

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

**Proposed Amendments to Title 10, California Code of Regulations,
Chapter 5, Subchapter 4.7, Section 2632.5 (Second Set)
[Pay-Drive (Usage Based Auto Insurance)]**

July 31, 2009

File No. REG-2008-00020

SECOND PROPOSED AMENDED REGULATION TEXT

PAY-DRIVE (USAGE BASED AUTO INSURANCE)

Amend Title 10, Chapter 5, Subchapter 4.7, Section 2632.5 to read as follows:

Sec. 2632.5 Rating Factors

(a) Every insurer offering or issuing a policy of automobile insurance shall establish a class plan for the calculation of rates that specifies rating factors in accordance with this section and which complies with the good driver discount requirements of California Insurance Code Section 1861.02 and all other statutes providing discounts in automobile insurance rates and premiums.

(b) Each insurer may only use the characteristics of one driver to rate each vehicle except as provided for in section 2632.5(d)(13) and section 2632.5(c)(2). If there are more vehicles on a policy than drivers, the insurer shall assign either a rate for an undesignated driver or the lowest rate for all driver related factors to the excess vehicles.

(c) An insurer's class plan, and all rates and premiums determined in accordance therewith, shall utilize the following rating factors (the "Mandatory Factors") for bodily injury liability, property damage liability, medical payments, uninsured motorist, collision, and comprehensive coverages:

(1) "First Mandatory Factor," as used in subchapter 4.7, is the insured's driving safety record per California Insurance Code Section 1861.02(a)(1). This factor means the following for the driver rated on the insured vehicle:

(A) the public record of traffic violation convictions available from the California Department of Motor Vehicles, together with similar public records of traffic violation convictions that are available from other jurisdictions (hereinafter sometimes referred to as the "Motor Vehicle Report" or "MVR"). To determine a driver's safety record for purposes of California Insurance Code Sections 1861.02(a)(1) and 1861.025, each insurer shall verify a driver's current driving safety record as contained in the MVR for every driver listed on the policy at the time of policy application, and for each new driver added to the policy at the time the driver is added, and no less frequently than every 36 months thereafter, if the policy remains in effect. No insurer shall rate or underwrite a renewal policy based upon an MVR older than 36 months at the time the policy is renewed. However, nothing in this section shall be construed to preclude an insurer from obtaining, for the time periods set forth in this regulation, a report from

an insurance-support organization or other third party which establishes that a new MVR would contain only the information already found on the MVR the insurer most recently obtained. When an insurer has such a report for a particular driver, the insurer is not required to obtain a new MVR for that driver. Additionally, nothing in this section shall be construed to preclude an insurer from granting a discount based on a driving record longer than 36 months as long as the insurer verifies a driver's record as set forth in this section;

(B) the principally at-fault accidents, as determined pursuant to section 2632.13;

(C) all convictions for violations of Vehicle Code Sections 23140, 23152, or 23153 must be treated as the highest surchargeable violation; however, other Vehicle Code convictions may receive equal treatment.

(2) "Second Mandatory Factor" as used in Subchapter 4.7, is the number of miles he or she drives annually, per California Insurance Code Section 1861.02(a)(2).

Except as provided in section (c)(2)(F) this factor means the estimated annual mileage for the insured vehicle during the 12 month period following the inception of the policy. Insurers may not retroactively or prospectively adjust premiums based on actual miles driven unless notice is provided to the policyholder prior to the effective date of the policy. Estimated annual mileage shall be determined only as follows and except as otherwise set forth in this section, an insurer shall use the applicant's estimated annual mileage:

(A) For new business or vehicles added during the term of the policy:

(i) During the application process, or when a vehicle is being added or replaced during the term of the policy, the applicant shall provide the miles he or she expects each vehicle to be insured will be driven during the 12 month period following policy inception. The insurer may also require or request, as set forth in sections (C) and (D) below, information from the applicant during this process necessary to support the estimate.

(ii) If an applicant does not provide the estimated annual miles he or she expects to drive or the information required pursuant to (C) below or if the information provided does not support the applicant's estimated annual miles, an insurer may issue a policy using a reasonable objective mileage estimate based upon the information provided pursuant to sections (C), (D) and (E) below or, if a reasonable estimate cannot be determined, using a default annual mileage figure which has been filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02. Before doing so, the insurer shall inform the applicant of the mileage figure which it will use to rate the policy.

(iii) For the purposes of this section, when one or more vehicles are added during the term of the policy, "applicant" shall be construed to mean "policyholder" when the context so requires.

