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July 8, 2009

Daniel M. Goodell
Senior Staff Counsel
California Department of Insurance
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San Francisco, California 94105
Email: PubComments.2008-0200@insurance.ca.gov

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

Dear Mr. Goodell:

The Personal Insurance Federation of California (PIFC), representing State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and the National Association of Mutual Insurance Companies, thanks the California Department of Insurance (CDI) for an opportunity to comment on the above-referenced proposed modifications (the "Proposed Regulations").

PIFC greatly appreciates the CDI's interest in improving the auto insurance rating system in California. The concept of rating upon the exact number of miles actually driven, instead of today's heavy reliance upon estimated annual mileage, represents an important positive step in auto rating.

One theme emerges in our comments on the Proposed Regulations. The Proposed Regulations would establish many specific requirements for Pay-Drive programs that make market adoption less likely. We hope the CDI will modify the Proposed Regulations to eliminate the various blanket prohibitions on the CDI's own authority to review carrier proposals for Pay-Drive programs. The Proposed Regulations should, instead, encourage a multitude of different Pay-Drive approaches under the safety of CDI review and approval.

The new "Price Per Mile (PPM)" concept could lead to innovative programs, but also illustrates the difficulty of creating a workable, meaningful Pay-Drive program within the existing statutory and regulatory framework. Having said that, we do see this as a positive first step in the process, and we respectfully submit the following comments for your consideration.

Section 2632.5

Section 2632.5 (c)(2)(E) *An insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair to estimate annual miles driven.*

We suggest not limiting this section to a particular government agency, as other government agencies may, now or in the future, have the relevant mileage information. We suggest a concept such as the following:

> **Section 2632.5 (c)(2)(E)** An insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair **or other governmental agency that may hold the relevant mileage information** to estimate annual miles driven.

Section 2632.5 (c)(2)(F)(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:*

Section 2632.5 (c)(2)(F)(i) 3. *by odometer readings obtained from smog check stations licensed by the California Bureau of Automotive Repair provided to the insurer by the policyholder, the California Bureau of Automotive Repair, or a vendor retained by the insurer.*

As stated above in **Section 2632.5 (c)(2)(E)**, we suggest the following:

> **Section 2632.5 (c)(2)(F)(i) 3.** by odometer readings obtained from smog check stations licensed by the California Bureau of Automotive Repair provided to the insurer by the policyholder, the California Bureau of Automotive Repair **or other governmental agency that may hold the relevant mileage information**, or a vendor retained by the insurer.

Section 2632.5 (c)(2)(F)(i) 5. *by a technological device provided to the insured pursuant to section (c)(2)(D). A technological device shall not be used to collect information about the location of the insured vehicle. Information collected by a technological device shall only be used to calculate automobile rates.*

We understand the CDI's desire to prohibit insurers from using technological devices to rate based on driver location. However, the Proposed Regulations are overly broad and would prohibit safety devices and services currently offered to consumers for non-rating purposes. Features such as "On Star" and similar services that activate in an emergency situation, features and services that alert a towing service when needed or a device that allows a stolen car to be tracked all provide location information. The Proposed Regulations would prohibit offering these services due to use of location information. We recommend that the CDI preserve the ability of carriers to use technological services or devices that have these additional important safety features and narrowly tailor the prohibition as suggested below:

Section 2632.5 (c)(2)(F)(i) 5. by a technological device provided to the insured pursuant to section (c)(2)(D). ~~A technological device shall not be used to collect information about the location of the insured vehicle~~. **Information collected by a technological device about the location of the insured vehicle shall not be used in rating or, unless expressly permitted by the insured or registered vehicle owner, to settle claims.** . ~~Information collected by a technological device shall only be used to calculate automobile rates.~~

Section 2632.5 (c)(2)(F)(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, the same discount shall be provided to all policyholders in the verified actual mileage program, regardless of the method of verification used.*

Requiring that an insurer provide a discount to all policyholders who participate in a mileage-based program is acceptable, but there should not be a requirement that the discount be the same for all verification methods if a carrier satisfies the department's requirements for demonstrated cost savings or actuarial accuracy. The quality of the information derived from different methods of verification is a factor in pricing the verified mileage program and the insurer should be allowed to justify the different discounts based upon the type and quality of verification mechanism employed.

