making, which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW **34.05.313** or as otherwise provided by the agency.

We previously suggested, for the purpose of discussion, that it might be a more efficient approach for the commissioner to consider for the itemized rate/premium providing more generalized categories that impact changes in premiums. For example:

i. Change in risk/coverage - change in coverage, change in incident activity, change in vehicle or vehicle count, change in operator or operator characteristics, change in credit- based insurance score, etc.

ii. Change in rate – factors/weights have been adjusted for: base rates, incident activity, vehicle characteristics, operator characteristics, etc.

The second draft of the proposed Rule neither acknowledges nor addresses this suggestion. APCIA also suggested that it might be constructive for the commissioner to work with the industry to attempt to draft a sample notice, to ensure consistent understanding of the intent. The proposed Rule does not address this suggestion and instead includes an OIC-drafted Premium Change Notice.

APCIA appreciates the opportunity to submit these comments. For the reasons set forth herein and in our prior comment letters, we urge you to immediately withdraw R 2022-01.

Submitted by:

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