

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

INITIAL STATEMENT OF REASONS

GENDER NON-DISCRIMINATION IN AUTOMOBILE INSURANCE RATING

October 19, 2018

REG-2018-00020

Exempt Rulemaking

Pursuant to Government Code section 11340.9(g), this proceeding is exempt from the rulemaking provisions of the Administrative Procedure Act.

INTRODUCTION

California Insurance Commissioner Dave Jones will hold a public hearing to consider amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 3, Section 2632.5, Subsections (d)(9), (d)(13), (c)(2)(F)(viii), (e), and section 2632.11, Subsection (c) to eliminate the use of gender in private passenger automobile insurance rating in California pursuant to the authority granted by Insurance Code section 1861.02 (a)(4). The date, time and location for the public hearing, as well as applicable contact information, are set forth in the Notice of Proposed Action for this rulemaking.

STATEMENT OF THE PROBLEM

Insurance Code section 1861.02 states:

“(a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

- (1) The insured's driving safety record.
- (2) The number of miles he or she drives annually.
- (3) The number of years of driving experience the insured has had.
- (4) Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without approval shall constitute unfair discrimination.”

Pursuant Insurance Code section 1861.02(a)(4), the Commissioner adopted by regulation gender of the rated driver as an optional rating factor. In the decades since its initial adoption, numerous problems with using a driver’s gender as a rating factor have surfaced, leading the Commissioner in his discretion to conclude that automobile insurers should no longer be permitted to rate

individuals differently based on their gender. Insurance Code section 1861.02(a)(4) does not require the Commissioner to adopt any additional rating factors, and thus provides authority for him to eliminate previously established factors at his discretion.

The prime directive of Proposition 103 is codified in Insurance Code section 1861.05(a) which states that no rate should be inadequate, excessive, or unfairly discriminatory. A regime in which auto insurance rates are based on personal characteristics over which a driver has no control, such as gender, rather than on factors within a driver's control, is more likely to be unfairly discriminatory because it may not treat equally individuals who make the same risk-averse choices. To that end, we are proposing that gender be removed as an optional rating factor for the following reasons:

- Gender's relationship to risk of loss no longer appears to be substantial, and the logical justification for the statistical relationship to risk of loss has become suspect because:
 - Company experience has come to vary widely, with some companies finding females to be a higher risk while other companies find similarly situated males to be a higher risk.
 - Insurers routinely combine gender with other, more predictive factors like years driving experience.
 - Gender's effect on rates appears to vary widely by location.
- With regard to distracted driving due to mobile phone use, currently reported by insurers to be one of the primary drivers of increased accident frequency and severity, there is no difference in the experience of male versus female drivers.
- The Gender Recognition Act permits California driver license applicants to select "nonbinary" to appear on their driver license instead of "male" or "female" beginning on January 1, 2019. Insurers who use the optional rating factor have expressed uncertainty as to how to rate individuals who identify as nonbinary. There is no historical experience upon which to establish an actuarially justified nonbinary rate. Given the small population size of nonbinary drivers, it is likely that there will never be sufficiently credible data upon which to base such a rate. The term "nonbinary" as defined in the Gender Recognition Act describes a population with significant diversity. This combination of small population size and non-homogeneity reduces the value of treating drivers within that population as statistically similar.
- the American Academy of Actuaries "Risk Classification Statement of Principles" dictate that any such system should be acceptable to the public and must recognize the values of the society in which it is to operate. California has extended legal recognition to persons with nonbinary identities through the courts and through legislative action, acknowledging that gender exists along a spectrum rather than a binary. Eliminating gender as a rating factor recognizes the societal values around gender and ensures that nonbinary individuals and people of all genders are treated fairly under Proposition 103's mandate to avoid unfairly discriminatory rates.

Even if data for nonbinary drivers were credible, allowing insurers to rate nonbinary drivers in a third category would not address the other problems with gender as an optional rating factor that have become apparent through the decades since its initial adoption. These numerous concerns weigh in favor of conforming the optional rating factors to the spirit of the Unruh Civil Rights Act by eliminating gender.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF ADOPTING REGULATIONS

How These Regulation Amendments Will Achieve the Goal of Eliminating the Use of Gender in Private Passenger Automobile Insurance Rating

The purpose of these amendments is to eliminate the use of a driver's gender in private passenger automobile insurance rating for the reasons stated above. The specific purpose of each adoption and the rationale for the Commissioner's determination that each adoption is necessary to carry out the purpose for which it is proposed is set forth below.

Section 2632.5. Rating Factors.

(d)(9):

~~(9) Gender of the rated driver;~~

The purpose of this amendment is to remove gender of the rated driver from the list of optional rating factors insurers are permitted to use in setting rates. Because this is an exhaustive list of optional rating factors insurers are permitted to consider, eliminating gender of the rated driver is necessary to prevent insurers from considering gender in setting rates. By eliminating gender of the rated driver from the list of optional rating factors, insurers will no longer be permitted to consider gender in private passenger automobile insurance rating.

(c)(2)(F)(viii):

“An insurer employing verified actual mileage pursuant to section (c)(2)(F) may combine Percent Use, Academic Standing, ~~Gender~~, Marital Status, and Driver Training with the Second Mandatory Rating Factor. If an insurer elects to do so, the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individually, comply with the weight ordering requirements of Section 2632.8.”

The purpose of this amendment is to remove gender from the list of optional rating factors that can be combined with other optional factors in setting rates. This amendment is necessary because the above amendment to subsection (d)(9) eliminates gender of the rated driver from the list of optional rating factors. To achieve the purpose of eliminating the use of gender in private passenger automobile rating, gender cannot be permitted to be combined with any rating factors.

