

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, California 95814**

**INITIAL STATEMENT OF REASONS**

**Auto Body Repair Labor Rate Surveys**

**Date: March 04, 2016**

**CDI Regulation File: REG-2012-00002**

**INTRODUCTION**

The California Department of Insurance (“the Department”) proposes to adopt under Title 10, California Code of Regulations (“CCR”), Chapter 5, Subchapter 7.5, Article 1, section 2695.81, entitled “The Standardized Auto Body Repair Labor Rate Survey, and section 2695.82, entitled, “Questionnaire For the Standardized Labor Rate Survey.” Additionally, the Department proposes to adopt amendments to Title 10, CCR, Chapter 5, Subchapter 9, Article 7, section 2698.91, entitled “Reporting Auto Body Repair Labor Rate Surveys.” The amendment and adoption of these three sections are collectively called “Auto Body Repair Labor Rate Surveys.” (All references to the CCR in this Initial Statement of Reasons are references to sections in CCR Title 10, unless otherwise stated.) The Department proposes to amend and adopt these sections under the authority granted by California Insurance Code (“Ins. Code”) sections 758, 790.10, 12921, and 12926.

CCR section 2698.91 became effective October 25, 2002. After working with the regulations, it became apparent that additional clarification is necessary for the proper interpretation and implementation of the Ins. Code section 758. Furthermore, clearer and more reliable standards are needed to provide consistency in the way insurance companies conduct and report Auto Body Repair Labor Rate Surveys.

The primary purpose of the proposed amendment to CCR section 2698.91 is to interpret, clarify, and make specific the provisions of Ins. Code section 758(c) and the primary purpose of the proposed adoption of CCR sections 2695.81 and 2695.82 is to provide insurers with a mechanism to support the use of labor rate surveys when settling automobile insurance repair claims in a fair, equitable and reasonable manner, as required by Ins. Code section 790.03(h). The amendment and adoption of these Regulations will also identify and clarify consistent standards by which insurers can conduct and report reliable labor rate surveys.

**GENERAL DESCRIPTION OF THE PUBLIC PROBLEM (Government Code § 11346.2(b)(1))**

Ins. Code section 758 (c) provides that if an insurer conducts an auto body repair labor rate survey, the insurer must report the results of the survey to the Department of Insurance. The Department is required to make the information available to the public upon request.

The current regulations provide some broad definitions, outline what basic information should be included in surveys conducted by insurers, and provide a procedure for submitting the surveys to the Department. After section 2698.91 became effective, it became apparent that additional clarification is necessary for the proper interpretation and implementation of Ins. Code section 758(c). For example, each insurer that submits a labor rate survey to the Department, submits the survey in a different format, using different terminology and with different data. Differences in formats limit the Department's ability to make these surveys public in a more effective and efficient manner. Currently, the Department must make a copy or scan in all the surveys and respond to each ad hoc public records request for these surveys. The Department seeks the ability to post these surveys on its public website rather than respond to each ad hoc survey request. The proposed amendments to section 2698.91 are intended and necessary to address these above described issues, as well as providing clarity to insurers and consumers when the results of labor rate surveys must be reported to the Department.

In addition to the above clarity issues with section 2698.1, because there is no standard methodology specifically outlined in the statute (i.e. whether insurers use a sufficient number of randomly selected shops or whether insurers use an average, or other methods to measure a prevailing labor rate charged by shops), many surveys submitted to the Department and used by insurers to pay claims tend to produce inconsistent, inaccurate, and unreliable results, creating confusion when insurers seek to support their payments of automobile repair insurance claims or the adjustment of the body shop estimate as reasonable within the meaning of CCR section 2695.8(f) of the Fair Claims Settlement Practices regulations. Insurers continue to use these unreliable surveys to settle and pay claims and limit payment on claims.

The Department received hundreds of complaints from consumers and auto body repair shops, alleging specific instances where consumers were forced to pay out-of-pocket costs, or shops were deprived of their reasonably charged rates due to outdated and unreliable surveys. For example, some insurers' labor rate surveys relied on artificially large geographic areas or outdated survey data that did not reflect the market rate. Furthermore, some insurers advised claimants and/or repair shops that since a survey was submitted to the Department, that survey is reliable support for limiting the labor rate component of repair claims, or that the Department has approved the methodology of the insurers' labor rate survey. However, the fact that the Department is acting as a "clearing house" for surveys submitted to the Department pursuant to Ins. Code section 758(c), does not render these surveys "approved" by the Department. The statute, Ins. Code section 758 (c), and the associated regulations do not confer upon the insurer the unfettered ability to use these surveys to pay claims in cases where the claimant seeks repairs from a shop outside of the insurer's direct repair program network of shops.

These complaints culminated in several enforcement actions which the Department filed against several insurers. The enforcement actions were based on potential violations of Ins. Code section 790.03. Additionally, the Department tracked dozens of class-action lawsuits in other jurisdictions that relate to unfair and unequitable settlement of claims based on outdated or unreliable labor rate surveys.

As a result of some disputes that arise when an insurer limits the amount of labor rate it will pay on a claim, the consumer is placed in a position where they have to pay the difference between their repair shop's labor rate and the rate the insurer will pay based on their auto body labor rate survey. Since surveys currently conducted pursuant to Insurance Code section 758(c) contain no standards for reliability, the Commissioner has deemed many of them unreliable for use by insurers in settling claims. Further, current regulations do not provide insurers with minimum standards that can be used in surveys that the Commissioner believes do result in reliable labor rate data for use in fair and equitable settlements and payments of automobile repair claims.

The proposed amendments and adoptions are necessary to address various problems, including:

- 1) The proposed regulations for the Auto Body Repair Labor Rate Surveys will address the issue where inconsistent, unreliable, and inaccurate surveys are used by insurers to settle insurance claims.
- 2) The proposed regulations will address the problem of unfair or unequitable settlements of repair claims based on unreliable or outdated auto body labor rate surveys.
- 3) The proposed regulations will address the problem of unclear or inconsistent interpretation of the Ins. Code section 758(c), and the inconsistent reporting submissions of auto body survey results to the Department.
- 4) The proposed regulations will address the problem of the lack of a clear guidance and standards when conducting auto body labor rate surveys.
- 5) The proposed regulations will address potential enforcement actions based on unreliable or outdated labor rate surveys.
- 6) The proposed regulations will address potential class-action lawsuits that may be filed as the result of inaccurate, unreliable, or inconsistent labor rate surveys that are used to settle claims.

The Department's proposed amendments and adoptions to the regulations are described in more detail below.

## **SPECIFIC PURPOSE AND REASONABLE NECESSITY FOR THE PROPOSED AMENDMENTS TO THE REGULATIONS (Government Code § 11346.2(b)(1))**

### **Section 2695.81**

This preamble outlines the purpose and intent of the Regulations. The proposed adoption, which mirrors the language of Ins. Code section 790.03(h)(5), will make clear and clarify that the Commissioner recommends the standardized survey, as set forth in the Regulations for settling auto body insurance claims. The proposed regulation is reasonably necessary to clarify to consumers and insurers the purpose of these regulations and how to use them to fairly settle claims, where auto body repair labor rates are a component of those claims settlements. The proposed regulation is also reasonably necessary to clarify to insurers and the public that this section provides for a recommended labor rate survey, rather than a mandatory requirement of the Commissioner. The text of regulations used for the pre-notice public discussions pursuant to Government Code section 11346.45(a) on January 25, 2012, April 3, 2015, and April 16, 2015 proposed that in order for an insurer to use an auto body labor rate survey to pay claims, the insurer was mandated to follow the survey standards set forth in the proposed regulations. After hearing from interested parties in these workshops and in writing, the Commissioner has determined that there may be other methods of conducting a labor rate survey, than those set forth in these regulations that could result in fair and equitable settlement of the labor rate component of claims. Therefore, the Commissioner is proposing to adopt these regulations as recommended standards, rather than mandatory. To the degree, an insurer conducts a labor rate survey that differs from the methods and standards set forth in these regulations and can support that these methods and standards result in fair and equitable settlement of the labor rate component of claims, an insurer may use a survey other than the Standardized Survey to settle claims.

### **Subdivision (a)**

This proposed subdivision is reasonably necessary because it clarifies what the Regulations do not require the insurer to do, which is the payment of prior unrelated damages. For example, if the claimant's vehicle was damaged in a prior collision, the insurer, settling a particular claim, would not be required to pay for the costs associated with that damage unrelated to the claim being settled by the insurer to the degree the insurer is not required to pay for these costs under the insurance policy or any applicable law. This subdivision is necessary as insurers expressed concern in previous public discussions that any regulations that describe labor rate surveys and how insurers may use these surveys to pay claims might be construed as requiring payment of all repairs, even repairs of prior or unrelated damages that the insurer was not otherwise obligated to pay.

### **Subdivision (b)**

This proposed subdivision clarifies the premise that the Regulations are not intended to prohibit an insurer from paying a labor rate lower than the surveyed rate, if the auto body repair shop, chosen by the claimant to perform repairs, charges a labor rate lower than the

surveyed rate. This subdivision is reasonably necessary to clarify to insurers the ability to pay a rate lower than the surveyed rate in this situation, and that they are not required to pay the higher labor rate obtained from the survey if the shop in fact charges a lower rate. This subdivision is necessary as insurers expressed concern in previous public discussions that any regulations that describe labor rate surveys and how insurers may use these surveys to pay claims might be construed as requiring payment of a labor rate that is higher than what the shop in fact intends to charge for a particular repair.

#### Subdivision (c)

The language in this subdivision references the standard for settling claims as described in Ins. Code section 790.03(h)(5), which states that an unfair and deceptive practice in the business of insurance includes: “[n]ot attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.” This subdivision explains how compliance with these Regulations results in the rebuttable presumption of compliance with Ins. Code section 790.03, as it relates to the labor rate component of the claims settlement process. The Department received hundreds of complaints regarding unfair or unequitable settlements based on outdated or unreliable labor rate surveys. The Department filed enforcement actions based on alleged violations of Ins. Code section 790.03.

This subdivision is reasonably necessary to clarify the provisions of Ins. Code section 790.03. This proposed section is also reasonably necessary to clarify to insurers and the public that compliance would be limited to a rebuttable presumption by the Commissioner that the insurer attempted to act in good faith in compliance with sections 2695.81(c)(1) and 2695.81(c)(2). Additionally, this subdivision is reasonably necessary to convey to insurers the consequences of failing, or choosing not to comply, which is the loss of the rebuttable presumption. The proposed language is reasonably necessary to convey that the rebuttable presumption only applies when all conditions of subdivision (c) are met, for consistency and clarity purposes. Furthermore the rebuttable presumption is a reasonably necessary incentive for insurers to comply with when faced with a potential enforcement action for violations under Ins. Code section 790.03(h). Finally, this proposed subdivision names and clarifies that the labor rate survey for the purposes of this Regulation is called a “Standardized Labor Rate Survey,” which for clarity purposes makes the rest of the Regulation easier to read and understand.

#### Subdivision (c)(1)

This proposed subdivision clarifies that the rebuttable presumption is limited to the presumption that the insurer attempted in good faith to effectuate a fair and equitable labor rate component of a claim settlement. The subdivision is reasonably necessary to clarify and explain to the public and insurers what the limitations of the rebuttable presumption is, which relates only to the labor rate component of the settlement process under Insurance Code section 790.03.

#### Subdivision (c)(2)

This proposed subdivision clarifies that the rebuttable presumption is limited to the presumption that the insurer attempted in good faith to effectuate a fair and equitable adjustment of the labor rate component of a written estimate as referenced in section 2695.8(f)(3). The subdivision is reasonably necessary to clarify and explain to the public and insurers what the limitations of the rebuttable presumption are, which relates only to the labor rate component of the settlement process under Insurance Code section 790.03.

#### Subdivision (d)

This proposed subdivision begins to clarify and outline what would qualify as a Standardized Labor Rate Survey, as referenced under section 2695.81(c). This subdivision is reasonably necessary to clarify and make clear what the standards are to qualify as a Standardized Labor Rate Survey.

#### Subdivision (d)(1)

This proposed subdivision clarifies and outlines that one of the qualifications for a standardized survey is currentness of the survey. The Department recognizes that overhead, repair methods, and other costs that go into determining the labor rate charged by repair shops change over time. Survey data may become stale and not properly represent the going market rate for repairs. Due to the rapidly changing innovations in novel alloys, and other aspects of newer car models, auto body shops struggle to keep abreast with ever-changing equipment, training, and methodologies to meet consumer demand and new technologies. Also, employee wages, benefits and material costs increase over time and due to market forces. These factors may result in rapidly increasing costs to auto body shops, which drive up the labor rates charged to consumers for repairs. Many complaints to the Department's Consumer Services Division and correspondence from auto body shops report documented instances where insurers use survey data that is several years old and no longer reflects the prevailing market rate in the geographic area to settle claims. Because some insurers are relying on old surveys and data, there is a gap between what the insurer is willing to pay and what the auto body shop is actually charging, resulting in out-of-pocket costs to Consumers.

