



August 17, 2009

Daniel M. Goodell
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, California 94105
Email: PubComments.2008-020@insurance.ca.gov

RE: PAY-DRIVE (Usage Based Auto Insurance)
Modifications to Text of Proposed Amendments to Title 10, California Code
of Regulations (CCR), Chapter 5, Subchapter 4.7, Article 3, Section 2632.5
File No. REG-2008-00020

Dear Mr. Goodell:

The Personal Insurance Federation of California (“PIFC”) appreciates the accommodations made by the Department in response to the comments made regarding the June 24, 2009 text. PIFC understands that to the extent it has provided comments not accommodated in the July 31, 2009 text the Department has not accepted those comments, and PIFC does not reiterate those comments here. These additional comments simply suggest clarifications. None of PIFC’s suggestions contained herein have regulatory effect, they are offered on technical drafting points to avoid potential misinterpretations in the future. At this juncture the intended meaning of the regulations may seem obvious and the requests for clarification unnecessary. In PIFC’s experience, however, the intended meaning is not always obvious to those outside the process, possibly several years in the future. Minor adjustments at this point can avoid future confusion.

(1) Subpart 2632.5(c)(2)(E) provides that “an insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair, the California Department of Motor Vehicles, or any other governmental agency that maintains odometer readings to estimate annual mileage driven.”

We suggest that the words “smog check” be deleted. This is an artifact from the original text, which was limited to odometer readings obtained from the Bureau of Automotive Repair, which are obtained by that entity for smog checks. The text may be improperly read to limit acceptable odometer readings to those obtained for smog checks (i.e., “smog check odometer readings”), no matter from what agency they are obtained.

(2) Subpart 2632.5(c)(2)(F)(i) 5 allows verification “by a technological device pursuant to section (c)(2)(D)(2).” It would be prudent to instead spell out that verification may be “by a technological device provided by the insurer or otherwise made available to the insured that accurately collects vehicle mileage information.” This imports the words of (c)(2)(D)(2) and avoids the risk of future arguments that (c)(2)(F)(i) 5 incorporates other parts of (c)(2)(D), which are inherently part of (c)(2)(D)(2).

(3) Subpart 2632.5(c)(2)(F)(i) 5(b) states that the limitations in subpart 5(a) shall not “prevent a motor club or insurer from using a technological device to collect information about the location of the insured vehicle as part of an emergency road service, theft service, map service or travel service.” We interpret this section as including usage by third party vendors that may be retained by a motor club or insurer for purposes of the listed services.

(4) The regulation uses the term “mileage estimation program” (e.g. 2632.5(c)(2)(F)(iii)) and the term “estimated mileage program” (e.g. 2632.5(c)(2)(F)(iv)) to mean the same thing. Under rules of statutory and regulatory interpretation, when different terms are used a different meaning is presumed. It seems clear that these terms are intended to mean the same thing. Nonetheless, it would be prudent to conform the terms used to avoid risk of future misinterpretation.

(5) Subpart 2632.5(c)(2)(F)(iii) provides: “. . . if an insurer offers a discount, under section (c)(2)(F) all policyholders in the verified actual miles program, regardless of the method of verification used, shall qualify for a discount.” This subpart may be misinterpreted to mean that all policyholders shall qualify for a discount, under the specified conditions. This could not be accurate or intended. Some policyholders will drive long miles and be subject to a higher rate rather than a discount. We suggest that the intent is to require that: “. . . if an insurer offers a discount under section (c)(2)(F), the insurer shall not condition qualification for a discount on the method of verification used.”

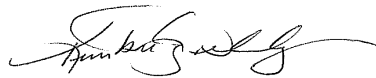
(6) Subpart 2632.5(c)(2)(F)(iv) provides: “If an insurer offers an estimated mileage program and a verified actual mileage program, participation in a program by a policyholder to determine actual mileage shall be voluntary. An insurer offering an estimated actual mileage program shall not require any policyholder to participate in a program to provide verified actual mileage.” There is a potential for confusion in that there is overlap between acceptable means of determining estimated mileage and acceptable means of determining verified mileage. Compare 2632.5(c)(2)(C) 6 and 2632.5(c)(2)(F)(i) 4 (insured-reported odometer readings); 2632.5(c)(2)(E) and 2632.5(c)(2)(F)(i) 3 (government agency odometer readings). An insurer using insured-reported odometer readings or government agency odometer readings as its means of estimating mileage might be misinterpreted as compelling participation in a program to provide verified actual mileage. Confusion could be forestalled by adding the words “Notwithstanding section (c)(2)(F)(iv)” at the beginning of subparts (c)(2)(C) 6 and (c)(2)(E).

(7) **Subpart 2632.5(c)(2)(F)(v)** states that an insurer “. . . shall make available all verification methods it offers to all insureds equally.” We believe that the intent of this section is to provide that an insurer “. . . shall make equally available to all insureds all verification methods offered.” We suggest a language change to clarify.

Again, PIFC appreciates the Department’s efforts to expand the industry’s ability to offer desirable innovations to consumers within the confines of Proposition 103, and appreciates this opportunity to suggest minor, non-substantive changes to avoid any future confusion.

Sincerely,

PERSONAL INSURANCE FEDERATION OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Kimberley Dellinger", with a stylized flourish at the end.

Kimberley Dellinger
General Counsel