(d)(13):

“(123) Secondary Driver Characteristics. For drivers not assigned as a primary or secondary driver to another vehicle, this factor may be composed of a

combination of the following factors: Safety Record, Years Licensed, ~~Gender~~, Marital Status, Driver Training, and Academic Status;”

The purpose of this amendment is to remove gender from the list of optional rating factors that can be combined with other optional factors in setting rates. This amendment is necessary because the above amendment to subsection (d)(9) eliminates gender of the rated driver from the list of optional rating factors. To achieve the purpose of eliminating the use of gender in private passenger automobile rating, gender cannot be permitted to be combined with any rating factors.

(e):

Except as expressly provided in this subsection and in section 2632.5(c)(2)(F)(viii) the three mandatory factors may not be combined with any other factor. Optional rating factors for Percent Use, Academic Standing, ~~Gender~~, Marital Status, and Driver Training may be combined with number of years of driving experience. If an insurer elects to combine number of years of driving experience with Percent Use, Academic Standing, ~~Gender~~, Marital Status, or Driver Training, the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individually, comply with the weight ordering requirements of Section 2632.8.

The purpose of this amendment is to remove gender from the list of optional rating factors that can be combined with other optional factors in setting rates. This amendment is necessary because the above amendment to subsection (d)(9) eliminates gender of the rated driver from the list of optional rating factors. To achieve the purpose of eliminating the use of gender in private passenger automobile rating, gender cannot be permitted to be combined with any rating factors.

Section 2632.11. Submission of Class Plans, Symbols, and Implementation Data.

The purpose of these amendments is to ensure timely implementation of the new regulatory scheme that eliminates gender as an optional rating factor. The amendments mandate insurers file a revised class plan that changes nothing other than the use of gender as a rating factor. The amendments prescribe a uniform filing date and require a limited filing consisting of only that which is necessary to evaluate whether gender has been properly removed as a rating factor from private passenger automobile class plans. These amendments are necessary to minimize the possibility of creating a temporarily uneven playing field for insurers due to the elimination of gender as a rating factor.

(c) Eliminating the effects of gender as a rating factor.

(1) Revised class plan. In order to comply with the 2018 amendments to Section 2632.5 that become effective on January 1, 2019, insurers shall file with the Department no later than July 1, 2019 a revised class plan for each program of private passenger automobile insurance under which the insurer issues a “policy” as defined in Subdivision (a) of Insurance Code section 660. The revised class plan shall, in each case, be substantively identical to the most recently approved iteration of the class plan (hereinafter the “prior class plan”), except as provided in this subdivision (c)(1).

The purpose of this amendment is to ensure timely implementation of the new regulatory scheme that eliminates gender as an optional rating factor. This amendment mandates insurers file a revised class plan that changes nothing other than the use of gender as a rating factor. This amendment prescribes a filing deadline and only that which is necessary to evaluate whether gender has been properly removed as a rating factor from private passenger automobile class plans.

(A) The revised class plan shall eliminate all effects of gender as a rating factor, regardless of whether gender was used as a stand-alone rating factor, or in combination with any other rating factor, in the prior class plan. In its revised class plan the insurer shall demonstrate that the revised class plan complies with the weight ordering requirements stated in subdivision (d) of Section 2632.8 and subdivision (e) of Section 2632.5. The calculation of weights in the revised class plan shall be performed using the same distribution of vehicles as was used in the prior class plan.

The purpose of this amendment is to remove gender of the rated driver from the list of optional rating factors insurers are permitted to use in setting rates. Pursuant to 10 CCR section 2632.5, subdivision (e), this amendment requires insurers to submit a revised class plan which does not use gender as a stand-alone rating factor or combine gender with any of the other mandatory or optional rating factors listed in 10 CCR section 2632.5. This amendment also requires that the weights of factors in an insurer's class plan continue to decrease in order of importance, beginning with the mandatory rating factors in the order that they appear in CCR section 2632.5, subdivision (d), followed by each individual weight of each optional factor.

(B) The analysis of rating factors pursuant to Section 2632.7 that was included in the prior class plan shall remain unchanged in the revised class plan.

The purpose of this amendment is to ensure that insurers do not change the analysis of rating factors because it is not necessary to make this change to eliminate gender as a rating factor and doing so would cause unnecessary delays in implementation.

(C) Where gender was used as a rating factor in combination with any other rating factor in the prior class plan, the revised class plan shall eliminate all effects of the use of gender as a rating factor.

This amendment is necessary to achieve the purpose of eliminating the use of gender in private passenger automobile rating because gender cannot be permitted to be combined with any rating factors if it is to be eliminated.

1. The following steps shall be performed with respect to each combined rating factor that in the prior class plan included gender:

This amendment states that certain requirements must be met with regard to the revised class plan. This is necessary to ensure that gender has been properly removed as a rating factor from private passenger automobile class plans without delaying the implementation of the revised regulations.

a. Use the same distribution of vehicles as was used in the prior class plan;

The purpose of this amendment is to ensure that insurers do not change the distribution of vehicles because it is not necessary to make this change to eliminate gender as a rating factor and doing so would cause unnecessary delays in implementation.

b. Separate the combined rating factor into its component rating factors and isolate one component rating factor at a time; the order in which each component factor is separated out and isolated in the revised class plan may differ from the order in which it was separated out and isolated in the prior class plan, except that the years driving experience component must still be separated out and isolated first;

This section is necessary in order to separate out the gender component from the combined rating factor, so that the effect of gender can be removed in the subsequent sections.

c. Remove the gender component;

This section is necessary because it eliminates the gender component from private passenger automobile rating by its terms, which is the overall purpose of these amendments.

d. For each isolated component factor that remains, demonstrate compliance with the weight ordering requirements stated in subdivision (d) of Section 2632.8 and the individual weight ordering requirement stated in subdivision (e) of Section 2632.5; and

This amendment is necessary to ensure that after the removal of gender as a rating factor does not cause the weight order of the other factors to fall out of compliance with subdivision (d) of Section 2632.8 and subdivision (e) of Section 2632.5, which would be contrary to the purpose of *only* eliminating gender in private passenger automobile rating.

e. Recombine the relativities of the remaining component factors that had been combined with gender in the prior class plan, in order to calculate the relativities of the recombined rating factor, from which gender has been removed. For purposes of this subdivision (c)(10)(C), a recombined rating factor may be comprised of a single rating factor.