Thus, a current survey submitted to the Department and current survey data was deemed necessary to address these issues, and to qualify as a Standardized Labor Rate Survey. This subdivision is reasonably necessary to clarify the importance of a timely and current survey in order to qualify for the rebuttable presumption under section 2695.81(c). Furthermore, this subdivision is reasonably necessary to ensure that information is accurate, up-to-date, and is a reliable source for insurers, consumers and other stakeholders to rely upon.

#### Subdivision (d)(1)(A)

This proposed subdivision clarifies and outlines that one of the currentness standards is the time since the submittal of the survey to the Department. This subdivision is reasonably necessary to clarify the meaning of currentness and

what one of the requirements are for the currentness standard to qualify as a Standardized Labor Rate Survey.

Subdivision (d)(1)(A)1.

This proposed subdivision clarifies what is meant for time since submittal of the survey to the Department. This subdivision sets forth the requirement that a survey compliant with this section must be submitted to the Department no less than annually. The requirement of one year addresses the ever-increasing costs to auto body shops due to innovations in the car industry.

This subdivision is reasonably necessary to provide clarity to insurers and the public what is the timeframe for submitting the survey to the Department to be considered a Standardized Labor Rate Survey. Additionally, the one year requirement is narrowly tailored to address the increases to costs to auto body shops.

Subdivision (d)(1)(A)2.

This proposed subdivision clarifies the premise that surveys that were submitted beyond the one calendar year period no longer qualify as a Standardized Labor Rate Survey. The proposed subdivision is reasonably necessary to make clear to insurers and the public when a survey is no longer a Standardized Labor Rate Survey based on the submission of the survey to the Department.

Subdivision (d)(1)(B)

This proposed subdivision makes clear that in addition to the time that the survey was submitted to the Department, that the time since the collection of data is also a requirement for the currentness standard. For example, even if a survey was submitted to the Department in the past year, the survey questionnaire may have been sent years earlier and would therefore be too old to be reliable and current. The proposed language is reasonably necessary to clarify to insurers and the public the appropriate time since the collection of data in order to qualify as a Standardized Labor Rate Survey. The language also clarifies the distinction that even if an insurer submits a survey annually to the department, the data in that survey must also be current to be considered a Standardized Labor Rate Survey.

Subdivision (d)(1)(B)1.

This proposed subdivision makes clear that sixteen (16) months is the deadline for the data to be considered current. The proposed language and standard of sixteen (16) months is necessary to prevent insurers from using data that is no longer reflective of the current labor rate in the geographic area. The sixteen (16) months requirement also addresses the issue of increasing labor rate costs to auto body shops, and is narrowly tailored to account for these increased labor rate costs. Furthermore, it

will prevent potential data manipulation of old data by insurers to deflate labor rates in a specific geographic area by using old data.

Subdivision (d)(1)(B)2.

This proposed subdivision clarifies that a previously qualified Standardized Labor Rate Survey is no longer considered a Standardized Labor Rate Survey when it contains data collected beyond sixteen (16) months. The proposed language is necessary to make clear when a previously submitted Standardized Labor Rate Survey no longer qualifies based on data that is too old.

Subdivision (d)(1)(B)3.

This proposed subdivision defines and clarifies that four-hundred and eighty-seven days is considered sixteen (16) months for the Department. Given that many insurers have the option to electronically send and gather survey information using various electronic technologies, sixteen (16) months is sufficient time in allowing insurers to gather the appropriate data while keeping the data current. The proposed subdivision is necessary to make clear to insurers and the public when the exact day is to still qualify as a Standardized Labor Rate Survey.

Subdivision (d)(1)(C)

This proposed subdivision outlines the circumstances in which data older than sixteen (16) months and surveys submitted to the Department beyond one year may be used in the settlement of claims and continue to qualify as a Standardized Labor Rate Survey, if three conditions are met under subdivisions (d)(1)(C)1. – (d)(1)(C)3. During the public discussions, insurers expressed concern over conducting a survey every year and contended that an annual survey would result in significant costs to insurers. The Department does not agree that the costs of conducting an annual survey is significant and many insurers who conduct surveys currently do so annually. However, in order to address insurers' concerns, this proposed subdivision permits the survey to be used beyond the first year under specified conditions. The proposed language allows insurers to extend the useful life of their surveys up to two (2) years and the data collection by up to twenty-eight (28) months, if an inflation factor is applied to the data.

This proposed subdivision is reasonably necessary to clarify that the currentness standard under subdivision (d)(1)(B) can be extended under certain circumstances, and provides insurers guidance as to how it can be done. Additionally, the proposed subdivision allows insurers a method to reduce the costs of recollecting data every sixteen (16) months, and submitting the data every year by applying a simple inflation factor to their data. Furthermore, this subdivision is reasonably necessary to account for the ever-increasing costs to auto body shops by increasing the data in labor rate surveys to account for inflation costs.



Subdivision (d)(1)(C)1.

This proposed subdivision clarifies that one of the requirements for extending the useful life of the survey is that the time since the labor rate survey was submitted to the Department is two years. The proposed language is necessary to clarify one of the three requirements of extending the useful life of a survey includes a two year limit for the time the survey was submitted to the Department.

Subdivision (d)(1)(C)2.

This proposed subdivision clarifies that the second requirement for extending the useful life of the survey is the time since the data is collected is no older than twenty-eight months, which equals eight-hundred and fifty-two (852) days. The proposed language is necessary to clarify one of the three requirements of extending the useful life of a survey includes a twenty-eight month limit for the time since the collection of survey data.

Subdivision (d)(1)(C)3.

This proposed subdivision clarifies the third requirement of extending the useful life of the survey is only if inflation is calculated into the data in accordance with Sections (d)(1)(C)3.a. – (d)(1)(C)3.d.

The proposed language is necessary to clarify how and what inflation factor must be used to extend the useful life of the survey. Furthermore, the proposed section accounts for both the costs to insurers of conducting a survey every sixteen (16) months and submitting a survey every year, and the rising labor rate costs to auto body shops.

Subdivision (d)(1)(C)3.a.

This proposed subdivision defines exactly which inflation index should be used, over what timeframe, and how it must be used to extend the useful life of the survey. The language specifies that the most recent annualized index value of the monthly Consumer Price Index for all Urban Consumers for California (“CA CPI-U”) must be used. Inflation rates may vary during different points in time, and from year to year. Furthermore, inflation rates in California may not be the same rate in different states. The Department chose the CA CPI-U, which tracks and accounts for the monthly inflation rates within the cities of San Francisco, Los Angeles, and San Diego. The CA CPI-U is independently and regularly analyzed and calculated by the California Department of Industrial Relations to account for California’s unique inflation circumstances. Furthermore, the index can easily be found on the California Department of Finance website.

This proposed subdivision is reasonably necessary to address the above clarity issues. Furthermore, the CA CPI-U reasonably accounts for the rising costs to auto body shop because it is

California specific and accounts for the most current monthly inflation rates in the major urban areas of California.

Subdivision (d)(1)(C)3.b.

This proposed subdivision accounts for the fact that, historically, two of the years in the CA CPI-U reflected a negative inflation rate, but doesn't necessarily account for the unique auto body industry's more volatile price changes. In other words, even if there is negative inflation in a given year from materials, metals, oil, and other inputs, that does not mean the repair shop's labor costs have decreased and does not mean the shop could reduce its labor rates.

This proposed subdivision is reasonably necessary to ensure that no insurer will make a negative CPI adjustment that results in a decrease to a previously surveyed prevailing rate.

Subdivision (d)(1)(C)3.c.

This proposed subdivision allows the inflation adjustment to occur only once, and after an eleven-month period. The subdivision outlines and defines the timeframe to make the adjustment in order to qualify for the extension requirements.

This proposed subdivision is reasonably necessary to define the proper timeframe for making a CPI adjustment, as the resulting adjustment needs to be reflective of the current index. The adjustment also cannot be used to prolong the life of a survey indefinitely because as time passes the actual prevailing rate may diverge from the CPI index. The number of days for eleven months is defined for clarity purposes.

Subdivision (d)(1)(C)3.d.

This proposed subdivision specifies the requirement that should survey data be adjusted with the inflation index, then the results must be resubmitted to the Department. Furthermore, the subdivision requires that if the survey data is not adjusted due to a negative inflation rate under subdivision (d)(1)(C)3.b., that also must be reported to the Department.

The proposed subdivision is reasonably necessary to clarify to the Department and the public if the insurer has exercised the right to apply the inflation factor to its survey data, and if so what the results of that adjustment is on each geographic area. This provides clarity and consistency for insurers, the public, and the Department, in a fashion similar to the reporting of survey results. The adjusted survey results and prevailing rate must be submitted no later than eight days after the adjustment to clarify to insurers a reasonable timeframe for reporting the results.

#### Subdivision (d)(2)

The proposed subdivision clarifies to insurers and the public which auto body shops must be sent a survey questionnaire to qualify as a Standardized Labor Rate Survey. According to the Bureau of Automotive Repair (“BAR”), there are approximately 5,000 automotive repair dealers registered and authorized to perform automobile collision repair services in this state. Of the 5,000 repair dealers authorized to perform automobile collision repair services in this state, not all of them meet the minimum standards set forth in subdivision (d)(4). The Commissioner estimates that less than 4,000 repair dealers meet these minimum standards. Given this relatively low number of shops, especially when broken down into smaller geographic areas, surveying too few shops could result in an unreliable survey and an unreliable prevailing rate for any given area.

The proposed subdivision is reasonably necessary to ensure that all qualified shops be surveyed and those that are not excluded, to ensure the most accurate and reliable results. This language also reduces the possibility that only the shops with known lower labor rates are used in a survey to the detriment of higher (but still reasonably) priced shops. To qualify as a Standardized Labor Rate Survey, the insurer must send a survey questionnaire to, all known auto body repair shops licensed by the Bureau of Automotive Repair and use those results in its Standardized Labor Rate Survey.

The subdivision outlines the steps the insurer must follow should an insurer obtain information that a shop does not meet the BAR standards, and is to be excluded from the survey. The language is reasonably necessary to provide clarity as to how non-BAR shops, or shops that do not meet the minimum standards, should be excluded. Furthermore this language is consistent with the other reporting requirements of the Regulation.

#### Subdivision (d)(3)

This subdivision is proposed to ensure that repair facilities, which are not duly registered by the BAR, should not be used in the survey. Also, this subsection clarifies that the insurer shall not be required to verify the licenses status of each of the surveyed shops with the Bureau of Automotive Repair, as long as the survey questionnaire or survey format asks the repair shop to respond as to whether it is duly registered with the Bureau of Automotive Repair to perform auto body collision repairs in this state. The proposed subdivision is reasonably necessary to provide a guideline to insurers when working with licensed and unlicensed auto body repair shops, and to provide clarity to the provisions of the statute and regulations. This subdivision is also necessary to provide guidance to insurers regarding BAR license status and to save insurers from extraneous costs to verify BAR license status of all the shops in a survey.

#### Subdivision (d)(4)

This subdivision is proposed to address the general premise that shops that do not have all the standard equipment necessary to effect proper repairs may charge rates below the market rate due to cheaper operating costs. This subsection is intended to ensure that shops that do not meet certain minimum standards shall not be used in a labor rate

survey. An insurer may only use labor rates in a survey reported by shops that meet the enumerated specific standards. The proposed adoption is reasonably necessary to make clear that not all shops that exist should be surveyed because it may result in artificially low rates due to not having all the required equipment.

#### Subdivision (d)(4)(A)

The specific standards of the shops that must be surveyed are outlined in these subdivisions. The standards enumerated from subdivisions (d)(4)(A)1. – (d)(4)(A) 8. were obtained from (1) the equipment requirements for auto body repair shops, as required by the BAR and as described in CCR, Title 16, Division 33, Chapter 1, Article 6, section 3351.5, Equipment Requirements for Auto Body Repair Shops; and (2) the “Minimum Recommended Requirements for a ‘Class A’ Collision Center”, as published by the Collision Industry Conference (“CIC”) in 2005.

The proposed regulation is reasonably necessary to provide guidance to insurers conducting labor rate surveys which auto body repair shops should be included, and provide a consistent standard for consumers and insurers to rely upon when settling claims. Furthermore, directly tying the standards to BAR standards and the minimum recommended requirements from the CIC ensures that only qualified shops are surveyed, preventing unqualified shops from being included. Including both standards is necessary since the BAR requirements outlined in section 3351.5 does not list all required equipment, the Department felt it was necessary to include the CIC recommended requirements as well. The CIC is a reliable authority which lists accepted industry standards for minimum equipment requirements for auto body repair shops.