We support the development of innovative insurance options but do not believe there will be widespread adoption of Pay-Drive concepts if such rigid requirements are included. A better alternative would be to allow CDI discretion in reviewing innovative proposals, without a blanket prohibition. There is no reason for the CDI to eliminate its own ability to exercise sound judgment before seeing the evidence for an alternate approach.

Section 2632.5 (c)(2)(F)(v) *An insurer employing verified actual mileage pursuant to section (c)(2)(F) shall market and make available all verification methods it offers to all insureds equally. No insurer shall offer or use a verification method that is not uniformly promoted and offered to the public.*

We would greatly appreciate an opportunity to discuss whether this proposal is within the Commissioner's power. Section 1861.02, subdivision (b), relates only to the rights of a qualified Good Driver and a requirement that an insured shall not refuse to offer and sell a policy to one who qualifies under that definition. A positive first step would be for the CDI to explain what is motivating this requirement and how it fulfills some necessity. A better outcome would be to allow carriers to file programs for CDI review to assess discriminatory impact; a blanket prohibition will eliminate innovation, not encourage it.

Setting aside the scope of authority issue, we have genuine concerns that this section could discourage the adoption of verified mileage programs. We question whether the verified mileage program should - even if determined legally permissible - be required to be marketed to all insureds equally. Company's individual business plans dictate their marketing strategies and this regulation attempts to micromanage those strategies to intolerable levels of second guessing. The CDI should reserve the authority to assess carrier proposals, not outlaw itself from considering new developments.

The Proposed Regulations, in particular, should not prohibit pilot programs to validate new program approaches involving a smaller group of insureds before offering to millions of customers simultaneously. The requirement to make available all validation methods to all insureds and to only use a verification method uniformly offered to the public, will stifle the very innovation this program seeks to promote. We understand the need for non-discrimination protections and will support the CDI's efforts in this regard; however, legitimate, non-discriminatory practices should be available for review by the CDI -- not prohibited with overly-broad language. There is no reason for the CDI to eliminate its ability to exercise sound judgment with these rules.

Section *2632.5 (c)(2)(F)(vi)* *An insurer employing a verified actual mileage program shall employ multiple mileage rating bands with the class plan for that program and each mileage band shall be associated with a relativity that is determined specifically for that mileage band. An insurer shall employ at least one mileage band for miles driven between zero and 3,999 miles. An insurer shall employ at least six mileage bands for miles driven between 4,000 and 15,999 miles. An insurer shall employ at least one mileage band for 16,000 miles and above.*

The proposed minimum mileage bands appear arbitrary and we question the necessity of including them in the Proposed Regulation. What is the basis of these specific bands? Did the CDI conduct an internal study that should be made public as part of this rule-making? Did the CDI consider the programming and systems costs associated with this approach? We would greatly appreciate additional information on any justification behind this approach.

It is unlikely that these specific bands would work under the varying business models of every company. Restrictions on the number of the bands and, more importantly, how these bands should be structured, will have the undesirable outcome of fewer companies choosing to participate in Pay-Drive programs. We suggest that insurers should have the flexibility to apply different bands, or at least justify its selections to CDI staff. This will promote innovation and ensure that the bands used by a carrier best fit with their overall product and pricing design.

The Insurance Commissioner has publicly stated his desire for market adoption of Pay-Drive concepts. The CDI's rules should not be an impediment to such market adoption.

Section 2632.5 (c)(2)(F)(vii) *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 combine the Second Mandatory Rating Factor with any other optional factor as provided in section (c)(2)(F), 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.

We have long held the position that allowing greater interaction of auto rating factors would produce more effective rating tools, and we appreciate that the CDI is proposing to permit the combination of mileage with other rating factors when employing a verified mileage program. However, we see no public policy reason to limit the interaction of factors to the verified mileage option, nor to the optional factors alone. We recommend that the CDI consider allowing, for both verified and non-verified, mileage to be combined with all rating factors. If each factor must stand on its own individual weight, and comply with the weight re-order rules, there is really no point in limiting the combinations.