This section is necessary to eliminate gender from the combined factors.

2. The weights of all of the rating factors used in the revised class plan, when considered individually, must comply with the weight ordering requirements stated in Section 2632.8. The relativities of a recombined rating factor, from which the gender factor has been removed, may be pumped or tempered pursuant to subdivision (d) of Section 2632.8, if necessary in order to achieve this result. Alternatively, the relativities of one or more of the remaining component rating factors of a recombined

rating factor may be pumped or tempered pursuant to subdivision (d) of Section 2632.8, if necessary in order to achieve compliance with the weight ordering requirements stated in Section 2632.8.

This amendment is necessary to ensure that the removal of gender as a rating factor does not cause the weight order of the other combined factors to fall out of compliance with Section 2632.8. This section accomplishes this by requiring that the revised class plans comply with Section 2632.8 and by prescribing permissible methods of achieving that compliance. Allowing the weight order to fall out of compliance with Section 2632.8 would be contrary to the purpose of *only* eliminating gender in private passenger automobile rating.

(D) The relativities assigned to any rating factor that in the prior class plan was not combined with the gender rating factor shall in the revised class plan remain unchanged from the prior class plan.

The purpose of this amendment is to ensure that insurers do not change the relativities assigned to any rating factor that in the prior class plan was not combined with the gender rating factor because it is not necessary to make this change to eliminate gender as a rating factor and doing so would cause unnecessary delays in implementation.

(E) The class plan application accompanying the revised class plan shall demonstrate that the change from the prior class plan to the revised class plan is revenue neutral, based on the current distribution of vehicles. In order for the change to be revenue neutral, there must be no projected change in premium for the book of business in question. A change in the base rate may be used in order to ensure that the change from the prior class plan to the revised class plan is revenue neutral.

The purpose of this amendment is to ensure that the removal of gender as a rating factor does not change the overall premium an insurer collects, which would be contrary to the overall limited purpose of these amendments which is to eliminate the use of gender in private passenger automobile rating.

(F) The class plan application accompanying the revised class plan shall illustrate the expected market dislocation resulting from the change from the prior class plan to the revised class plan. The calculation of market dislocation shall be based on the current distribution of vehicles.

The purpose of this amendment is to allow the Department to verify that no groups have been significantly adversely impacted by the changes made in the revised class plan filing.

(G) Subdivision (b) of this Section 2632.11 notwithstanding, the following application pages and supporting exhibits, and no other documentation, shall be included in the class plan application accompanying the revised class plan:

The purpose of this amendment is to ensure timely implementation of the new regulatory scheme that eliminates gender as an optional rating factor by mandating that insurers file a revised class plan that changes nothing other than the use of gender as a rating factor. The following list of

application pages and supporting exhibits are the only documentation necessary to remove gender from insurer class plans.

(1) CP-1: General Company Information,

This is a simple form that contains pertinent information, such as company details, the line of insurance and the program to which this class plan applies and contact information. This page also contains the prior class plan filing number which the revised class plan is to be based on. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(2) CP-2: Insurer Group Multi-Company Filing,

This page must be completed when an insurer group filing is submitted so it is clear which insurer is submitting the filing and which insurers it will apply to. Each company to which the filing applies must be listed on this page. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(3) CP-4: Filing Checklist,

This page is needed to allow the insurance company and the department to ensure that the class plan application is properly assembled and that all necessary documents are included as part of the class plan application. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(4) CP-5: Rating Factors Checklist,

This page requires the insurer to confirm all of the rating factors that have been used. This will allow for ease of verification that all factors have been used as per the prior class plan, with the exception of gender. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(5) CP-9: Rating Logic Samples,

This application page shows the current and proposed premium for a few sample rating profiles. This allows for verification that gender has been correctly been removed from the rating algorithm, and no other changes have been made. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(6) CP-10: Market Dislocation Summary,

This page will explain the expected market dislocations due to the changes in the proposed class plan. This will allow the Department to verify that no groups have been extremely and adversely impacted by the changes made in the revised class plan filing. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(7) Exhibit 1 – Explanatory Memorandum,

This page allows the insurer to provide a summary and explain what changes they have made in their revised class plan filing, meaning the removal of gender. It is therefore necessary for timely

implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(8) Exhibit 2 – Filing History.

This form provides a list of all the previous filing numbers that have been made to the California Department of Insurance for this program within the last three years. This allows for easy reference to the relevant information from the prior approved class plans that will be reused in this revised class plan. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(9) Exhibit 7 – Factor Weights.

This exhibit is necessary to show compliance with 10 CCR §2632.8 [Factor Weights] and 10 CCR §2632.5, subd. (e) [Rating Factors – prohibition against combining the three mandatory factors with any other factor]. Where gender is used as a combined rating factor, this exhibit is also shows the individual factor weights and relativities for the rating factors that were combined with gender. This will allow insurers to remove the gender factor relativities from their revised class plan. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(10) Exhibit 8 – Revenue Neutral, and

The Department requires the insurer to file as revenue neutral so that there is no projected change in premium for the insurer. This exhibit provides and supports the insurer’s methodology used to maintain a revenue neutral class plan as required by these amendments to 10 CCR §2632.11, subd. (c)(1)(E). It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(11) Exhibit 12 – Complete Rate and Rule Manual.

For purposes of this subdivision (c)(1)(G)11., the insurer shall submit a marked-up copy of the rate and rule manual for the prior class plan, and a clean copy of the rate and rule manual, reflecting the removal of gender as a rating factor in the revised class plan.

This exhibit is necessary so that the department has a record of the rates and rules the insurance company will be using for the proposed rating period, which should no longer include gender, and so that consumers will have access to and can view the rates and premiums the insurance company will be charging for coverage. A marked-up copy of the current manual as well as a clean copy for the revised class plan is necessary so the department can ensure that gender, and only gender, was removed. It is therefore necessary for timely implementation of the removal of gender as a rating factor through the submission of the revised class plan.