#### Subdivision (d)(4)(B)

The proposed adoption of this subdivision makes clear that insurers are under no obligation to confirm that a shop meets the standards enumerated under Subdivision (d)(4)(A). The proposed language is necessary to make it clear that insurers are only obligated to send out the survey, and use survey responses without incurring the additional costs or liability of including shops that may not necessarily meet the standards enumerated. The proposed language is also reasonably necessary to address and alleviate concerns by insurers that they may be held liable for including shops that do not meet the standards under subdivision (d)(4)(A).

#### Subdivision (d)(5)

The existing regulation under section 2698.91(b), defines “prevailing auto body rate” generally, however, this definition is not sufficiently specific and reliable in providing guidance to insurers when conducting labor rate surveys to settle claims or adjust a

written estimate pursuant to CCR section 2695.8(f)(3) and as referenced in proposed subdivision (c)(2).

The proposed subdivision clarifies the definition by specifically describing the term “prevailing.” Webster’s New World Dictionary, Third College Edition (1991), defines “prevailing” as “predominant....widely existing....prevalent.” The proposed definition clarifies that “prevailing auto body rate” means the rate at or below which, the majority (or predominant number) of surveyed shops charge in a geographic area. Furthermore, in order for the prevailing rate to not fall below the average of rates in an area, the prevailing rate must be at least equal to or greater than the average rate.

The adoption of this section is reasonably necessary to define these terms, and provide guidance to insurers when calculating the prevailing rate. Furthermore, the proposed subdivision is reasonably necessary to explain and clarify the “prevailing auto body rate” language in Insurance Code section 758(c), when a survey is used as a Standardized Labor Rate Survey.

Subdivision (d)(5)(A)

The Department also provides two examples or illustrations of how this definition would operate. Providing two discrete examples is reasonably necessary to illustrate the concept of prevailing auto body rate, especially since there are two distinct ways to calculate a prevailing auto body rate.

Subdivision (d)(5)(A)1.

For the first example, the Department assumes there are six (6) repair shops in a specific geographic area, with surveyed labor rates of \$64, \$65, \$66, \$66, \$71, and \$73. The proposed definition of prevailing rate requires that the “greater” of two methods be used; (1) the arithmetic mean or average labor rate charged by auto body repair facilities in the specific geographic area-or, (2) the rate, at or below which, the simple majority of surveyed shops charge in a-specific geographic area. The arithmetic mean or average labor rate of the six repair shops is \$67.50 ( $\$64 + \$65 + \$66 + \$66 + \$71 + \$73 / 6$ ). The rate at or below which a simple majority of surveyed shops charge is \$66, since four of the six shops (the simple majority) charge a rate of \$66 or less. Since \$67.50 is greater than \$66, the prevailing rate in this example would be the arithmetic mean or average, which is \$67.50.

This example is reasonably necessary to demonstrate reaching the prevailing auto body rate by using the arithmetic mean or average.

Subdivision (d)(5)(A)2.

For the second example, assume there are 6 shops in a geographic area, with surveyed labor rates of \$62, \$64, \$64, \$67, \$68, and \$70. The proposed definition of prevailing rate requires that the “greater” of two methods be used; (1) the arithmetic mean or average labor rate charged by auto body repair facilities in the specific geographic area-or, (2) the rate, at or below which, the simple majority of surveyed shops charge in a-specific

geographic area. In the above example, Option 1 would result in an average rate of \$65.83 ( $\$62 + \$64 + \$64 + \$67 + \$68 + \$70 / 6$ ). Option 2 would result in a rate at or below which the simple majority of surveyed shops charge, which is \$67. In other words, 4 of the 6 shops (the simple majority) charge a rate of \$67 or less. Since \$67 is greater than \$65.83, the rate to be used in the survey would be \$67.

This example is reasonably necessary to demonstrate reaching the prevailing auto body rate using the simple majority.

#### Subdivision (d)(5)(B)

The proposed adoption of this subdivision accounts for the inflation factor described in subdivision (d)(1)(C), and for the fact that if the useful life of data is to be extended using an inflation factor, then the same must be done for the prevailing rate. The proposed language is necessary to account for the potentially paradoxical situation where the usefulness of the data can be extended by an inflation factor, but the prevailing rate is not adjusted using the same factor. Thus it is reasonably necessary for consistency and clarity within the proposed Regulation.

#### Subdivision (d)(6)

The proposed subdivision prohibits insurers from using a discounted rate negotiated or contracted with members of its Direct Repair Program. Discounted rates or rates from insurers' Direct Repair Program, tend to be lower than the actual market rate since insurers are able to negotiate a lower labor rate in return for promising the shop an increased volume of work will be referred to that DRP shop. The purpose of the Standardized Labor Rate Survey is intended to settle claims for repairs in the non-discounted or open market. Also, since Ins. Code section 758.5 confers upon a claimant the right to select the automotive repair dealer (repair shop), using discounted or negotiated rates from DRP hinders that right, misrepresents the actual market labor rates in a given geographic area and results in unreasonably low insurance settlements. The proposed language is reasonably necessary to address the skewed data that may result by including discounted or DRP labor rates. The proposed language does not prohibit the use of non-discounted rates of a DRP shop, which will equitably be included in the Standardized Labor Rate Survey. However insurers must report their use of DRP shops in its survey under proposed CCR section 2698.91(d) for transparency purposes.

#### Subdivision (d)(7)

This proposed section requires that insurers use, as the basis for the Standardized Labor Rate Survey, only direct responses provided by a repair shop from a survey questionnaire that complies with subdivision (d)(9) of this proposed Regulation. Using direct responses to the questionnaire is reasonably necessary to garner the most accurate labor rate in that specific geographic area. Other sources of labor rate data may not be reliable or accurate and may also be biased. This proposed subdivision is reasonably necessary to ensure the reliability and integrity of the labor rate survey.

Subdivision (d)(7)(A)

This subdivision prohibits insurers from using estimates written by the insurer to estimate repair claims in the Standardized Labor Rate Survey. Labor rates taken from estimates prepared by an insurer, are not reliable as labor rates in a survey since they are just estimates, and not actual labor rates “charged” by repair shops. The language is reasonably necessary to ensure that only actual rates are included in the Standardized Labor Rate Survey.

Subdivision (d)(7)(B)

This subdivision prohibits an insurer from using third-party automobile collision repair estimating software used by the insurer to prepare estimates. Similarly to estimates written by insurers, third-party automobile estimates are also simply just estimates rather than actual rates charged. The language is reasonably necessary to ensure that only actual rates are included in the Standardized Labor Rate Survey.

Subdivision (d)(7)(C)

This subdivision prevents insurers from using labor rates derived from subrogation reimbursements in the Standardized Labor Rate Survey. Subrogation is the practice of one insurer seeking reimbursement of a claim paid by that first insurer when the second insurer’s policyholder was at fault for the accident or damage. Since insurers negotiate subrogation demands, the actual repair costs (which includes the labor rates) charged by the repair shop might not be the amounts agreed to between the two insurers in order to settle the subrogation demand, and therefore do not reflect actual and reliable market rates for repairs. In the past, some insurers used these depreciated subrogation rates as the basis for a labor rate survey. This language is reasonably necessary to ensure that depreciated labor rates derived from subrogation are not used in a Standardized Labor Rate Survey.

Subdivision (d)(7)(D)

This subdivision prohibits any other sources other than direct responses provided by an auto repair shop on a survey questionnaire. This subdivision is reasonably necessary to address the premise that the Department cannot identify every possible situation where insurers may use labor rates not from direct responses from their survey questionnaire. The subdivision is reasonably necessary to clarify that only direct responses are allowed for the Standardized Labor Rate Survey.

Subdivision (d)(8)

This proposed section defines the geographic area that must be used by an insurer in order to qualify as a Standardized Labor Rate Survey. Currently, the various insurers determine a geographic area in several ways, including but not limited to United States

Postal Service (USPS) Zip Code areas, city, counties, multiple counties, and some highly irregular and customized “markets” or “zones” which the insurer creates. The Department’s experience is that some of the geographic areas used by insurers in surveys result in artificially inaccurate, unreliable, and unreasonably low labor rates that are not representative of the market. For example, in one instance, an insurer used its insurance adjusters’ territories as the geographic areas for its labor rate survey, which may have been convenient for the insurer, but which also had no relationship to the actual market areas where shops were located. The result is a significant range in labor rates used by insurers for the same insured, claimant, or repair shop. A claimant should not be paid significantly differently depending on which insurance company is paying the claim. In order to achieve greater consistency and reliability in the Standardized Labor Rate Survey, the Department finds it necessary to define geographic area.

Based upon information obtained from the California Bureau of Automotive Repair (BAR), in 2013, there were approximately 5,397 auto body (collision) repair shops registered with BAR. Statewide, collision repair labor rates can range from about \$25 per hour to as much as \$100 per hour, depending on the particular locale of the shop. Some insurers conduct Labor Rate Surveys of shops in order to determine labor rates in certain market areas and use these surveys, as a basis to limit how much they will pay in auto insurance claims. Insurers and shops frequently are in dispute as to what the reasonable labor rate is in a particular area. These disputes lead to consumers being stuck in the middle and, in many cases, paying out-of-pocket for these unpaid amounts to have their vehicles repaired. A primary area of dispute with insurer surveys is over what constitutes the appropriate size and boundaries of a geographic (or market) area where labor rates charged by shops may be similar. An area chosen by an insurer may be too large, too small, or simply too artificially created to render a survey reliable for fairly and reasonably paying insurance claims.

In order to create more uniform and fair geographic areas, the Department is defining geographic areas as a requirement of the Standardized Labor Rate Survey. The requirements as outlined in subdivisions (d)(8)(A) - (d)(8)(D) leads to consistent geographic areas that insurers can use to settle claims and to qualify for the rebuttable presumption.

The proposed adoption of this subdivision makes clear that only geographic areas that consistently yield prevailing labor rates that ensure that the labor rate component of the claim settlement is fair and equitable. This subdivision begins to outline the particular criteria to be used for a geographic area to qualify as a Standardized Labor Rate Survey. The proposed language is reasonably necessary to provide guidance to insurers and an understanding as to what is to be used as a geographic area in a Standardized Labor Rate Survey so that there is no confusion during the claims process.

#### Subdivision (d)(8)(A)

The proposed subdivision defines commonly used terms used in the subdivision.

1. Street Address is defined in this subdivision. This proposed subdivision deals with the possibility that Qualified Auto Body Repair shops may have multiple



addresses, such as P.O. Boxes, incorporation addresses, and other mailing addresses. For purposes of the Standardized Labor Rate Survey, the physical address of record with BAR is considered the address to be used in the Standardized Labor Rate Survey. The proposed language is reasonably necessary to clarify and account for possible multiple addresses of Qualified Auto Body Repair Shops, and provide guidance to insurers while including shops in creating the geographic areas for their Standardized Labor Rate Surveys.

2. Qualified Auto Body Repair Shop is defined as a shop that is BAR licensed as referenced in subdivision (d)(4)(A). The proposed language is reasonably necessary to provide consistency within the regulations and to provide clarity as to what shops are to be included in geographic areas.
3. Responding Qualified Auto Body Repair Shop is defined as to those Qualified Auto Body Repair Shops that respond to the survey. The proposed language is reasonably necessary to provide further guidance and clarity as to which of the Qualified Auto Body Repair Shops must be included in the geographic area.

Furthermore, the proposed language defines “responds to” in the proceeding sentence as meaning, specifying on the survey questionnaire at least one type of labor rate. The labor rates listed are the most common types of auto body repair labor rates that are charged by auto body repair shops. Listing each type of labor repair is reasonably necessary to distinguish the varying costs related to types of labor rates. For instance structural labor rates may be higher than refinish labor rate based on the equipment that is needed for that type of repair. Drawing a distinction for each type of rate is reasonably necessary to ensure claims are equitably settled based on similar types of labor, which varies depending on the complexity of repair.

- a. Auto body/sheet metal labor accounts for the repair of the auto body and sheet metal of the vehicle. Specifying this type of labor rate is reasonably necessary to account for this type or repair which is distinct from the other types of labor rates.
- b. Structural labor accounts for the repair of the structure of the vehicle. Specifying this type of labor rate is reasonably necessary to account for this type or repair which is distinct from the other types of labor rates.
- c. Frame labor accounts for the repair of the frame of the vehicle. Specifying this type of labor rate is reasonably necessary to account for this type or repair which is distinct from the other types of labor rates.
- d. Mechanical labor accounts for the repair of the mechanics of the vehicle. Specifying this type of labor rate is reasonably necessary to account for this type or repair which is distinct from the other types of labor rates.