(B) For renewal business:

(i) During the renewal process, an insurer shall, at least every three years, request a policyholder to provide the estimated annual miles he or she expects each vehicle to be insured will be driven during the 12 month period following policy renewal. The insurer may also require or request, as set forth in sections (C) and (D) below, information from the policyholder necessary to support the estimate. The request may be made with the renewal notice. An insurer may, if not requesting updated information, use the mileage figure from the expiring policy or

use a reasonable objective mileage estimate solely based upon the information set forth in (C), (D) and (E) below.

(ii) If, during the renewal process the insurer receives none or only some of the information requested in (i) above:

1. The insurer may renew the policy using either the mileage figure from the expiring policy or using a reasonable objective mileage estimate based upon the information set forth in (C), (D) and (E) below, whichever it determines is the most reasonable.

2. The insurer may, if it lacks sufficient information to determine a reasonable estimate, renew the policy using a default annual mileage figure which has been filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02.

(iii) Before renewing a policy, the insurer shall provide the applicant written notice that highlights the mileage figure for the expiring policy and the mileage figure for the renewal policy.

(C) An insurer may require an applicant or policyholder to provide the following information:

1. If the vehicle is used for commute purposes, the location of the workplace, school, or other destination where the vehicle will be driven and, if applicable, an estimate of the number of miles the vehicle will be driven in the course of employment;

2. The number of days per week the vehicle will be used for commuting;

3. An estimate of the number of miles to be driven for pleasure or other purposes;

4. The approximate total number of miles driven for any time period within, but not to exceed, the previous 24 months;

5. The reason for any differences between the estimate for the upcoming 12 months and the miles driven the previous 12 months; and

6. The current odometer reading of the vehicle to be insured.

(D) An insurer may request but shall not require an applicant or policyholder to provide the following information:

1. Service records which document the odometer reading of the vehicle to be insured.

2. The use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle mileage information.

(E) 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 miles driven.

(F) The Commissioner finds that basing the Second Mandatory Rating Factor on verified actual miles driven, rather than on estimated miles driven, may enable policyholders to reduce their premiums by driving less and create incentives for innovation in automobile insurance rating in California with numerous attendant benefits. Therefore, notwithstanding sections (c)(2)(A), (B), (C), (D) and (E), an insurer may offer an automobile insurance program that uses verified actual mileage rather than estimated mileage to determine the Second Mandatory Factor. An insurer may offer a verified actual mileage program instead of, or in addition to, an estimated

mileage program offered pursuant to sections (c)(2)(A), (B), (C), (D) and (E). An insurer offering both estimation and verification methods for determining mileage for the second mandatory rating factor may require an insured who chooses verified mileage for one vehicle to choose verified mileage for all vehicles insured under the same policy.

(i) For any verified mileage program an insurer offers pursuant to section (c)(2)(F), the Second Mandatory Factor shall be verified by one or more of the following methods as specified by the insurer in its class plan:

1. by odometer readings of the insured vehicle or vehicles, made by an employee of the insurer, an agent of the insurer, or a third-party vendor retained by the insurer;

2. by odometer readings recorded by an automotive repair dealer, as defined by section 9880.1 of the Business and Professions Code, in the ordinary course of the business of servicing a vehicle, provided to the insurer by the policyholder or by a vendor retained by the insurer.

3. by odometer readings obtained from smog check stations licensed by the California Bureau of Automotive Repair, from the California Department of Motor Vehicles, or any other governmental agency that maintains public records of vehicle odometer readings. Any odometer readings obtained pursuant to this section shall be provided to the insurer by the policyholder, the California Bureau of Automotive Repair, the California Department of Motor Vehicles, any government agency that maintains odometer readings, or a vendor retained by the insurer.

4. by odometer readings reported to the insurer by the insured or by an agent of the insured.

5. by a technological device pursuant to section (c)(2)(D)(2).

a. Except as provided in subsection b.:

(I) An insurer shall only use a technological device to collect information for determining actual miles driven under the Second Mandatory Factor.

(II) An insurer shall not use a technological device to collect or store information about the location of the insured vehicle.

b. Nothing in this section shall 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.

6. by any other method approved by the Commissioner.

(ii) An insurer employing verified actual mileage pursuant to section 2632.5(c) may retroactively or prospectively adjust premiums based on actual miles driven provided notice is given to the policyholder prior to the effective date of the policy.