(2) Exception. Insurers need not file a revised class plan pursuant to subdivision (c)(1) of this section for any program of private passenger automobile insurance in which gender is used neither as a stand-alone rating factor nor in combination with any other rating factor.

The purpose of this section is to prevent insurers that do not use gender in auto rating from filing a revised class plan, which would be contrary to the purpose of these amendments and cause delays in implementation.

(3) Class plan applications submitted in the ordinary course; pending class plan applications. For any class plan filed with the Commissioner on or after January 1, 2019, the provisions of Section 2632.5 as that section was amended effective January 1, 2019 shall apply. However, for any class plan that was filed with but that had not been approved or rejected by, the Commissioner before January 1, 2019, the provisions of Section 2632.5 as that section existed on the day the class plan was filed shall apply. In no event, however, shall a class plan that does not comply with Section 2632.5 as that section was amended effective January 1, 2019 be approved after June 30, 2019.

This section is reasonably necessary to ensure uniform elimination of gender in private passenger automobile insurance rating within a reasonable timeframe, without creating an unfair burden on insurers awaiting approval of class plans submitted prior to the change in law.

~~For class plan changes submitted in accordance with the 2006 amendments to Section 2632.8, every class plan shall be submitted in conjunction with an accompanying rate filing and shall be subject to the following conditions:~~

Current subsection (c) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented. Because current subsection (c) is no longer necessary, replacing it with an implementation plan for the proposed amendments to section 2632.5 is prudent.

~~(1) Class plan applications submitted in accordance with subdivision (c) shall include a transition plan. The transition plan shall consist of at least two annual class plan filings. The first of the two annual class plan filings shall be submitted within 30 days of the date the 2006 amendments to Section 2632.8 are filed with the Secretary of State. Insurers must fully comply with Section 2632.8 within two years of the date the 2006 amendments to Section 2632.8 are filed with the Secretary of State.~~

Current subsection (c)(1) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(2) An insurer shall revise factor weights in each of the annual class plan filings to correct non-compliance with Section 2632.8.~~

Current subsection (c)(2) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(3) The amount of non-compliance shall be based upon the insurer's class plan in effect on December 31, 2005.~~

Current subsection (c)(3) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(A) The amount of non-compliance shall be established by comparing the factor weight for each optional rating factor to the factor weight for the third mandatory factor, years driving experience.~~

Current subsection (c)(3)(A) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(B) The formula for establishing the amount of non-compliance shall be: (weight of optional factor divided by weight of years driving experience) minus 1.00.~~

Current subsection (c)(3)(B) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(C) If the resulting calculation is greater than or equal to zero, the optional factor does not comply and must be corrected. If the calculation is less than zero, the factor is in compliance.~~

Current subsection (c)(3)(C) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(4) The first annual filing must correct at least 15% of the current amount of non-compliance for every rating factor that is not in compliance. The transition plan shall be demonstrated in each filing as follows:~~

Current subsection (c)(4) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(A) The insurer must demonstrate that it has achieved the required amount of correction in each filing. This shall be done by calculating the formula in subdivision (c)(3)(B) of this Section for the current class plan and newly submitted class plan for each optional rating factor to show that the required amount of correction has been made. The required amount of correction to be demonstrated in the newly submitted class plan can be achieved by tempering the optional rating factor or pumping years driving experience and the mandatory factors as necessary, relative to the rating factor weights used in the formula specified in subdivision (c)(3)(B) of this Section. Alternatively, the required amount of correction can be achieved by simultaneously tempering the optional rating factor and pumping years driving experience and other mandatory factors as necessary, relative to the rating factor weights used in the formula specified in subdivision (c)(3)(B) of this Section.~~

Current subsection (c)(4)(A) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(B) For each filing submitted on an annual or more frequent basis to comply with subdivision (c) of this Section, the insurer must perform the weight test and correction calculation with a set of policies with effective dates no more than six months prior to the date of filing.~~

Current subsection (c)(4)(B) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(5) The annual corrections described in subdivision (e) of this Section shall apply to each individual coverage or combination of coverages as described in Section 2632.8(a).~~

Current subsection (c)(5) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(6) The annual corrections described in subdivision (e) of this Section shall apply to the factor weights of each optional rating factor, as listed in Section 2632.5(d).~~

Current subsection (c)(6) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(7) The factor weights for the three mandatory rating factors in each filing shall be in the order specified in Section 2632.8(d).~~

Current subsection (c)(7) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

~~(8) An insurer may choose to make more than one class plan filing during each annual period, however, the first annual filing must correct at least 15% of the current amount of non-compliance as provided in subdivision (e) of this Section. An insurer may also choose to achieve full compliance at any date prior to the end of the two-year transition period.~~

Current subsection (c)(8) concerns the implementation of the 2006 amendments to section 2632.8, which have now been fully implemented, making this section superfluous.

ECONOMIC IMPACT ANALYSIS

The prime directive of Proposition 103 is codified in Insurance Code section 1861.05(a) which states that no rate should be inadequate, excessive, or unfairly discriminatory. In the decades since the adoption of gender as a rating factor in private passenger auto insurance, gender's relationship to risk of loss has become suspect as company experience has come to vary widely. Further, the American Academy of Actuaries "Risk Classification Statement of Principles" dictate that any such system should be acceptable to the public and must recognize the values of the society in which it is to operate. California has extended legal recognition to persons with nonbinary identities through the courts and through legislative action, acknowledging that gender exists along a spectrum rather than within a rigid binary categorization. Eliminating gender as a rating factor recognizes the societal values around gender and ensures that nonbinary individuals and people of all genders are treated fairly under Proposition 103's mandate to avoid unfairly discriminatory rates.