- e. Refinish labor accounts for the refinishing of vehicles. Specifying this type of labor rate is reasonably necessary to account for this type or repair which is distinct from the other types of labor rates.
- f. Aluminum repair labor accounts for the repair of vehicles that are composed of aluminum. Specifying this type of labor rate is reasonably necessary to account for this type or repair which is distinct from the other types of labor rates.

Subdivision (d)(8)(B)

Currently, the process of using unsupported and unreliable prevailing labor rates to pay or adjust automobile insurance claims often results in unfair and inequitable claim settlements due to inconsistent and unreliable geographic areas. The Department received hundreds of consumer complaints alleging specific instances where consumers were forced to pay out-of-pocket costs, or shops were deprived of their reasonably charged rates, due to outdated, and unreliable surveys.

The complaints all allege similar allegations. When the consumer took their vehicle for repair, the auto body shop billed the consumer based on the work that was done on their vehicle. When insurance covered auto body repair work, the auto body repair shop on the behalf of the consumer engaged with the insurer to settle the labor rate component of automobile insurance claim. However, the complaints alleged that the prevailing rates for many geographic areas fell well below the shop's actual cost, as the result of unreliable geographic areas that do not accurately reflect the actual labor market, or using outdated surveys. Thus, consumers were forced to pay the difference between the prevailing rates and the actual labor rate charged by the shop or shops were deprived of their reasonably charged rates.

In order to address these consumer complaints, and address the issue of unreliable surveys based on inconsistent or inaccurate geographic areas, the Department is proposing this subdivision to create reliable and consistent geographic areas that will result in fair and equitable claims. The proposed subdivision defines a geographic area as a total of six (6) Responding Qualified Auto Body Repair Shops. In cases where the shop in question is a Responding Qualified Auto Body Repair Shop, then the geographic area will consist of the shop in question plus the five (5) closest Responding Qualified Auto Body Repair Shops. In cases where the shop in question is not a Responding Qualified Auto Body Repair Shop, then the geographic area will consist of the six (6) closest Responding Qualified Auto Body Repair Shops. Closest shop is clarified as the "closest straight-line distance" to the shop in question.

The proposed language is reasonably necessary to address the issue of inaccurate and inconsistent geographic areas by providing clarity and consistent guidelines. The proposed language treats each auto body repair shop as its own geographic area, whether or not it responded to a survey. Furthermore, the geographic area is defined as six (6) Qualified Auto Body Repair Shops closest in straight-line

distance, which is reasonably necessary to provide clarity when calculating distance. Designating each shop as a unique geographic area will make it possible to account for the diverse population, socio-economic differences, possible zoning differences, and real estate cost differences within cities and rural areas in California. For instance, one shop, due to higher real estate costs, or other factors in a specific location may have a much higher prevailing labor rate than another shop across town in the same city but with much different socio-economic characteristics. To account for these large differences in the marketplace characteristics, using each shop as a geographic area will capture the highly variable rates between shops within diverse cities, and within the diverse State of California. The proposed language is reasonably necessary to address this concern as well as provide clarity to insurers as to what is considered a geographic area to qualify as a Standardized Labor Rate Survey. Furthermore, the proposed language is reasonably necessary to provide consistent and equitable treatment of each auto body shop, because every shop's prevailing rate is based on the six (6) closest Responding Qualified Auto Body Repair Shops.

On page 15 of the report titled *Auto Body Labor Rate Surveys, A Statistical Review* written by four PhD Professors in the College of Business Administration of Sacramento State University ("Sac State Study"), March 30, 2014, a six-shop geography and a minimum response rate of three shops was recommended as sufficient for a response rate.

"The literature suggests that an approximately 50% probability is a reasonable assumption for the response rate in a mail-based survey study. If a designated area has as few as 6 shops, we can expect to have about 3 responses by surveying all 6 shops. A sample size of 3 will give us a 10% tolerance error around the mean under a 10% Coefficient of Variation (CV) and 90% confidence level – this can be considered an acceptable accuracy."

While the Sacramento State Study would support the use of only 3 responding shops, the Department believes it is more reliable to use the closest 5 or 6 shops to the subject shop. This increase in the number of data points for each geographic area should render the survey results to be more reliable. Because the state is highly diverse and geographically large, big differences exist between cities, and even areas within individual cities. A geographically narrowed population size, reflecting each shop and its closest five responding shops as a distinct geographic area can better reflect this diversity. Therefore, the proposed subdivision is reasonably necessary to address these issues.

#### Subdivision (d)(8)(C)

The proposed subdivision clarifies and defines exactly how straight-line distances are to be calculated using a geocoding process, based upon the latitude and longitude coordinates of the Street Address of each shop. Geocoding has become commonplace and many insurers use geocoding and similar software in other aspects of their operations, so are familiar with the technology. Insurers must

access a file containing addresses for each shop, then search for the individual shop addresses in an address locator, and derive the latitude and longitude for each shop to ascertain the geocoded location. As part of the process, insurers must use Topologically Integrated Geographic Encoding and Referencing (“TIGER”) line files to obtain the location information or coordinates of each shop. When performing address matching, the location of each shop, TIGER line files, and the survey analysis must be put into Geographic Information System (“GIS”) software, which can reliably compute distances between shops within one-thousandth of a mile.

The proposed subdivision is reasonably necessary to convey that a geocoding process must be used in order to qualify as a Standardized Labor Rate Survey. Furthermore, the proposed subdivision is reasonably necessary to clarify to insurers how the latitude and longitude coordinates can be derived using the TIGER line files and GIS software, providing consistency of results and increasing the reliability of each geographic area. Additionally, TIGER line files are produced and updated decennially (every ten years) by the US Census Bureau, which is a federal government agency. TIGER line files, maintained by the US Census Bureau, provide the most comprehensive body of addresses. They are easily accessed, free to the public and downloadable from the Internet. Thus, using TIGER line files is reasonably necessary because it is the most comprehensive and cost-effective option for insurers when geo-coding. Additionally, the proposed subdivision is reasonably necessary to clarify to insurers that GIS software must be used to create their surveys. The purpose of importing the reference files and other derived latitude and longitude address coordinates into GIS software is to provide consistency of process. Software from an independent third party vendor, such as ArcView, has been deemed reliable in geocoding coordinates. Finally, by setting the reporting of distances within at least one-thousandths of a mile, the proposed language is reasonably necessary to provide consistency as well as address the possibility that shops may be nearly equal in distance. Therefore, the proposed subdivision is reasonably necessary to provide clarity and guidance in the geocoding process when establishing each geographic area comprising six shops.

#### Subdivision (d)(8)(D)

The proposed subdivision addresses instances where there is a tie for the sixth closest Responding Qualified Shops, rounded to the thousandth of a mile. The proposed language clarifies that in the event of a tie for the sixth closest shop, the sixth and seventh closest Responding Qualified Auto Body Repair Shop must both be included in the geographic area, even if it results in a geographic area that consists of more than six Qualified Auto Body Repair Shop.

For example, when the shop in question is Qualified Auto Body Repair Shop A, the closest straight-line Responding Qualified Auto Body Repair Shops are identified as Shop B, Shop C, Shop D, Shop E, and Shop F. Using the geocoding process identified in subdivision (d)(8)(C), the straight-line distance in one-thousandth of a mile from Shop A to Shop B is .001, Shop C is .002, Shop D is

.003, Shop E is .004, and Shop F is .004. In normal circumstances, the closest five (5) Responding Qualified Auto Body Repair Shops to Shop A would constitute a geographic area of six (6) Qualified Auto Body Repair Shops. However, since Shop E and Shop F are both tied, with a distance of .004 miles, Shop F must also be included in the geographic area. Thus, the geographic area would consist of all seven (7) Qualified Auto Body Repair Shops.

If the shop in question is a Non-Responding Qualified Auto Body Repair Shop, the closest six straight-line Responding Qualified Auto Body Repair Shops would still be selected, as in the above example. Inclusion of a seventh shop would be allowed in the event of a tie.

The proposed subdivision is reasonably necessary to provide clarity and guidance should there be a tie based on the thousandth of a mile between shops. Furthermore, by clarifying that the tied shop must be included in the geographic area will result in a consistency of process for insurers and more reliable results when settling claims.

#### Subdivision (d)(9)

This proposed subdivision addresses the variation and inconsistency that exists in insurer survey questionnaires. A survey that contains leading or confusing questions results in an unreliable survey. This section sets forth subdivisions (d)(9)(A) – (d)(9)(C) requirements that creates consistency among surveys so that the results are more reliable in the Standardized Labor Rate Surveys. This proposed section requires that an insurer which conducts a survey in accordance with this section shall utilize a questionnaire that is in accordance with section 2695.82. Insurers may customize the questionnaire with formatting, however, the substance must be in accordance with section 2695.82.

The proposed regulation is reasonably necessary to ensure consistency when insurers conduct labor rate surveys because it requires they use a substantively similar questionnaire provided under the section.

#### Subdivision (d)(9)(A)

This proposed subdivision clarifies that questionnaires can either be mailed or sent electronically in accordance to Insurance Code sections 38 and 38.5. The proposed language is necessary to provide clarity and guidance to insurers who will send out the questionnaires for the Standardized Labor Rate Survey, as well as provide consistency with the Insurance Code.

#### Subdivision (d)(9)(B)

The proposed subdivision clarifies the manner in which auto body repair shops may respond to the questionnaire – electronically via e-mail or secure website. An extra provision is made to allow auto body repair shops to respond via postage mail if they do not consent to electronic mail. Since not all repair shops transact business electronically, the proposed language is reasonably necessary to provide flexibility to auto body repair shops in responding to the questionnaire. The

proposed subdivision is also necessary to provide guidance to insurers regarding the type of responses that are allowed. If the auto body repair shop responds electronically, the insurer must allow the ability to print a copy of the survey, which is reasonably necessary for auto body repair shops to retain a copy for themselves.

Subdivision (d)(9)(C)

The proposed subdivision allows for at least 30 calendar days to respond to the survey. The proposed language is reasonably necessary to allow enough time for auto body repair shops to respond.

Subdivision (e)

The proposed adoption of this subdivision makes clear under what circumstances the Standardized Labor Rate Survey can be used. The proposed language is necessary to provide guidance to insurers and the public on how the surveys are to be used and under what clear circumstances to avoid any confusion in the settlement of claims.

Subdivision (e)(1)

The proposed subdivision makes clear that the Labor Rate Survey can be used as part of the labor rate cost component of estimates of repairs prepared by insurers under CCR section 2695.8(f) to quantify the insurer's obligation to pay the claim. This subdivision makes it apparent that the purpose of surveys is to justify the payment of estimates that have a labor rate component in their cost estimate.

The proposed language is reasonably necessary to demonstrate one of the main uses of the Standardized Labor Rate Survey, which is to settle claims. It makes clear to insurers and consumers how the labor rate survey may be used. Furthermore, this subdivision is consistent with other subdivisions regarding settlement of claims, and provides clarity to Insurance Code section 790.03.

Subdivision (e)(2)

This proposed subdivision recognizes and addresses the criteria upon which it may be reasonable and permissible for the insurer to adjust the labor rate on a written estimate provided by a claimant's chosen repair shop, pursuant to 2695.8(f)(3). This proposed section permits an insurer to adjust a written estimate provided by a claimant under two (2) specified criteria where this practice is permissible, and specifies how the adjustment may be effected. The proposed regulation is reasonably necessary to provide guidelines to insurers dealing with a claimant's chosen auto body repair shops' written estimates.

Subdivision (e)(2)(A)

This proposed subdivision allows insurers to adjust the labor rate in a

written estimate provided by the claimant's chosen repair shop to an amount equal to the prevailing rate. The reasoning behind this subdivision is to allow insurers the ability to use the prevailing rate in the geographic area in their Standardized Labor Rate Survey to adjust written estimates that do not match the prevailing rates. The proposed language is reasonably necessary to clarify how the prevailing rates in the Standardized Labor Rate Survey can be used to adjust written estimates of a claimant's chosen auto body repair shop.

#### Subdivision (e)(2)(B)

This proposed subdivision accounts for instances where the labor rate charged by an auto body shop does not match their own posted labor rates. It would be unfair to the insurer to require to pay the prevailing rate or the charged rate if the shop's posted rate is lower. The proposed language is reasonably necessary to address this concern, and also provide insurers guidance as to how to adjust the labor rate in a claimant's chosen auto body repair shop's estimate.

#### Subdivision (e)(3)

The proposed adoption of this subdivision accounts for the inflation factor described in subdivision (d)(1)(C), and for the fact that if the written estimate is adjusted using an inflation factor, then the same must be done for the adjustment of the prevailing rate. The proposed language is necessary to account for the potentially paradoxical situation where the written estimate can be adjusted by an inflation factor, but the inflation factor is then not used when adjusting the estimate per subdivision (e)(2). Thus it is reasonably necessary for consistency within the proposed regulation.