We have significant concerns with the language in the second sentence: *"If an insurer elects to combine the Second Mandatory Rating Factor with any other optional factor as provided in section (c)(2)(F), 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."* This is similar to the language used in 2632.5 (e) (discussed below). CDI developed an underground "Years Licensed template" based on this language which resulted in significant disruption and departure from cost-based pricing worse than the actual text of the auto rating factor regulations. Insurance companies are struggling with the implementation under the current underground template and strongly oppose similar language being adopted in the Proposed Regulation.

This sentence was added to 2632.5(e) in 2006. The explanation for its purpose, as described in the Final Statement of Reasons, read in part, "Thus the mandatory factors of driving safety record, annual mileage driven and years of driving experience cannot be outweighed by any individual optional rating factor – even when an optional factor is lawfully combined with years of driving experience. This revision represents a clarifying change and is reasonably necessary to uphold the requirement of Proposition 103 that the mandatory factors must be given greater importance than the optional rating factors adopted by the Commissioner." The language suggested below, and in 2632.5(e), clearly affirms that statement.

We offer the following language that maintains the Commissioner's complete authority to review class plan filings and the Commissioner's interpretation of the Proposition 103 weight rules, and also enables significantly more innovation in auto rating:

> **Section 2632.5 (c)(2)(F)(vii)** Mandatory and optional rating factors may be combined with one another, with the exception of Claims Frequency and Claims Severity. No optional factor can yield a weight that is higher than the third mandatory factor. ~~If an insurer elects to combine the Second Mandatory Rating Factor with any other optional factor as provided in section (c)(2)(F), 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.~~

Section 2632.5(c)(2)(G) – "Price Per Mile Option"

This amendment to the Proposed Regulations outlines an entirely new Pay-Drive option, the "Price Per Mile (PPM)." We appreciate the Commissioner's dedication to innovation and technology as well as the staff-work behind presenting this detailed proposal. Our member companies continue to review and work through the many details of this proposal and we hope to have another opportunity to offer full comments.

We take this opportunity primarily to raise concerns and questions. Our internal discussions revealed great enthusiasm for a PPM program, but the public comment time frame precludes a full analysis at this time. We hope the CDI will accept these comments knowing they are preliminary, while we continue our analysis of how to structure a PPM that the market would actually implement.

Although the PPM program is structured as an option under a verified mileage program, it does dictate specific requirements for a PPM program. We are concerned about the detailed, rigid approach to PPM programs which could limit the number of carriers willing to implement them. We recommend adopting a set of regulations allowing innovation not currently foreseeable by CDI staff, rather than mandating one detailed program option that only fits some of the market participants. At a minimum, the CDI should reserve its own authority to approve carrier filings rather than limit itself.

While pricing insurance for actual miles driven should improve rating accuracy and provide incentives and discounts for drivers based on how much they drive, the proposed PPM option will likely require sophisticated systems and technology to accurately and timely track mileage. Requiring such technology will delay market adoption of PPM programs, especially if the prior approval regulations prevent cost recovery of the technology acquisition costs. Claims processing and verifying coverage where it may not be clear whether a policy was in effect at the time of a claim could also pose problems.

Section 2632.5 (c)(2) (G)(ii) *"Automobile liability coverage" as defined in Insurance Code Section 660(b) shall be offered and provided for a set time period. All other coverages, including "automobile physical damage coverage" as defined in Insurance Code Section 660(c) and "automobile collision coverage" as defined in Insurance Code Section 660(d), may be offered on a basis other than for a set time period.*

The concept of separate policies for liability and other coverages, one based upon time, another on miles, is one that requires significant, costly changes. It will likely require entire systems changes to accommodate new contracts, payment method and timing, claims reporting and processing and the different cancellation notification requirements.

Section 2632.5 (c)(2)(G)(iii)*The insurer shall provide 24-hour access to any insured who participates in a Price Per Mile Option to allow the insured to purchase additional miles if needed.*

This requirement will reduce the number of carriers adopting PPM programs. Incurring the technology and service costs to enable 24-hour access for a PPM program is a major consideration without certainty of cost recovery. We respectfully submit that few, if any, carriers would file for a PPM-related rate change when the prior approval regulations would likely force rates down even further, rather than provide rate relief for PPM costs. Absent rate relief, few carriers will implement technology-dependent PPM programs.