The regulation proposes to remove gender as an auto rating factor for Private Passenger Automobile insurance ("PPA") under California Code of Regulations (CCR) section 2632.5. The regulations specify a deadline by which the industry must submit a revised class plan. The revised class plans would be substantively identical to the most recently approved iteration of the

class plan (or prior class plan), however the gender rating factor must be removed. Table 1 and Figure 1 below show the anticipated impact to male and female drivers if gender as an auto rating factor is removed.

The top 25 PPA insurers by market share were considered in completing this analysis. Out of the top 25 insurers, 17 of those who had submitted filings between 2011 and 2018 with the required data were included in the analysis. These 17 companies comprise 64 percent of the PPA market based on 2017 market share. While the majority of the companies included wrote standard and preferred auto policies, one insurer writing non-standard policies was represented in the analysis. All except one of the insurers included in the analysis vary gender auto insurance rates by years of driving experience (YDE). The one insurer who does not vary gender by YDE was excluded from the YDE results, but included in the total.

To calculate the impact, it was assumed that the gender neutral relativity would be the average of the relativities currently being applied to male and female drivers. Relativity data was obtained from the most recent class plans of the 17 companies included in this analysis. The relativity for all coverages combined was calculated as a premium weighted average of the individual coverage relativities. This analysis utilized premium and exposure data from the market in order to assess the total impact on the population. The market data was trended to 2019 using various assumptions.

This analysis represents the average impact for all insured vehicles driven for the 17 companies. Note that these impacts could vary considerably across individuals with different YDEs and also by company. Furthermore, the actual premium impact will vary by policyholder based on individual characteristics and the coverages selected.

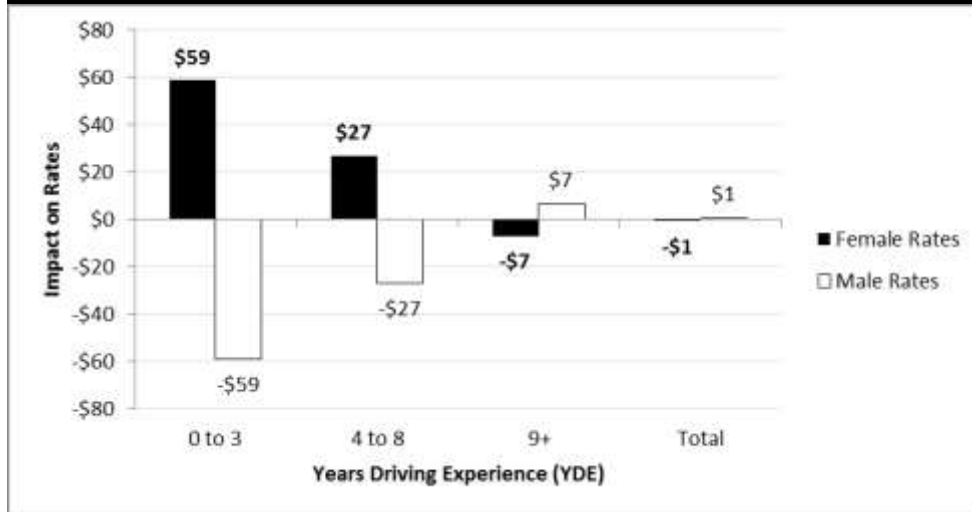
As per CCR § 2632.5, gender may be combined with Secondary Driver Characteristics. Some of the top 25 PPA insurers, by 2017 market share, did use Secondary Driver Characteristics as a rating variable, but none of these companies combined this rating variable with gender. While there may be an additional impact on removing gender arising from this rating variable, it is not considered likely and was not considered in this analysis. Furthermore, there may be additional impacts when considering other rating variables that may be related to the use of gender in auto insurance rating, for example, location of the insured vehicle, multi-vehicle households or multi-line policies. Data was not available to assess the potential indirect effects on these other rating factors.

Table 1. Summary of Impacts on Female and Male Rates by Years Driving Experience

Years Driving Experience (YDE)	Distribution - Female ¹	Distribution - Male ¹	Approximate % Impact on Female Rates	Approximate % Impact on Male Rates	Approximate \$ Impact on Female Rates	Approximate \$ Impact on Male Rates
0 to 3	2.0%	2.0%	6.0%	-5.4%	\$59	-\$59
4 to 8	3.9%	3.8%	2.8%	-2.6%	\$27	-\$27
9+	37.0%	37.2%	-0.7%	0.7%	-\$7	\$7
Total	42.9%	42.9%	-0.1%	0.1%	-\$1	\$1

Female drivers with minimal driving experience (0-3 years) are expected to see the biggest impact, with rate increases averaging an estimated +6.0 percent (or +\$59 per year). Conversely, male drivers with minimal driving experience (0-3 years) will have a corresponding estimated -5.4 percent (-\$59) rate decrease. Female drivers with nine or more YDE will see a slight rate decrease on the order of -0.7 percent (-\$7) and male drivers with the same YDE will likely see a slight rate increase of about +0.7 percent (+\$7). As the market is dominated by drivers with nine or more YDE, these latter impacts drive the overall results. Thus, on balance, this analysis indicates an estimated slight rate decrease for female drivers of -0.1 percent (-\$1) and a slight rate increase for male drivers of +0.1 percent (+\$1).

Figure 1. Impact on Female and Male Rates by Years Driving Experience



The Department will require insurers to submit their class plan applications as revenue neutral, i.e., any calculated impact, positive or negative, from the elimination of the gender rating factor will be offset by base rate adjustments. In effect, insurers will be required to make balancing revisions to ensure that the impact on total premium remains neutral. Since the impact on premiums would be required to remain revenue neutral, the impacts to subgroups will offset, resulting in no net impact on the auto insurance market or the economy as a whole. The only

¹ The distributions do not add up to 100 percent as “excess vehicles” (i.e. where there are more vehicles than drivers) were excluded. For the analysis, it was assumed that excess vehicles would receive the same impact as other vehicles.

costs to private industry would be attributed to the time it takes for insurers to prepare and submit their revised class plans.