#### Subdivision (e)(4)

The proposed subdivision clarifies that the Regulations does not prevent insurers from negotiating or adjusting the prevailing rate upwards to account for instances where an auto body shop's rates are greater than the prevailing rate in a geographic area due to particulars related to the repair, the geographic area or other factors. The proposed language is reasonably necessary to provide clarity that upward adjustments and negotiated rates higher than the prevailing rate is allowed under the Regulations. However, while this subdivision does not prevent insurers from negotiating or adjusting the prevailing rate upwards it also does mandate that insurers do so.

#### Subdivision (e)(5)

The proposed language clarifies that auto body repair shops are not obligated to accept the amount offered by insurers that use the Standardized Labor Rate Survey or that the amounts charged by the repair shops are excessive or unreasonable. Since the regulations are intended to quantify an insurer's contractual or legal obligation for payment of the claim pursuant to the applicable

insurance policy or other laws, and not to regulate repair shops, the proposed language is reasonably necessary to provide clarity to the public and insurers that the rates offered based on the Standardized Labor Rate survey does not obligate auto body shops to accept that rate.

#### Subdivision (f)

The proposed subdivision makes clear that the survey information submitted by the insurer not specified in subdivision (d) of section 2698.91 will not be disclosed without a valid subpoena, court order, or other law. The Department recognizes this additional information, which may include voluminous working papers, computer program data, unfiltered data, and other records, may be necessary for the Department to carry out its regulatory functions, but are not necessary to disclose to the public. The proposed language is reasonably necessary to clarify under what instances the Department will disclose this information, and what information is to remain private.

#### Section 2695.81 Note

The proposed Note outlines the authority and references used for the Regulation. The Note is reasonably necessary to provide guidance and clarity to insurers and the public the authority and references of these Regulations.

#### **Section 2695.82**

The Department proposes to adopt a Questionnaire for the Standardized Labor Rate Survey (“Questionnaire”), as referenced in section 2695.81(d)(9). Compliance with the provisions set forth in section 2695.81(d) are intended to result in surveys that reflect fair and equitable claim settlements or adjustments of the labor rate component of claims. In achieving this intent, the survey questionnaire must be consistent among insurers and must be devoid of leading questions, misleading statements or other extraneous information that could lead to biased survey responses. Therefore, the Questionnaire was created to achieve the stated intent and mirrors the criteria of the Standardized Labor Rate Survey as outlined in section 2695.81(d).

The proposed regulation will require that the Questionnaire is addressed to an Auto Body Repair Facility, and the insurer’s name, address, phone number, and e-mail address is provided. This information is reasonably necessary so that auto body shops are aware which insurance company is conducting the survey, and that the Questionnaire is specifically for them.

The instructions in the Questionnaire describes to auto body shops how to complete the survey, when it is due, and how to submit it. The instructions are reasonably necessary to inform auto body shops the purpose of the Questionnaire, and how to submit the survey to the insurer in a timely manner once completed.

Further instructions, warn auto body shops that their results may be excluded if they fail to complete it in full, and that they are not required to complete the survey. It also



informs the auto body shop that if they are not eligible, they can still return the results to the insurer. The proposed language is reasonably necessary to inform auto body repair shops that only complete Questionnaires will be considered, and that they are not required to complete the survey. The proposed language is also reasonably necessary for recordkeeping purposes. Auto body shops also have the option to decline participation in the Questionnaire. This is reasonably necessary to convey to insurers and the auto body shop that their participation is not mandatory.

The first question of the Questionnaire mirrors the requirements of section 2695.81(d)(2) and (d)(3) which states that insurers must send a survey questionnaire to all auto body shops registered with BAR, and only use survey data for shops registered with BAR. The proposed language is reasonably necessary to inform whether or not a shop is registered with BAR, and provides consistency within the proposed regulations. If the auto body shop is not registered with BAR, then they are allowed to proceed to the end of the survey, which is reasonably necessary to save the auto body shop time from completing the rest of the Questionnaire.

The second question of the Questionnaire mirrors the requirements of section 2695.81(d)(4) which states that only labor rates reported by auto body repair shops that meet specific standards may be used in a Standardized Labor Rate Survey. The second question is reasonably necessary for insurers to determine whether the auto body shop has the specific standards to be included in the Standardized Labor Rate Survey, and provides consistency within the proposed regulations. If the auto body shop does not have all the requirements, then they are allowed to proceed to the end of the survey, which is reasonably necessary to save the auto body shop time from completing the rest of the Questionnaire.

The third question of the Questionnaire mirrors the requirements of section 2695.81(d)(8)(A)3. which states that a shop that specifies a rate for a particular type of labor rate in a survey is considered a Responding Qualified Auto Body Repair Shop. The third question is reasonably necessary for insurers to identify and determine what type of labor rate the auto body shop charges, and what the labor rate is. Additionally, the proposed language is reasonably necessary for consistency within the proposed regulations. Listing each type of labor repair is reasonably necessary to distinguish the varying costs related to types of labor rates. For instance structural labor rates may be higher than refinish labor rate based on the equipment that is needed for that type of repair. Drawing a distinction for each type of rate is reasonably necessary to ensure claims are settled equitably based on a survey of similar types of labor, which may be more or less depending on the complexity of repair.

The fourth question of the Questionnaire mirrors the requirements of section 2695.81(d)(6) which prohibits insurers from including any discounted or contracted rate from an auto body repair shop in the Standardized Labor Rate Survey but also requires insurers to report any DRP shops that respond to their surveys under CCR section 2698.91(d). The fourth question is reasonably necessary for insurers to determine whether or not a specific shop charges a discounted or contracted labor rate for referrals. Additionally, the second part of the fourth question informs the responding auto body

shop that they can only include non-discounted rates in their survey questionnaire. The proposed language is reasonably necessary to inform the auto body shop that they can only provide non-discounted or contracted rates within the responses to the Questionnaire. Additionally, the proposed language is reasonably necessary for consistency within the regulations. Furthermore, the language is reasonably necessary to equitably include the non-discounted or non-contracted rates of shops who are part of a DRP.

The next portion of the Questionnaire instructs the auto body repair shop to keep a copy of the Questionnaire for their record. The proposed language is reasonably necessary in the case where there are potential disparities regarding survey results between insurers and the shop.

The final portion of the Questionnaire is a Declaration which requires a signature, date, printed name, title, telephone, e-mail, and physical address of the repair shop. The proposed language is reasonably necessary for insurers to know who filled out the Questionnaire, and the Declaration ensures that truthful and correct information was provided in the Questionnaire.

#### Section 2695.82 Note

The proposed Note outlines the authority and references used for the Regulation. The Note is reasonably necessary to provide guidance and clarity to insurers and the public the authority and references of these Regulations.

#### **Section 2698.91**

##### Title

The Department is amending the title to add “Reporting,” to clarify that these requirements under Ins. Code section 758(c) are related to reporting the results of auto body repair labor rate surveys. The proposed amendment is necessary for clarity purposes.

##### Subdivision (a)

This subdivision defines the term “auto body repair labor rate survey” as used in Ins. Code section 758(c). The proposed amendment to this subdivision clarifies the definition to apply to the term “survey” as well, so that the regulations are easier to read. The proposed subdivision makes additional language and punctuation changes for clarification and consistency purposes. The proposed subdivision is reasonably necessary to further define and clarify these terms in order to assist the reader in understanding the statute and regulations. Furthermore the language clarifies “by an insurer, or on an insurer’s behalf,” which is reasonably necessary for clarity purposes, since insurers are conducting these labor rate surveys.

#### Subdivision (b)

This subdivision defines “prevailing auto body rate”, as used in these regulations and in Ins. Code section 758(c). The proposed amendments to this subdivision are intended to remove language that narrows the definition to only those surveys used by an insurer as a basis to settle automobile insurance claims. In fact, an insurer may use surveys for various other reasons. Some of those reasons include, but are not limited to, determining what certain auto body repair shops charge or setting labor rates when entering into DRP arrangements to name a few. The proposed subdivision is reasonably necessary to further define and clarify these terms and assist the public and insurers in their understanding of the statute and regulations, and reflect the potential expansive use of auto body repair labor rate surveys beyond a basis for determining cost to settle auto collision claims.

#### Subdivision (c)

The proposed subdivision defines “auto body repair shop” or “repair shop” to mean an automotive repair dealer, as defined in section 9880.1 of the Business and Professions Code registered with, or licensed by, the BAR to perform automotive body repairs. The proposed regulations are reasonably necessary to ensure that it is clear what specific type of entity is referred to in these regulations, and to provide consistency.

#### Subdivision (d)

This proposed subdivision describes the minimum information that must be included in the survey submitted to the Department pursuant to Insurance Code section 758(c), which will be made available to the public. The proposed language is reasonably necessary to clarify Ins. Code 758, which requires the Department to make the information available upon request.

##### Subdivision (d)(1)

Subdivisions (1) and (2) of this proposed section (d) have been amended to combine the name and address into subdivision (1) who responds to the survey. The proposed language is reasonably necessary to provide clarity to the Department, insurers, and the public as to which shops responded to the labor rate survey conducted by the insurer. This requirement is reasonably necessary for compliance purposes, especially for the Standardized Labor Rate Survey, under Section 2695.81 which requires Responding Qualified Auto Body Shops to be used in the survey.

##### Subdivision (d)(2)

Subdivision (2) was amended to add the requirement that the date of the survey be included in the submission to the Department. The proposed language is reasonably necessary for the Department to keep track of when the survey is completed. The requirement for this information is reasonably necessary for compliance purposes, especially for the Standardized Labor Rate Survey, under Section 2695.81 which requires current survey data and submission.

Subdivision (d)(4)

Subdivision (4) was amended for consistency, as the statute does not refer to a rate “established” by the insurer but the rate “determined and set” by the insurer. The proposed language is reasonably necessary to provide consistency and clarity. The words “auto body” is reasonably necessary for clarity purposes since the rate the subdivision refers to is the auto body rate.

Subdivision (d)(5)

Subdivision (5) was amended to account for the standards set forth in subdivision (d) of section 2695.81. The new standards will allow the Department to determine if the survey complies with the standards set in the Standardized Labor Rate Survey. Additionally, since the geographic area under the Standardized Labor Rate Survey is based on geocoding, a statement stating that the geographic areas are based on the standards set forth under section 2695.81(d) will suffice. This is reasonably necessary to save insurers time and resources, rather than restating the standards. Furthermore, a statement regarding which areas will not be used to settle claims under the labor rate component is reasonably necessary to advise the Department where the rebuttable presumption will be granted. For instance, if the insurer only intends to do business in Northern California, but not Southern California, a statement that the survey will not be used to settle claims in Southern California is reasonably necessary to provide clarity.

Subdivision (d)(7)

Subdivision (7) is proposed to be adopted in order to clarify that the insurer must include in its submission to the Department the labor rate reported by each shop that responded to the survey. This information is currently included in most or all surveys currently submitted to the Department under this Insurance Codes section 758(c). Since a primary purpose of these surveys is to make them available to the public, not including this information conflicts with this important purpose, and is reasonably necessary for clarity purposes.

Subdivision (d)(8)

Subdivision (8) is proposed to be adopted in order to clarify that the insurer must include in its submission to the Department the name, and physical address of record, and license number as recorded with the Bureau of Automotive Repair, of each shop that responded to the survey and that is a member of the insurer’s Direct Repair Program, as defined in section 2698.90. This information is vital to the Department and for disclosure to the public as to which shops were used in the survey, which of those shops responded to the survey, and which of those shops are members of the insurer’s Direct Repair Program. Since a primary purpose of these surveys is to make them available to the public, not including this information conflicts with this important purpose. Additionally, the proposed subdivision is reasonably necessary for consistency with CCR sections 2695.81(d)(6) and 2695.82.

#### Deletion of Current Subdivision (d), and Adoption of a new Subdivision (e)

The Department has now designated that the results of the survey are to be sent to the Custodian of Records, per subdivision (e), rather than the Market Conduct Division. This deletion addresses the fact that it is the responsibility of the Department's Custodian of Records to disclose the results of labor rate surveys to the public if there is a public record request, per subdivision (f). Thus, the change reflects the more accurate location where these surveys should be submitted. The deletion is reasonably necessary to provide clarity and consistency to consumers and insurers where the results are to be sent.

Furthermore, the proposed subdivision (e) clarifies the time frame for insurers to submit completed surveys to the Department as thirty (30) calendar days. The provision also states when the Department considers a survey complete. The language is reasonably necessary to provide clarity to insurers as to the timeframe of survey submission to the Department, and provides insurers enough time to report results to the Department.