Section 2632.5 (c)(2)(G)(viii) *The insurer shall notify the insured to report his or her odometer reading as provided in (c)(2)(G)(iv), by one or more of the following methods initiated by the insurer or its agent or vendor:*

This list seems overly prescriptive and raises the question whether this list also applies to estimated mileage programs.

Section 2632.5 (c)(2)(G)(xi)

We applaud the innovation and the effort to present options to encourage Pay-Drive. And on their face, these three options seem reasonable, though we are finding it more difficult to anticipate the actual implementation. We question whether more discussion and other options should be explored by the CDI before adopting such a detailed regulatory scheme that may serve as a disincentive for innovation within companies.

Section 2632.5 (c)(2)(G)(xi)(2) *Hybrid Time Basis and Miles Basis Policy, with notice of expiration provided at time of policy purchase. Automobile liability coverage is offered for a set time period. If the block of miles purchased by the insured expires and the insured does not purchase additional miles, all coverages other than automobile liability coverage will expire, provided the insurer gives notice pursuant to California Insurance Code Section 663. An insurer may comply with the notice requirements of California Insurance Code Section 663 if it gives notice to the insured at the time of purchase of the policy that specified coverages other than automobile liability coverage will expire upon exhaustion of the purchased miles. Such notice shall be effective only if the insured agrees in writing at the time of purchase of the policy to the terms of the notice and acknowledges his or her understanding of the consequences of exceeding the purchased miles.*

It is not clear how the insurer would be made aware that the purchased miles had expired. As mentioned throughout our comments, technological devices could provide this information timely and accurately, but may not be offered by all insurers or available for all vehicles – thereby creating conflict with other provisions of the Proposed Regulations. Absent technology, carriers would need to rely on the insured to accurately and timely report mileage expiration. This creates the obvious potential of problems with claims reporting, processing and possible fraud.

This section also expressly provides different, and arguably more lenient, non-renewal or cancellation rules for certain PPM programs. Is it equitable to treat noticing requirements differently for one program versus another? We understand the difficulty in developing an innovative program under the constraints of the current statutory and regulatory framework, but the proposed PPM program should not create an unlevel playing field for other, as yet undeveloped mileage verification programs, or for that matter, for existing estimated mileage programs. We would greatly appreciate CDI staff thoughts about how the Proposed Regulations comply with existing statutory requirements related to noticing provisions (Insurance Code Section 663).

On a technical note, auto insurance policies today may be purchased electronically and the agreement should be allowed in the same form. A paper form should not be required. We suggest the following:

> **Section 2632.5 (c)(2)(G)(xi)(2)** Hybrid Time Basis and Miles Basis Policy, with notice of expiration provided at time of policy purchase. Automobile liability coverage is offered for a set time period. If the block of miles purchased by the insured expires and the insured does not purchase additional miles, all coverages other than automobile liability coverage will expire, provided the insurer gives notice pursuant to California Insurance Code Section 663. An insurer may comply with the notice requirements of California Insurance Code Section 663 if it gives notice to the insured at the time of purchase of the policy that specified coverages other than automobile liability coverage will expire upon exhaustion of the purchased miles. Such notice shall be effective only if the insured agrees in writing**, or in the same format as the policy is being purchased,** at the time of purchase of the policy to the terms of the notice and acknowledges his or her understanding of the consequences of exceeding the purchased miles.