The Department expects 167 auto insurers, representing 90 insurance groups, will be impacted by the proposed regulation. These insurers or groups of insurers are expected to submit approximately 174 revised class plans. Insurers or insurance groups will incur one-time costs for filing a revised class plan for each program of private passenger automobile insurance.

To estimate the cost of preparing and implementing a class plan, the Department considered many factors. First, the regulation allows six months for insurers to submit a revised class plan. This class plan has already been developed by an insurer and approved previously by the Department. The main change is the removal of gender as a rating factor as detailed below. Table 2 shows a full breakdown of anticipated costs to insurers of completing a revised class plan. Employee benefits were estimated to be 30 percent of total compensation for all direct cost estimates in this analysis. Since the regulations require insurers to file an estimated 174 revised class plans the total direct impact of the regulation on the insurance industry is projected to be \$2.2 million.

The Department assumed that all insurers used gender as a rating factor, and that gender has been combined with YDE. A revised class plan where gender has been used as a rating factor on its own is likely to require less time to complete and review. However, the impact of factoring this into the costs is expected to be minimal as this should represent a small number of filings (estimated to be around 10 percent).

Table 2. Estimated Insurer Cost of a Revised Class Plan

Title	Hours	Estimated Annual Salary²	Estimated Salary + Benefits	Total Cost per Filing
Actuarial Analyst	16	\$80,000	\$104,000	\$800
Senior Actuary	8	\$200,000	\$260,000	\$1,000
Product Manager	16	\$144,000	\$187,200	\$1,440
IT programming	160	\$88,000	\$114,400	\$8,800
Administrative Assistant	16	\$59,000	\$76,700	\$590
Average Cost per Filing				\$12,630

² The salaries for Actuarial Analyst and Senior Actuary were estimated using DW Simpson an actuarial recruitment website. <https://www.dwsimpson.com/salary>. Accessed September 2018. The remaining salary data comes from the United States Bureau of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm) and represents wage data for “Financial Managers” Standard Occupational Classification (SOC) 11-3031, “Computer Programmers” (SOC Code 15-1131), and “Executive Secretaries and Executive Administrative Assistants” (SOC 43-6011). Data accessed October 2018.

The following application pages and supporting exhibits, and no other documentation, shall be included in the class plan application accompanying the revised class plan:

- (1) CP-1: General Company Information,
- (2) CP-2: Insurer Group Multi-Company Filing,
- (3) CP-4: Filing Checklist,
- (4) CP-5: Rating Factors Checklist,
- (5) CP-9: Rating Logic Samples,
- (6) CP-10: Market Dislocation Summary,
- (7) Exhibit 1 – Explanatory Memorandum,
- (8) Exhibit 2 – Filing History,
- (9) Exhibit 7 – Factor Weights,
- (10) Exhibit 8 – Revenue Neutral and
- (11) Exhibit 12 – Complete Rate and Rule Manual.

The majority of these pages will require a very limited amount of time to complete as it requires insurers to fill out simple forms or exhibits where the relevant information can be taken from the insurer's prior class plan. The Department is not requiring a new sequential analysis as the analysis from the prior filing is still considered appropriate for the revised filing removing gender as a factor. The items that are expected to take the most time to complete are CP 10: Market Dislocation Summary, Exhibit 7 – Factor Weights, and Exhibit 8 – Revenue Neutral.

For Exhibit 7 – Factor Weights, measuring the amount of impact on the rates for different categories of insureds, insurers should use the same distribution of vehicles as used in the prior class plan. If an insurer does not combine gender with any other rating factor, then the weights will be the exactly the same as the prior filing, with the exception that there is now no weight for gender. If gender is combined with other rating factors, such as YDE and marital status, the insurer will have to delink the gender factor from these other rating factors. Insurers have been required to previously calculate these rating factors' relativities and the weights for those factors as if they were separate. This means that the insurers already have the relativities separated, so to get the appropriate relativities for the revised class plan they can just combine the non-gender relativities and that will give them the appropriate relativities to charge after removing gender as a factor. Given the above, this should not take a significant amount of time for insurers to complete.

For CP 10: Market Dislocation and Exhibit 8 – Revenue Neutral, insurers should use their currently insured vehicles. As such, there will be time needed for IT programming and obtaining the required data. Typically, if they have the required data, insurers would be able to turn around CP 10 and Exhibit 8 in a few days.

The submission of revised class plans will also create a one-time fiscal impact on the Department. Actuaries and analysts will review the revised class plans that insurers submit to ensure compliance. The time required for analyst or actuarial review of the revised class plan would be greatly reduced compared to the review of a complete class plan. Table 3 specifies the anticipated costs to the Department of conducting the reviews of the revised class plans required by the regulation. As a result, because the regulations are projected to lead to 167 insurers filing

174 revised class plans, there will be a \$276,000 fiscal impact on the Department to conduct reviews of the revised class plans.

Table 3. Estimated Department Cost of a Revised Class Plan

Title	Hours	Estimated Annual Salary	Salary + Benefits	Total Cost per Filing
Rate Analyst	20	\$70,000	\$98,000	\$942
Senior Casualty Actuary	4	\$160,000	\$224,000	\$431
Bureau Chief	2	\$95,000	\$133,000	\$128
Rate Analyst - Intake	2	\$65,000	\$91,000	\$88
Average Cost per Filing				\$1,588

Benefits Anticipated From the Proposed Regulation

The benefits anticipated to result from the adoption of the proposed regulations include the promotion of efficiency, fairness and social equity, and the prevention of discrimination. Eliminating gender from auto rating helps to bring about a regime in which auto insurance rates are based on factors within a driver’s control, rather than personal characteristics over which drivers have no control. This promotes fairness and social equity by treating equally individuals who make the same risk-averse choices. Removing gender as a rating factor prevents systemic discrimination on the basis of gender. These regulations will ensure actuarially sound rates, promote fair treatment of nonbinary drivers as they begin to take advantage of the Gender Recognition Act, and require simplified class plans that will not allow insurers to attempt to rate a small, non-homogenous group of nonbinary drivers based on gender.