The Department recognizes that insurers may conduct rolling surveys that change on a regular basis, and makes an annual reporting requirement in that instance. This is to save insurers the cost of resubmitting a new survey every single time it is completed. The proposed language is reasonably necessary to provide guidance and clarity in regularly changing surveys.

This proposed section also recognizes that in order for the Department to more effectively make survey information available to the public, the Department may require that a survey be submitted in a standard electronic or other format in order to publish survey data on the Department's public website. This proposed regulation is reasonably necessary to ensure that completed insurer surveys are available to the public in a timely fashion and that these surveys are in as form that can be posted on the Department website or transmitted to the public more efficiently and cost effective.

#### Subdivision (f)

The proposed subdivision re-letters and amends the current subdivision (e) to clarify that the information from subdivision (d) will be made public after a public records request to the Custodian of Records. The language is reasonably necessary to provide clarity and guidance to the public as to the manner in which to request and receive the survey data, and what information will be provided pursuant to a California Public Records Act. California is specified for clarity purposes.

#### Subdivision (g)

The proposed regulation adds the requirement that certain non-public survey information must also be submitted to the Department, in addition to the public information submitted pursuant to proposed section 2698.91(d). The proposed subdivision is reasonably necessary to provide the Department with sufficient information it needs to verify the accuracy and reliability of the survey conducted by the insurer including compliance with section 2695.81, and that the regulations are complied with. This information will be considered non-public information and will not be subject to public disclosure.

Subdivision (g)(1)

The subdivision requests that the name and physical address of each shop sent a survey, but that did not respond to the survey, be submitted to the Department as non-public information. The proposed language is reasonably necessary to protect the identities of those auto body repair shops who may not want their rates posted publicly disclosed through a public records request or to respond to an insurer's survey questionnaire. Furthermore, in order to verify the accuracy of the survey information submitted, the Department feels it is reasonably necessary to know which shops did not respond.

Subdivision (g)(2)

This subdivision requires the insurer to submit a copy of the survey questionnaire used to survey the auto body repair shops to the Department as non-public information. This subdivision is necessary in order for the Department to ensure that only the Questionnaire for a Standardized Labor Rate Survey is used when conducting a Standardized Labor Rate Survey. This information is also necessary in cases where the insurer is not conducting a Standardized Labor Rate Survey so the Department may analyze whether the questionnaire used is reasonable, devoid of misleading or leading questions or information, or otherwise is reasonable. However, in order for the Department to verify the accuracy of the survey information, the Department will need a copy of the questionnaire. The proposed language is reasonably necessary to address these issues.

Subdivision (g)(3)

This subdivision requires the insurer to submit the definition and description of each geographic area surveyed to the Department as non-public information. This subdivision is necessary in order for the Department to ensure that geographic areas used for a Standardized Labor Rate Survey align with the requirements for a geographic area set forth in section 2695.81(d)(8). This information is also necessary in cases where the insurer is not conducting a Standardized Labor Rate Survey so the Department may analyze whether the geographic areas used by the insurer yield reasonable prevailing labor rates for the markets surveyed. In order for the Department to verify the accuracy of the survey information, the Department will need the definition and description of each geographic area. The proposed language is reasonably necessary to address these issues.

Subdivision (g)(4)

This subdivision requires the insurer to submit, for any shop excluded from the survey pursuant to subdivision (d) of section 2695.81, the name of the shop and any information the insurer obtains indicating that the shop does not meet the standards set forth in subdivisions (d)(3) and/or (d)(4) of Section 2695.81 to the Department as non-public information. This information is necessary in order for the Department to ensure that insurers do not use survey responses from all shops

that do not meet the requirements under section 2695.81(d), which states that an auto body repair shop will be excluded from the labor rate survey if it does not meet the standards of the section. The proposed language is reasonably necessary to provide consistency where the section 2695.8(d) described a manner of exclusion that must be reported to the Department.

Subdivision (h)

This proposed adoption clarifies the requirement that the department shall have access to all records, data, computer programs, or any other information used by the insurer or any other source to determine geographic area labor rate information. This proposed regulation also clarifies that the non-public information obtained by the CDI will be kept confidential pursuant to the provisions of subdivision 2698.91(g). This proposed regulation also sets forth the insurer's recordkeeping requirement that all survey records, questionnaires and all other information regarding the survey shall be maintained by the insurer for a minimum of five years. This proposed regulation also clarifies that even if information, data or records used or relied upon by a licensee is obtained through a third party source, this fact shall not absolve the licensee of its responsibility to provide the Department with the requested information. This proposed regulation is reasonably necessary to allow the Commissioner to obtain and review the documentation ensuring that the surveys were conducted in compliance with the standards set forth in these regulations.

Subdivision (i)

The proposed subdivision section clarifies that nothing in these regulations prohibits an insurer from voluntarily negotiating or contracting with an auto body repair shop for a specific labor rate. The proposed language is reasonably necessary to clarify this issue, and to clarify that auto body labor rate surveys is not the exclusive means to settle the labor rate component of automobile claims.

Subdivision (j)

Insurance Code section 758(c) does not require an insurer to conduct a labor rate survey. The proposed amendment clarifies this legislative intent by stating that nothing in this section shall require an insurer to conduct an auto body labor rate survey. The proposed regulation is reasonably necessary to make the statute clearer, and to convey to the public and insurers that conducting a survey pursuant to Insurance Code section 758(c) is not required.

Subdivision (k)

The proposed subdivision clarifies that surveys submitted under this Section are not deemed approved, or that the Department has made a determination that the survey data is accurate or reliable. The proposed subdivision addresses instances where insurers claimed that since a labor rate survey was submitted with the Department, the Department has approved the methodology or survey results. The proposed language is reasonably necessary to clarify that this provision is merely a reporting requirement, and the fact that the insurer has submitted a survey to the Department does not indicate approval of the methodologies or labor rate surveys that were submitted.

**ECONOMIC IMPACT ASSESSMENT (Government Code § 11346.3(b)(2))**

**Costs Anticipated From the Proposed Amendments**

Auto body damage and repair can occur in claims in any of the three different types of coverage: collision, comprehensive, and property damage liability. These types of coverage have different characteristics and the impact of the proposed regulations was estimated separately for each type of coverage. Table 1 displays twelve input parameters (A – L) used to estimate the impact per vehicle. The resulting parameter (M) is the cost per vehicle. It is used to calculate the anticipated annual costs in Table 2. A discussion of the parameters and the justification for their selection is below.

**Table 1. Parameters for Estimating the Impact of the Labor Rate Survey Regulation**

<b>Parameter and Description</b>	<b>Collision</b>	<b>Comprehensive</b>	<b>Property Damage Liability</b>
A Annual Claim Frequency	6.561%	3.956%	3.964%
B Percentage of Claims Requiring Body Work	83.0%	27.5%	83.0%
C Percentage of Claimants with Body Shop Preference	30.0%	25.0%	80.0%
D Percentage of Disputed Repair Cost Rates	2.0%	2.0%	4.0%
E Market Share of Companies Conducting Surveys	24.7%	24.7%	24.7%
F Total Disputed Claim Frequency	0.01%	0.00%	0.03%
G Percentage of Total Claims With Cost Increase	0.12%	0.03%	0.66%
H Estimated Cost Increase Per Disputed Claim	5.0%	5.0%	5.0%
I Estimated Cost Increase Overall	0.006%	0.002%	0.033%
J Current Pure Premium Cost per Vehicle	\$235.03	\$56.03	\$129.54
K Target Loss Ratio	59.1%	59.1%	65.7%
L Approximate Premium per Vehicle	\$397.68	\$94.81	\$197.17
M Approximate Premium Increase per Vehicle	\$0.024	\$0.002	\$0.065

A) The first parameter is the frequency of the claims by coverage. The frequency levels shown in Table 2 were taken from an internal Department memo "Private Passenger Non-fleet Automobile Trend Factors –Data ending December 31, 2014". This report is a compilation of insurance company claim experience, and is updated every three months. Frequency represents the measure of claim activity, usually measured on an annual basis. For example, a frequency of 5%



would mean that there will be five claims annually for every one hundred insured vehicles.

- B) Collision coverage invariably involves auto body damage, but not all vehicles are repaired. If the cost of repair is greater than the value of the car, then it is considered a total loss. Industry statistics regarding the incidence of total losses are not readily available, so the estimate of 17% is based upon results from a 2014 J.D. Power study of insurance claims satisfaction. Comprehensive coverage covers almost all perils to the vehicle other than collisions. Most of these claims would not involve body work. For example, glass claims represent nearly 47% of the total but would not involve body work. After reviewing each type of loss and applying actuarial judgment, it is estimated that 27.5% of comprehensive claims would involve body work. Property damage liability would be similar to collision claims but could include some claims that do not involve other vehicles, such as a car striking a building. To be conservative, the same assumption was adopted for this coverage as for collision.
- C) This represents the estimated proportion of claimants who require auto body repair and have chosen the repair shop independent of the advice of the insurer. The estimates were provided by the Consumer Services and Market Conduct Branch of the Department based upon their experience with insurance claim audits.
- D) This represents the estimated proportion of claimants who have chosen the repair shop independent of the advice of the insurer and subsequently have a dispute with the insurer with regard to the labor rate quoted by the chosen auto body shop. The estimates were provided by the Consumer Services and Market Conduct Branch of the Department based upon their experience with claim disputes.
- E) Not all companies currently conduct labor rate surveys. The market share of companies currently conducting surveys is estimated to be 74%, and the Department assumes that only their portion of the auto insurance market will be impacted. These companies already have most of the infrastructure in place needed to conduct a survey and could switch to the new survey method relatively quickly. However, the Department assumes that only one-third of the market will be affected in the first year ( $74\% \times 0.333 = 24.7\%$ ) because some companies may already have current surveys. They may also elect to delay implementation of a new survey methodology that could require a more rigorous analysis.
- F) This is the product of the first five parameters and represents the estimated proportion of insured vehicles that will be impacted by the new regulation. The formula for this calculated value is as follows:  $F = A \times B \times C \times D \times E$
- G) This is the proportion of claims that will be impacted by the new regulation and is the ratio of the frequency of disputes to the frequency of claims. The formula for this calculated value is as follows:  $G = F / A$
- H) This is the expected average increase in cost on disputed claims due to the effect of the new regulation. The estimate was provided by the Consumer Services and Market Conduct Branch of the Department based upon their experience with claim disputes.
- I) This is the product of the prior two parameters and is the estimated percentage impact per insured vehicle. The formula for this calculated value is as follows:  $I = H \times G$

- J) The pure premium is the loss cost per insured vehicle and includes only the cost of the claim itself and not the expense of settling the claim nor the expenses involved in servicing the policy. The values shown in Table 2 were taken from an internal Department memo "Private Passenger Non-fleet Automobile Trend Factors –Data ending December 31, 2014".
- K) This is an estimate of the proportion of the premium collected that covers the pure premium. The amounts shown are ten-year industry averages from A.M. Best *Aggregates & Averages*.
- L) The estimated average premium per vehicle is derived by dividing the pure premium by the target loss ratio. The formula for this calculated value is as follows:  $L = J / K$
- M) The product of the premium per vehicle and the cost increase overall produces the dollar impact per insured vehicle. This a calculated value and is as follows:  $M = I \times L$

**Table 2. Vehicles Insured by Type of Insurance Coverage and Cost Impacts**

<b>Year</b>	<b>Liability</b>	<b>Collision</b>	<b>Comp</b>	<b>Increase<sup>1</sup></b>
2012 <sup>2</sup>	24.52	16.75	17.37	
2013 (estimate)	25.35	17.32	17.96	3.4%
2014 (estimate)	25.96	17.74	18.39	2.4%
2015 (estimate)	26.72	18.25	18.92	2.9%
2015 AB 60 adjustment <sup>3</sup>	0.38	0.26	0.27	
2015 (estimate total)	27.10	18.51	19.19	
2016 (estimate)	27.88	19.05	19.75	2.9%
<b>Cost Estimates</b>				
<b>Per Vehicle</b>	<b>\$0.065</b>	<b>\$0.024</b>	<b>\$0.002</b>	
<b>Annualized Total</b>	<b>\$1,812,254</b>	<b>\$457,110</b>	<b>\$39,503</b>	<b>\$2,308,867</b>

1) The projected increase is a proxy based on the increase in vehicles registered with Dept. of Motor Vehicles (DMV). The growth rate used in 2015 and 2016 is an average of the 2013 and 2014 growth rates.

2) National Association of Insurance Commissioners, PPA Report-2014, "Auto Insurance Database Report"

3) Based on DMV data through Sept. 2015 for newly-insured undocumented drivers. Assumes new collision and comprehensive coverage are the same proportion to liability coverage as in the 2012 base year. Assumes 25% of the newly licensed drivers already drive an insured vehicle.