Section 2632.5 (c)(2)(G)(xi)(3)*Hybrid Time Basis and Miles Basis Policy with notice of expiration provided at time the insurer determines that purchased miles have been exhausted. Automobile liability coverage is offered for a set period of time. If the block of miles purchased by the insured expires and the insured does not purchase additional miles, all coverages other than automobile liability coverage will expire, provided the insurer gives notice pursuant to California Insurance Code Section 663. An insurer may comply with the notice requirements of California Insurance Code Section 663 if it gives notice to the insured at the time the insurer determines that the purchased miles have been exhausted. The coverages subject to expiration will expire 30 days following the insurer's notice (in the case of nonrenewal) and 20 days following the insurer's notice (in the case of an offer of renewal), unless the insured purchases more miles.*

Of the three options this one may be the most problematic. By requiring notice at the time the insurer determines that purchased miles have been exhausted, the burden is placed on the insurer to know the mileage. Unless a technological device capable of tracking and reporting mileage to the insured is in place, carriers would be unable to make such a determination. By guaranteeing coverage for a 20 or 30-day period beyond the notice, this requirement places no

responsibility on the insured, and in fact incentivizes the insured to delay reporting the expired mileage.

Section 2632.5 (c)(2)(H) *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.*

We would appreciate more clarification about what will need to be filed when a company is ready to roll out a new Pay-Drive program, i.e.:

> Will a company be required to submit an entire class plan submission at that time, including the sequential analysis?
>
> If a company chooses to use separate mileage bands for actual and estimated miles, would it need to file as two separate groups?

Our best guess is that few carriers would file a Pay-Drive program if it requires a companion rate filing under the prior approval regulations, particularly given that rate filings take so long for approval and often involve rate suppression. In addition, to encourage Pay-Drive submissions, carriers should be allowed to file a Pay-Drive program independent of class plan changes without a full class plan filing.

Section 2632.5 (c)(2)(I) *In no event shall an insurer require a policyholder to provide information from a prior insurer to confirm mileage estimated or driven.*

We request the language be revised to clarify that an insurer may request, but not require, an applicant seek the information:

> **Section 2632.5 (c)(2)(I) An insurer may request but may not** ~~In no event shall an insurer~~ require a policyholder to provide information from a prior insurer to confirm mileage estimated or driven.

Section 2632.5(e) *~~The~~ Except as expressly provided in section 2632.5(e) and in section 2632.5(c)(2)(F)(vii), the three mandatory factors may not be combined with any other factor, ~~except~~. 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 any other optional factor as provided in this Section, 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.*

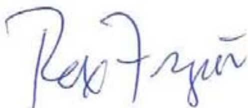
This section places unnecessary limitations on auto insurance rating that are not required by Proposition 103 and which, we respectfully submit, run counter to Proposition 103's express purpose of stimulating market competition. The limitation on combining mandatory and optional factors should be removed and insurers should be allowed to use interactions between factors where they can demonstrate a substantial relationship to the risk of loss, all subject to CDI review. The second sentence, should be deleted, as discussed under Section 2632.5(c)(2)(F)(vii). This sentence, added in 2006, and purported to be necessary to ensure that a stand-alone optional factor could not outweigh a mandatory factor, has resulted in a tension between two mandatory factors: years licensed and annual mileage. That sentence is not necessary for compliance with Proposition 103 and causes unfair cross-subsidies of some drivers by others. The previous version of the ARF regulations did not contain the second sentence and yet was upheld in court without that requirement in Spanish Speaking Citizens' Foundation, Inc. v. Low, 85 Cal.App.4th 1179 (2000). The following suggested language, which the Commissioner clearly has the power to adopt under Proposition 103, would promote needed market innovation within the Pay-Drive concept:

> 2632.5(e) Mandatory and optional rating factors may be combined with one another, with the exception of Claims Frequency and Claims Severity. No optional factor may yield a weight that is higher than the third mandatory factor.

PIFC greatly appreciates the opportunity to comment on the revised Proposed Regulation. We applaud CDI's efforts to create a Pay-Drive program for California drivers and we are hopeful that, in proceeding, the CDI will make further revisions to the Proposed Regulations to increase flexibility and the likelihood of market adoption. Such a program will need to eliminate the many proposed, unnecessary restrictions, especially restrictions on combining rating factors that impede development of additional discounts and market competition. In addition, we cannot overstate the negative impact of the overly prescriptive elements of the Proposed Regulations. If these remain in the proposal, we question the viability of the Pay-Drive concept in California.

We look forward to continuing to work with you toward developing a vibrant Pay-Drive concept.

Sincerely,
PERSONAL INSURANCE FEDERATION OF CALIFORNIA



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