Additionally, various anti-discrimination laws prohibit discrimination on the basis of gender. Removing gender of the rated driver as an optional rating factor for PPA would be consistent with health insurance where gender is no longer a rating consideration.

Results of the Economic Impact Assessment

Below is a summary of the results of the Economic Impact Assessment pursuant to Government Code sections 11346.3(b)(1)(A) through (D). Detailed analysis of the conclusions follows.

- A. The proposed regulations will likely have a minimal effect, a net loss of 18.9 jobs, on overall employment within the State of California. The regulation is expected to affect less than one-thousandth of a percent of the total employment in California (i.e., $18.9 / 17,336,552 = 0.0001\%$).
- B. Given that the average direct cost to an impacted insurer is estimated to be \$13,200 (\$2.2 million / 167 firms), it is not anticipated that the proposed regulation will have a significant impact on the creation of new businesses or the elimination of existing businesses in California.

- C. Given that the average direct cost to an impacted insurer is estimated to be \$13,200 (\$2.2 million / 167 firms), it is not anticipated that the proposed regulation will have an impact on the ability of businesses in California to expand. Additionally, the small impact on total output suggests that the regulation will have a very small impact on the California economy as a whole.
- D. The proposed regulation will benefit the welfare of California's residents and insurance consumers by ensuring actuarially sound auto insurance rates and the fair treatment of nonbinary drivers. This proposed regulation will also prevent discrimination on the basis of gender in auto insurance policies.

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

The Department evaluated the potential changes in economic variables, including output and employment, which could result from the proposed regulation. Industry employment and output effects were assessed using the Regional Input-Output Modeling System (RIMS II) multipliers.³ Job and economic impacts, including the ripple effects (indirect and induced costs/benefits) of the regulation on employment and output, are calculated using the direct cost estimates to insurers.

Creation or Elimination of Jobs within the State

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 the RIMS II multipliers for insurance carriers. The Department calculated that removing the gender rating factor will likely have offsetting impacts on males and females based on YDE, as described above. Since these direct impacts offset within the same industry sector and premiums will not change overall, there is no expected induced or indirect economic impacts to the total economy resulting from the removal of the gender rating factor. The only cost that is estimated to have an impact on jobs, or output via induced or indirect economic impacts to the total economy, is the direct cost of preparing the revised class plan. The RIMS II multiplier for insurers is a ratio of 8.6023 jobs lost throughout the economy for every one million dollars in added costs. Due to strong job gains in the insurance industry sector the calculated job losses will likely not result in actual job losses, but will instead result in slightly slower job growth. The ratio multiplied by the estimated direct cost of \$2.2 million, equals the projected number of jobs lost, which is 18.9 (8.6023 x \$2.2 million = 18.9).

The proposed regulation is expected to have a minimal effect on total statewide employment. According to the Department of Finance, the projected total nonfarm employment for 2019 is nearly 17.4 million in California.⁴ When dividing the projected number of jobs lost by the

³ U.S. Department of Commerce, Bureau of Economic Analysis (BEA): Table 1.5 Regional Input-Output Modeling System (RIMS II) Multipliers (2007/2016). RIMS II multipliers show how an initial change in economic activity results in new rounds of spending (ripple effects including indirect and induced costs/benefits). 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 new \$1 million road will lead to an estimated 9.9 jobs throughout the economy and an increase in output of \$2 million. Likewise, under RIMS an initial decrease in economic activity will lead to a decrease in production.

⁴ http://www.dof.ca.gov/Forecasting/Economics/Eco_Forecasts_US_Ca/index.html. The Department of Finance economic forecast data was accessed October, 2018.

number of people employed in nonfarm jobs in California, the result is that the proposed regulations would not affect even one-thousandth of a percent of the total employment in California (i.e., $18.9 / 17,336,552 = 0.0001\%$).

Creation of New Businesses or the Elimination of Existing Businesses, and the Expansion of Businesses

To address Government Code sections 11346.3(b)(1)(B) and (C) and determine the effect of the proposed regulation on the creation of new businesses or the expansion of existing businesses within the state, the Department uses a broad approach. Factors affecting the creation and expansion of businesses are intertwined and very similar so they are analyzed together.

The Department anticipates that due to the structure and competitiveness of the auto insurance market, the regulation will not cause a measurable impact on business expansion or contraction.

The Department also 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 1.9219 represents a \$1.92 total economic impact (accounting for all direct, indirect, and induced costs/benefits) for every one million dollars of direct impact on insurers. Multiplying the direct cost of the regulation by the RIMS output multiplier results in an estimated loss to total output of \$4.2 million ($1.9219 \times \$2.2 \text{ million} = \4.2 million). The relatively small impact on output suggests that the regulation will have a very small impact on the California economy as a whole and is not likely to lead to a measurable impact on the elimination of existing businesses or the ability of existing businesses to expand.

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

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

Worker Safety and Environmental Effects

The proposed regulation is not expected to impact worker safety. Compliance with the proposed regulation does not change the nature of existing job responsibilities of the employees in the affected industries. Thus, the proposed regulation will neither increase nor decrease worker safety. The Department also concludes that there will be no measurable effect on the state's environment.

Health and Welfare Effects

The proposed regulation will benefit the welfare of California's residents and insurance consumers by ensuring actuarially sound auto insurance rates and the fair treatment of nonbinary drivers. This proposed regulation will also prevent discrimination on the basis of gender in auto insurance policies.

Impact on Small Business

The proposed regulation will have a minimal adverse direct impact on insurers as discussed in the foregoing analysis, but by law they are not considered small businesses (Government Code § 11342.610(b)(2)).