Additionally, the Department assumes that there will be a lag of six months to any change in payments, as insurers will first have to conduct the labor rate survey. As a result, there will likely be increases in the cost of each of the three components of automobile insurance (collision, comprehensive, and liability). The Department projects that for the 27.9 million covered vehicles in California, insurers will incur \$1.15 million in direct costs (half of the annual total in Table 2) in the first year that the regulation is in effect.

There are expected to be some additional administrative costs to insurers who conduct a more rigorous, better-defined Standardized Labor Rate Survey in compliance with the proposed regulation. These additional costs could include mailing or emailing more surveys, an increase in survey-related follow up costs, additional software, and legal costs related to compliance. The total cost of conducting a survey was estimated at \$41,727. This estimate assumes a simple majority response rate (51 % of 5,397 auto body shops) and would cost \$15.16 per usable response.<sup>1</sup>

The cost, time, and organizational infrastructure needed to conduct the new surveys will likely limit any first year impact to the companies already conducting surveys. The Department anticipates that as a result of the proposed regulations about a third of the 14 insurers that currently conduct a survey will begin conducting a standardized survey in the first year as a way to fairly and equitably settle claims. While the Department envisions this survey methodology becoming an industry standard, it is unrealistic to anticipate that every company will switch their survey methodology in the first year. Some insurance companies may have current surveys or other barriers preventing early adoption.

However, the Department believes that the fourteen companies that currently conduct surveys are highly sophisticated and well suited to adopt the proposed methodology and would only likely face a minimal impact by slightly expanding the scope of their current surveys. These companies already have the infrastructure in place to conduct a majority of the functions of a Standardized Labor Rate Survey. The Department assumes that on average, these insurance companies already spend 90% of what a standardized survey would cost and would only incur extra costs equal to 10% of the survey total. For each of these companies the incremental cost increase due to conducting a Standardized Labor Rate Survey would be \$4,173. Based on the assumptions above, insurers will incur about \$19,600 ( $\$4,173 \times 4.7 = \$19,613$ ) in administrative costs to conduct the Standardized Labor Rate Survey.

In total, the estimated cost of the proposed regulation is \$1.17 million (\$1.15 million + \$19,600) for the first year following the adoption of the regulation. In the second year, insurers may use a Consumer Price Index inflation adjustment instead of conducting a survey, practically eliminating their administrative costs.

### **Summary of Economic Impact Assessment**

*Government Code sections 11346.3(b)(1)(A) through (C)*

The proposed regulations are projected to have a very small impact on employment within the State of California (Government Code section 11346.3(b)(1)(A)). The proposed regulation is not expected to impact the creation of new businesses or the elimination of existing businesses within California (Government Code section 11346.3(b)(1)(B)), and the Department has determined that the proposed

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<sup>1</sup> Kaplowitz, Hadlock, & Levine. A Comparison of Web and Mail Survey Response Rates. This report was the basis for the estimate, with the value of \$10.97 per usable response for a mail survey adjusted for inflation to \$15.16.

regulations will not affect California businesses ability to expand (Government Code § 11346.3(b)(1)(C)).

### **The Economic Impact on Jobs, Businesses and the State Economy**

The Department evaluated the changes in a variety of economic variables, such as output and employment, which could result from this proposed regulation. Industry employment and output effects were assessed using standard Regional Input-Output Modeling System (RIMS II) multipliers.<sup>2</sup> Job and economic impacts, including the ripple effects (indirect and induced costs/benefits) of the regulation on employment and output are calculated based for the direct cost estimate of \$1.17 million for insurers and a direct benefit estimate of \$1.15 for auto body shops and households.

#### *The Creation or Elimination of Jobs*

The job impact estimates are based on aggregated data presented as full-time equivalents, not necessarily full-time jobs. The job impacts were calculated using three separate applicable RIMS II multipliers: one for insurance carriers, one for automotive repair and maintenance businesses, and one for the household sector (consumers and policy holders). The RIMS II multiplier for insurers is a ratio of 13.1748 jobs lost throughout the economy for every one million dollars in added costs. The ratio multiplied by the estimated cost of the regulation equals the projected number of jobs lost (e.g., 13.1748 x \$1.17 million = 15). While standard RIMS modeling projects a loss of some insurance company jobs, these job losses may be delayed by gradual implementation of the new survey techniques or negated by future premium increases.

On the other side of the coin, the impact on consumers (or the household sector) and auto body shops will likely benefit the economy. The RIMS II multipliers for the automotive repair and maintenance industry and the household sector result in a projected number of jobs gained for auto body shops (11) and for consumers (5).<sup>3</sup>

The proposed regulation results in a negligible impact on jobs ( $11 + 5 - 15 = 1$ ). As such, the proposed regulation is expected to have a minimal effect on total statewide employment. According to the most current data from the Bureau of Economic Analysis (BEA) for 2014, nonfarm employment was 16.5 million in California.<sup>4</sup> When dividing the projected net number of jobs gained by the number of people employed in nonfarm

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<sup>2</sup> U. S. Department of Commerce, Bureau of Economic Analysis (BEA): Table 1.5 Regional Input-Output Modeling System (RIMS II) Multipliers (2002/2010). RIMS II multipliers show how an initial change in economic activity results in new rounds of spending—for example, building a new road will lead to increased production of asphalt and concrete. The increased production of asphalt and concrete will lead to more mining. Workers benefiting from these increases will spend more, perhaps by eating out at nicer restaurants or splurging more on entertainment. For example, a \$1 million road will lead to an estimated 16.4 jobs throughout the economy and an increase in output of \$2.3 million. Likewise, under RIMS an initial decrease in economic activity will lead to a decrease in production.

<sup>3</sup> The auto body repair and maintenance industry has a multiplier of 15.3298 and the household sector has a multiplier of 9.8665.

<sup>4</sup> As of January 2016, the most current annual data for BEA nonfarm wage and salary employment was 2014.

jobs in California, the result is that the proposed regulations would have no effect on the total nonfarm employment in California (i.e.,  $1 / 16,508,643 = .000006\%$ ).

*The Creation of New Businesses or the Expansion of Existing Businesses*

In order to address Government Code sections 11346.3(b)(1)(B) and (C) and determine the creation of new businesses or the expansion of existing businesses from these proposed changes, the Department has used a broad approach.

The Department calculated the effect of the regulation on California's economic output. Output measures the total market value, including the value of all intermediary goods and services used in production of a final good or service. The RIMS II multiplier for output of 2.2583 represents a \$2.26 total economic impact (accounting for all direct, indirect, and induced costs/benefits) for every \$1 direct impact on insurers. Multiplying the cost of the regulation by the RIMS output multiplier results in an estimated impact on output of \$2.64 million ( $2.2583 \times \$1.17 \text{ million} = \$2.64 \text{ million}$ ). On the other side of the coin, multiplying the benefit of the regulation by the RIMS output multiplier for the automotive repair and maintenance industry and consumers, as was done for jobs, results in an estimated total beneficial impact of the regulation on output of \$2.06 million.

The net impact on output for California, estimated to be a loss of about \$560,000 ( $\$2.64 \text{ million} - \$2.06 \text{ million} = \$560,000$ ), represents a miniscule portion of the over two trillion dollar California Gross State Product. As such, the Department assumes there will be no impact on the rate of business creation/elimination and no impact on the ability of California businesses to expand.

**Health and Welfare Effects, the Impact on Worker Safety and Environmental Effects**

The Department has also assessed whether and to what extent the proposed regulations affect other criteria set forth in Government Code sections 11346.3(b)(1)(D).

The Department anticipates that the benefits from the proposed action will include:

- 1) The proposed regulations will benefit the health and welfare of California's consumers and businesses. Owners who suffer insured damage will receive an amount that is reflective of the market labor rate in a specific geographic area. It will also prevent auto body repair shops from facing the dilemma of whether to accept a financial loss, or bill the consumer for the shortfall between the insurance payment and the estimated cost of repair.
- 2) Reliable and consistent labor rate surveys will result in more accurate, prompt, fair, and equitable auto insurance claim settlements, which will promote increased fairness, openness, and transparency in business.
- 3) Conducting fair and equitable Standardized Labor Rate Surveys will benefit auto body shops and policy-holders (households). Currently, when the labor rate paid by the insurer doesn't cover the work performed by the shop, the shop either incurs a financial loss or bills the consumer the unpaid amount. While some shops may pass

this cost on to the consumer; others work with the consumer in an attempt to increase the probability of repeat business. The Department projects \$1.15 million in benefits will be passed on to auto body shops and policy holders (households).

- 4) The proposed regulations will provide reasonable standards for conducting Auto Body Repair Labor Rate Surveys, which will result in the prompt and equitable processing of claims that rely on Auto Body Repair Labor Rate Surveys. The proposed Auto Body Repair Labor Rate Surveys regulations will define specific terms and more clearly set out the format, purpose and use of surveys conducted pursuant to Ins. Code section 758(c) or surveys otherwise used to settle and pay claims, resulting in openness and transparency in business and government.

The proposed amendments are not likely to impact worker safety and will have no effect on the state's environment.

**TECHNICAL, THEORETICAL OR EMPIRICAL STUDY, REPORT OR SIMILAR DOCUMENT RELIED UPON (Government Code § 11346.2(b)(3))**

The Department identifies the following technical, theoretical or empirical study, report, or similar document relied upon by the Department in the proposed regulation:

- 1) A.M. Best. (2014). *Best's Aggregates & Averages, Property/Casualty, United States & Canada*. New York, NY: AM Best Co.
- 2) A.M. Best. (2014). *Cumulative By Line Underwriting Experience – Direct Premiums Written*. [Data publication/spreadsheet]. Sourced from Best's Global Insurance Database.
- 3) California Bureau of Automotive Repair. (2013 & 2015). *BAR Auto Body State List*. Bureau of Automotive Repair Spreadsheet of Licensed Auto Body Shops in California.
- 4) California Department of Motor Vehicles. (2015). *DMV AB 60 Statistics for September 2015*. Retrieved from [http://dmv.ca.gov/portal/dmv/detail/pubs/newsrel/newsrel15/2015\\_54](http://dmv.ca.gov/portal/dmv/detail/pubs/newsrel/newsrel15/2015_54)
- 5) California Department of Motor Vehicles. (2013). *Estimated Vehicles Registered by County for the Period of January 1 Through December 31, 2013*.
- 6) California Department of Motor Vehicles. (2014). *Estimated Vehicles Registered by County for the Period of January 1 Through December 31, 2014*.
- 7) Collision Industry Conference Definitions Committee. (2005). *Minimum Recommended Requirements For A "Class A" Collision Center*. Retrieved from <http://www.ciclink.com/archive/ClassADef2005.pdf>
- 8) Independent Statistical Service, Inc. (2012). *Automobile Experience California*. [Data publication/spreadsheet].
- 9) Isaac, R. & Lee, J. (2016). *Labor Rate Survey Economic Impact Analysis*.
- 10) J.D. Power: McGraw Hill Financial. (2014). J.D. Power Reports: Insurance Industry's Responsiveness and Concern for the Claimant Drives Continued Improvement in Satisfaction with Auto Insurance Claims [Press release of the study *J.D. Power 2014 U.S. Auto Claims Satisfaction Study*].

- 11) Kaplowitz, M.D., Hadlock, T.D., & Levine, R. (2004). A Comparison of Web and Mail Survey Response Rates. *Public Opinion Quarterly*, 55(1), 94-101.
- 12) National Association of Insurance Commissioners. (2014). *2011/2012 Auto Insurance Database Report*.
- 13) Urschel, F., (2015). *CA PPA Phys Damage Market Share*. California Department of Insurance Actuarial Data Spreadsheet.
- 14) Urschel, F. (2015). *Labor Rate Survey Regulation – Estimated Cost Impact*. California Department of Insurance Actuarial Report Write-Up.
- 15) Urschel, F. (2015). *Labor Rate Regulation – Parameters for Estimating Cost Impact*. California Department of Insurance Actuarial Selected Assumptions Spreadsheet.
- 16) Urschel F. & Cignarale, T. (2015). *Labor Rate Survey Regulation – Parameters for Estimating Cost Impact*. California Department of Insurance CSMCB Selected Assumptions.
- 17) Urschel, F. (2015). *Market Share By Line of Business – Property & Casualty*. California Department of Insurance Actuarial Data Spreadsheet.
- 18) Trinity Technology Group. (2013). *Body Shops Mapping and Analysis*. Report prepared for Tony Cignarale, Deputy Commissioner, California Department of Insurance.
- 19) Trinity Technology Group. (2013). *Autobody Shops with Coordinates*. Data Spreadsheet prepared for Tony Cignarale, Deputy Commissioner, California Department of Insurance.
- 20) Varshney, S.B., Thakur, S.K., Sun, Y., Mikhailitchenko, A.G. (2014). *Auto Body Labor Rate Surveys, A Statistical Review*. Prepared for Tony Cignarale, Deputy Commissioner, California Department of Insurance [Referenced as Sac State Study in this rulemaking].
- 21) Yen, G. (2015). *Private Passenger Non-fleet Automobile Trend Factors – Data ending December 31, 2014*. California Department of Insurance Rate Specialist Bureau Memorandum to Deputy Commissioner Joel Laucher.