(iii) An insurer that offers both a mileage estimation program and a verified actual mileage program may provide a discount to a policyholder who participates in a verified actual mileage program. Any discount provided under section (c)(2)(F) shall be based on demonstrated cost savings or actuarial accuracy associated with obtaining and using actual miles driven rather than estimated mileage. If an insurer offers a discount under section (c)(2)(F) all policyholders in the verified actual mileage program, regardless of the method of verification used, shall qualify for a discount.

(iv) If an insurer offers both an estimated mileage program and a verified actual mileage program, participation by a policyholder in a program to determine actual mileage shall be voluntary. An insurer offering an estimated mileage program shall not require any policyholder to participate in a program to provide verified actual mileage.

(v) An insurer employing verified actual mileage pursuant to section (c)(2)(F) shall make available all verification methods it offers to all insureds equally. No insurer shall offer or use a verification method that is not uniformly offered to the public.

(vi) An insurer offering both a mileage estimation program and a verified actual mileage program shall include both programs in one class plan.

(vii) An insurer employing verified actual mileage pursuant to section (c)(2)(F) may offer the policyholder an option to purchase coverage for a specified price per mile (Price Per Mile Option) provided the Price Per Mile Option complies with all applicable laws.

(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.

(G) All mileage rating rules that direct the selection of a mileage rating relativity shall be filed with and approved by the Commissioner in a class plan filing. This includes use of multiple mileage rating bands and use of default and/or average mileage rating relativities.

(H) In no event shall an insurer require a policyholder to provide information from a prior insurer to confirm mileage estimated or driven.

(I) Nothing in this section shall be construed to affect the ability of an insurer to decline to issue, cancel, or nonrenew a policy in accordance with any other applicable provision of California law.

(3) "Third Mandatory Factor" as used in Subchapter 4.7, is the number of years of driving experience the insured has, per California Insurance Code Section 1861.02(a)(3). This factor means number of years of experience that the driver rated on the insured vehicle has been licensed to drive in any jurisdiction. To the extent that a policy provides coverage for motorcycles or motor-driven cycles, as defined in California Vehicle Code Sections 400 and 405, this factor shall refer to the number of years that the driver rated on the insured vehicle has been licensed to drive such vehicles in any jurisdiction.

(d) In addition to the rating factors set forth in subdivision (c), an insurer's class plan, and all rates and premiums determined in accordance therewith, may utilize the following optional rating factors (the "Optional Factors"):

(1) Type of vehicle;

(2) Vehicle performance capabilities, including alterations made subsequent to original manufacture;

(3) Type of use of vehicle (pleasure only, commute, business, farm, commute mileage, etc.);

- (4) Percentage use of the vehicle by the rated driver;
- (5) Multi-vehicle households;
- (6) Academic standing of the rated driver;
- (7) Completion of driver training or defensive driving courses by the rated driver;
- (8) Vehicle characteristics, including engine size, safety and protective devices, damageability, repairability, and theft deterrent devices;
- (9) Gender of the rated driver;
- (10) Marital status of the rated driver;
- (11) Persistency:

(A) At policy renewal, persistency credit may be applied by an insurer or affiliate for the current named insured. Persistency credit may also be applied when issuing a separate new automobile policy for a person who is not the named insured on a policy, but is otherwise currently insured.

(B) An insurer shall not apply a persistency credit for a new policy issued to an individual, unless that individual is currently insured. Nor shall any insurer apply persistency, at any time, when based in whole or in part upon automobile insurance coverage provided by a non-affiliated insurer.

(C) This subsection shall not be construed to expand or restrict an insurer's ability to obtain evidence of a person's driving safety record. However, when such evidence concerns proof of prior insurance, this subsection shall apply.

(D) For purposes of this subsection, "currently insured" means a person who is presently covered for automobile insurance by the insurer or affiliate, other than as an unnamed person who is covered under a permissive user or similar provision.

(E) As used in this subsection, "affiliate" has the same meaning as defined in California Insurance Code section 1215.

- (12) Non-smoker;

(13) 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, Martial Status, Driver Training, and Academic Status;

- (14) Multi-policies with the same, or an affiliated, company;

(15) Relative claims frequency. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims frequency. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed;

(16) Relative claims severity. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the

census tracts in the state. Each band shall contain areas with a similar average claims severity. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed.

(e) Except as expressly provided in this subsection and in section 2632.5(c)(2)(F)(vii), 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.

NOTE: Authority cited: Section 1861.02, Insurance Code; and CalFarm Insurance Company v. Deukmejian (1989) 48 Cal. 3d 805. Reference: Sections 1861.02, 1861.025, 1861.05, 11628 and 11628.3, Insurance Code.