Analysis of Alternatives to the Proposed Regulation

Alternative 1: Strike references to gender rating factors from the text of regulations, but do not specify deadlines by which the industry must comply or the method of compliance.

This alternative is similar to what was noticed and sent with the invitation for the Pre-Notice Public Discussion. Class Plan Filings would trickle in at the discretion of the individual insurance companies, as they do currently. There would be no extraordinary impact from the regulation change on either the industry or the Department.

Reasons for rejecting Alternative #1

Some insurers have gone multiple years without updating their class plan and this alternative would allow insurers to continue using outdated class plans that are not in compliance with the regulations. This alternative would be much harder to enforce and could cause complaints from both consumers and companies alike regarding the lack of a level playing field, where some companies opt to comply sooner and others comply later, perhaps many years later, causing competitive advantages/disadvantages across the industry.

Alternative 2: In addition to striking gender rating factors from the text of regulations, this alternative would specify a deadline by which the industry must file a new class plan.

All companies would be required to follow the standard filing requirements for a complete class plan application. This scenario would cause an influx of filings all at once, over and above what is normally filed.

Reasons for rejecting Alternative #2

All rating factors, not just the impact of removing gender, would be subject to the normal review and resolution process. Implementation would be realized slowly, potentially over a couple years. Those filings could also be intervened, increasing the timelines further. This alternative would increase costs on both insurers and the Department due to the requirement that a new class plan be submitted. Like Alternative 1, this approach would invite complaints regarding the lack of a level playing field, and it would potentially impact the Department's ability to respond to other rate, rule and form filings on a timely basis.

Alternative 3: Allow insurers to track nonbinary drivers and rate them in a separate category.

Insurers would simply add a third category of nonbinary in addition to male and female.

Reasons for rejecting Alternative #3

The population of such drivers would not be large enough to ensure that the specific rates for this third class of gender are valid. Additionally, this third group would not be homogenous and would encompass individuals with very different risk experience, creating volatility in the rates for this category between insurers due to sample sizes within individual companies that are too small to be meaningful.

Alternative 4: Allow insurers to rate based on two gender categories, male and non-male.

This alternative was suggested during the Pre-Notice Public Discussion. It would allow insurers to continue rating drivers based on two gender categories, male and non-male. This alternative is similar to Alternative #3 in that it would be simple and insurers would not incur additional costs relating to programming computer systems.

Reasons for rejecting Alternative #4

A contrasting point of view was also presented at the Pre-Notice Public Discussion, questioning whether a gender rating factor could be used to reliably predict loss. The population of a non-male category would not be homogenous and would encompass individuals with very different risk experience. This alternative also does not result in the same benefits relating to the prevention of discrimination on the basis of gender that are provided by the proposed regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The adoption of these regulations will not mandate the use of specific technologies or equipment.

IDENTIFICATION OF STUDIES, REPORTS, DOCUMENTS

Automotive Fleet published an article entitled *Finder's Safe Driving Report* on Finder.com on August 3, 2018. The Department has reviewed this document, and is relying upon its findings and conclusions in developing these proposed regulations.

Consumer Federation of America published an article entitled *Most Large Auto Insurers Charge 40 and 60-Year-Old Women Higher Rates Than Men, Often More Than \$100 Per Year* on October 12, 2017. The Department has reviewed this document, and is relying upon its findings and conclusions in developing these proposed regulations.

The American Academy of Actuaries' published a booklet entitled *Risk Classification – Statement of Principles*. The Department has reviewed this booklet, and is relying upon its findings and conclusions in developing these proposed regulations.

Aside from the document referenced above and the Economic Impact Analysis, the Department of Insurance is not relying on any other studies, reports, or other documents in developing these regulations.

REASONABLE ALTERNATIVES

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A contrasting point of view was also presented at the Pre-Notice Public Discussion, questioning whether a gender rating factor could be used to reliably predict loss. The population of a non-male category would not be homogenous and would encompass individuals with very different risk experience. This alternative also does not result in the same benefits relating to the prevention of discrimination on the basis of gender that are provided by the proposed regulation.

PERFORMANCE STANDARD CONSIDERED

The Commissioner considered alternatively imposing a performance standard but rejected this alternative because it would be less likely than the proposed regulations to eliminate the use of gender in private passenger auto rating overall, and would particularly be less likely to do so in a uniform, timely manner without creating an uneven playing field for insurers.

PRE-NOTICE PUBLIC DISCUSSIONS

A Pre-Notice Public Discussion was held on October 2, 2018, and members of the public were invited to provide comments on the proposed regulations. Representatives from industry and consumer groups raised concerns about: uniform implementation to avoid competitive advantage for certain companies, the fact that gender of the rated driver has been a rating factor for 30 years and is only just now being eliminated, technical programming difficulty of implementation, whether there will be a significant rate impact for certain policyholders, the use of a driver's gender in auto rating not being in line with current public policy as expressed in the Unruh Civil Rights Act and the Gender Recognition Act, and weak actuarial justification and support for gender as a rating factor. At the Pre-Notice Public Discussion, a representative for an industry group requested additional time to elicit feedback from its members regarding implementation needs before submitting a response. For that reason, at the conclusion of the Pre-Notice Public Discussion, the Department requested that industry provide information about implementation needs by October 8, 2018.

ANTICIPATED BENEFITS FROM THE REGULATORY ACTION

The benefits anticipated to result from the adoption of the proposed amendments to these regulations include the promotion of efficiency, fairness, and social equity, and the prevention of discrimination. Eliminating gender from auto rating helps to bring about a regime in which auto insurance rates are based on factors within a driver's control, rather than personal characteristics over which drivers have no control. This promotes fairness and social equity by treating equally individuals who make the same risk-averse choices. Removing gender as a rating factor prevents discrimination based on gender by its terms. These regulations will ensure actuarially sound rates, fair treatment of nonbinary drivers as they begin to take advantage of the Gender Recognition Act, and simplified class plans that will not require insurers to attempt to rate nonbinary drivers based on gender.