**ANTICIPATED BENEFITS FROM THE REGULATORY ACTION (Government Code § 11346.2(b)(1))**

The Department anticipates that the benefits from the proposed action will include:

- 1) The proposed regulations will benefit the health and welfare of California’s consumers and businesses. Owners who suffer insured damage will receive an amount that is reflective of the market labor rate in a specific geographic area. It will also prevent auto body repair shops from facing the dilemma of whether to accept a financial loss, or bill the consumer for the shortfall between the insurance payment and the estimated cost of repair.
- 2) Reliable and consistent labor rate surveys will result in more accurate, prompt, fair, and equitable auto insurance claim settlements, which will promote increased fairness, openness, and transparency in business.

- 3) Conducting Standardized Labor Rate Surveys will benefit auto body shops and policy-holders (households). Currently, when the labor rate paid by the insurer doesn't cover the work performed by the shop, the shop either incurs a financial loss or bills the consumer the unpaid amount. While some shops may pass this cost on to the consumer; others work with the consumer in an attempt to increase the probability of repeat business. The Department projects \$1.15 million in benefits will be passed on to auto body shops and policy holders (households).
- 4) The proposed regulations will provide reasonable standards for conducting Auto Body Repair Labor Rate Surveys, which will result in the prompt and equitable processing of claims that rely on Auto Body Repair Labor Rate Surveys. The proposed Auto Body Repair Labor Rate Surveys regulations will define specific terms and more clearly set out the format, purpose and use of surveys conducted pursuant to Ins. Code section 758(c) or surveys otherwise used to settle and pay claims, resulting in openness and transparency in business and government.

The proposed amendments are not likely to impact worker safety and will have no effect on the state's environment.

**REASONABLE ALTERNATIVES AND PERFORMANCE STANDARD (Government Code § 11346.2(b)(4)(A) and § 11346.2(b)(4)(B))**

**Adverse Impact on Small Business**

The Department contemplated reasonable alternatives that would lessen any adverse impact on small businesses, however the Department does not anticipate an adverse impact on small business. The proposed regulations will directly affect insurers as discussed in the foregoing analysis, but by law, they are not considered small businesses (Government Code sections 11342.610(b)(2)). There is no estimated adverse impact on automotive body shops that are also small businesses. In contrast, the proposed regulations are anticipated to have a positive impact on small auto body shops and individual proprietors.

**Analysis of Alternatives to the Proposed Regulation**

The Department has contemplated alternatives that are less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. However, no such alternative has been proposed.

The following are alternatives that the Department considered:

**Alternative #1. Retain the status quo.** The Department has considered not adopting the proposed regulations. However, the Department has concluded that the status quo is not acceptable.

**Reasons for rejecting Alternative #1:** Not adopting the proposed regulations will result in the continued existence of no standards for how insurers may conduct a reliable survey used to pay or adjust automobile insurance claims. There would be no standards for the



number and types of repair shops suitable for creating a reliable benchmark for paying claims. There would be no standards for what constitutes a reasonable market area for collision repairs. Insurers would continue to pay claims based upon these unsupported and unreliable surveys, resulting in unreasonably and artificially low settlement offers to claimants. Claimants and small business would continue to be financially harmed by these reduced payments. Claimants would not be paid the full costs to repair their damaged automobiles, and small businesses would be forced to accept reduced payments for the repair services they deliver or take collection action against the claimants to recover these reduced payments by insurers.

**Alternative #2.** Amend section 2698.91 only. Clarify the intent and purpose of the Insurance Code section 758(c) survey by amending only section 2698.91, but not adopting sections 2695.81 and 2695.82, which provides direction on what standards insurers may use in order for a survey to be reliable to pay claims. The Department has considered, but has rejected this alternative.

**Reasons for rejecting Alternative #2:** Since the Insurance Code section 758(c) survey is not expressly intended for insurers to pay non-Direct Repair Program claims, and there are no standards to ensure the reliability of an Insurance Code section 758(c) survey, any survey conducted pursuant to Insurance Code section 758(c) in and of itself is not sufficient for insurers to demonstrate to the Department that the insurer has offered a fair and reasonable claims settlement. Insurers would be left with no guidance on what the regulator would accept as a reliable survey. This would result in no standards for how insurers may conduct a reliable survey used to pay or adjust automobile insurance claims. There would be no standards for the number and types of repair shops suitable for creating a reliable benchmark for paying claims. There would be no standards for what constitutes a reasonable market area for collision repairs. Insurers would continue to pay claims based upon these unsupported and unreliable surveys, resulting in unreasonably low settlement offers to claimants. The Department would be forced to take action against the insurers individually, on a case-by-case basis, rather than addressing this issue industry-wide. Claimants and small business would continue to be financially harmed by these reduced payments. Claimants might not be paid for the full costs to repair their damaged automobiles. Otherwise small businesses (body shops) might be forced to accept reduced payments for the repair services they deliver unless they take collection action against the claimants to recover these reduced payments by insurers.

**Alternative #3.** Performance Standard. Since the proposed regulations prescribes specific actions or procedures, the Department has considered performance standards as an alternative. One performance standard the Department considered would require insurers to report the results of the labor rate survey in such a way that public information is separate from the non-public information.

**Reasons for rejecting Alternative #3:** The Department rejected using this performance standard because it would fail to meet the clarity standard. For example, insurers would not know what information is public and what is non-public. Additionally, insurers

would not know how to report the results of the Department, or when. This performance standard will not be as effective as the proposed regulations. Therefore, this poses a clarity issue, and has been rejected. (See Specific Technologies or Equipment / Prescribes Specific Actions or Procedures below).

**Alternative #4. Alternative Geographic Areas.** The Department considered many alternatives to the Geographic Area under section 2695.81(d)(8). Below are the most viable alternatives that were considered by the Department, and then subsequently rejected:

Geographic Area Alternative A: Use a Census Tract-Based Geographic Area

The state is comprised of already recognized and fixed Census Tracts and Census Places. This option would define a geographic area as all shops in all Tracts that comprise a City or Census Place. This would create a geographic area for the survey that has economic and social significance.

Geographic Area Alternative B: Use Core Based Statistical Areas or Metropolitan Areas as the basis for Geographic Areas

A Core Based Statistical Area (CBSA) is a county-based U.S. geographic area defined by the Office of Management and Budget (OMB) that has a concentrated urban center or cluster and adjacent counties that are socioeconomically tied to the urban center by jobs and commuting. CBSAs are sometimes larger than metropolitan (metro) areas. The most current areas were based upon Census 2010 data and announced by OMB in February 2013. OMB's standards are used to update the definitions of metropolitan areas after each decennial census. This option would define a geographic area as all shops in each CBSA or Metropolitan Area. There are fewer CBSAs or Metro Areas than counties in California. Often, two or more counties are linked together to form a large Metro Area or a CBSA.

Geographic Area Alternative C: Create geographic areas based on City/County/Region, and a 50% response rate from surveyed shops.

This alternative was presented at the April 3, 2015 and April 16, 2015 Pre-Notice Public Discussions. Under this alternative, geographic area was defined as each city, given that the city has six (6) shops and at least 50% of the shops surveyed responded. If the city did not have at least six auto body repair shops or less than 50% of shops responded, then the geographic area was broadened to the county. Certain counties would have been treated as regions based on those counties having less than six (6) shops, and would have been treated as combined regions, which were specifically defined.

**Reasons for Rejecting Alternative #4**

Reasons for rejecting Geographic Area Alternative A

Of the 527 cities where the 5,397 automotive body shops are located, 134 cities have only one shop and 69 cities have only 2 shops. This creates the potential that these areas are too small to survey and the labor rate data could be unreliable or even uncollectable. Conversely, 10 cities have more than 60 shops, with Los Angeles having the most with 361 shops. This creates the potential that these areas are too large and that the data collected could be non-representative for the subject shop.

### Reasons for rejecting Geographic Area Alternative B

CBSAs and even some Metro Areas are too large to conduct a labor rate survey because there are significant differences in repair shop expenses and overhead, which impact labor rates in different locales. For example, the Los Angeles-Long Beach-Anaheim, CA Metropolitan Area contains more than 13 million residents (more than a third of the entire population of the state). It includes the large County of Los Angeles and Orange County.

Within this single Metro Area and even within each county, there are significant differences in shop expenses and overhead, which impact labor rates in different locales. Use of super-size geographic areas in a labor rate survey unreasonably flattens the labor rates in more affluent or higher cost areas and would result in many repair shops being paid less by insurers than the reasonable market rates in those areas.

### Reasons for rejecting Geographic Area Alternative C

This alternative was presented in the Pre-Notice Public Discussion. While this alternative may have merit, stakeholders from both the repair shop and insurance industries expressed confusion as to how this alternative would operate. Based on the alternative, insurers were confused as to when to use a city, county or region and the 50% response rate requirement. This rule could create confusion as to how to define the geographic area based on how many shops actually respond, especially in cities with close to 5 or 50 shops. The Department also believes this is not the most cost-effective solution as it introduces the cost of GIS software, but does not recommend it uniformly or across all geographic sizes. The Department believes that using GIS software to create one rule and apply it to every geographic area is more fair and equitable.

### **SPECIFIC TECHNOLOGIES OR EQUIPMENT / PRESCRIBES SPECIFIC ACTIONS OR PROCEDURES (Government Code §§ 11346.2(b)(1), 11346.2(b)(4)(A))**

Adoption of the proposed regulations will not require insurers to adopt any specific technologies or equipment since insurers are not required to conduct auto body labor rate surveys. Although the Department is not mandating any specific technologies or equipment, the Department encourages the use of specific technologies or equipment. One is the use of GIS software, which is necessary for manipulating geo-coding data. There is the optimal technology at manipulating geo-coding data to create a labor rate survey compliant with the Standardized Labor Rate Survey. Secondly, the Department encourages the use of TIGER line files, which is necessary for geo-coding and creating a Standardized Labor Rate Survey. TIGER line files are produced and updated decennially (every ten years) by the US Census Bureau, which is a federal government agency. TIGER line files, maintained by the US Census Bureau, provide the most comprehensive body of addresses. They are easily accessed, free to the public and downloadable from the Internet. Thus, the Department encourages the use of TIGER line files because it is the most comprehensive and cost-effective option for insurers when geo-coding.

The Department does prescribe specific actions or procedures in the proposed regulations. The Department recommends that insurers comply with the standards and requirements of the Standardized Labor Rate Survey. The prescribed procedures for complying with the Standardized Labor Rate Survey includes submitting current survey data and results, sampling

all shops licensed by the BAR, the methodology of calculating the prevailing auto body rate, calculating geographic areas through geo-coding, and limiting the size of geographic areas. Furthermore, the proposed regulations prescribes the specific use of the Standardized Labor Rate Survey which includes quantifying the labor rate component of estimates, as well as reasonably adjust the labor rate in a written estimate. The Department also prescribes the specific use of the Questionnaire for the Standardized Labor Rate Survey to comply with the standards of the Standardized Labor Rate Survey. These prescriptive standards are required because the Standardized Labor Rate Survey is a survey that the Department specifically recommends and to address issues of outdated and unreliable surveys, and therefore, the requirements and technicalities must specifically be stated.

In addition to these prescribed procedures of the Standardized Labor Rate survey, the proposed regulations prescribes specific standards when reporting auto body repair labor rate surveys to the Department. These include the specific public and private information that must be reported to the Department's Custodian of Records, when the survey data must be submitted to the Department, and how long survey data must be maintained by insurers. These prescriptive standards are required because the reporting requirements address issues of outdated and unreliable surveys. The Department must specifically prescribe these requirements to address these issues.

Since the proposed regulation will prescribe specific actions or procedures, the Department considered and rejected performance standards as an alternative (see Reasonable Alternatives and Performance Standard section above).

**PRE-NOTICE DISCUSSIONS (Government Code § 11346.45(a))**

The Commissioner conducted pre-notice public discussions pursuant to Government Code section 11346.45(a) on January 25, 2012, April 3, 2015, and April 16, 2015. Interested and affected parties were given an opportunity to present statements or comments with respect to the proposed amendments. The Commissioner considered these statements and comments in drafting the proposed amendments.