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STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105
RH06091489 ~~April 14, 2006~~ ~~June 27, 2006~~ August 31, 2006
PROPOSED REGULATION TEXT¹
Mileage Verification
 Section 2632.5 Rating Factors.

(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)

(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). 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 adjust premiums based on actual miles driven unless notice is provided to the policy holder prior to the effective date of the policy.

~~Estimated annual mileage shall be determined only as follows:~~

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

~~(i) At the inception of a policy During the application process or when one or more vehicle (s) is/are being added during the term of the policy, an insurer shall require an applicant to provide the applicant shall provide the miles he or she expects to drive the insured each vehicle to be insured will be driven during the 12-month period following policy inception, and reasonable information necessary to support the estimate. The insurer may also require reasonable information from the applicant during the application process, as set forth below, necessary to support the estimate. Except as otherwise set forth in this section, an insurer shall use the applicant's estimated annual mileage.:~~

~~(ii) "Reasonable information" consists of the following: the location of the applicant's workplace if the vehicle is used for commute purposes, the number of days per week the vehicle is used for commuting, an estimate of the number of miles driven for pleasure or other purposes, the approximate total number of miles driven the previous year, and the reason for any differences in the estimate for the upcoming year and the miles driven the previous year.~~

- ~~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, the approximate 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 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;~~
- ~~6. The current odometer reading of the vehicle to be insured; and~~

~~7. The approximate date the vehicle was acquired by the applicant.~~

~~An insurer may request but shall not require service records which document the odometer reading.~~

~~(ii) To substantiate the estimated annual mileage, an insurer may require all applicants to provide, at policy inception, the current odometer reading of the vehicle to be insured or the insurer may obtain the odometer reading from the California Department of Motor Vehicles smog certification program;~~

~~(iii) If an insurer markets using an independent or captive agency system, and an applicant meets with an agent in connection with the insurance application, the insurer may require the agent to verify the odometer reading of the vehicle to be insured under the policy, and the applicant shall allow the agent to do so;~~

~~(iv) (iii) If an applicant does not provide the information set forth in requested pursuant to (i) and (ii) above, and the insurer has no other means reasonably to estimate the miles to be driven during the 12 month period following inception of the policy, and the insurer has clearly indicated the consequences of not providing that information, the insurer may issue the policy using a default annual mileage figure, which has been filed with and approved by the Commissioner, or if the information provided does not support the applicant's estimated annual miles, and the insurer has informed the applicant of the mileage figure which it will use to rate the policy, an insurer may issue a policy using a reasonable objective mileage estimate based upon information in its possession 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. Upon receipt of the information set forth in (i) and (ii) above, the policy shall be rated using that information. The insurer may choose to re-rate all policies as of the date it receives the information, or as of policy inception. However, an insurer shall apply the same method for every policy.~~

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

~~(vi) In no event shall an insurer rate a policy unilaterally changing the mileage estimate provided without notifying the applicant of that change and providing the applicant a reasonable opportunity, no less than fifteen days from the date of mailing of that notice, to challenge the insurer's determination.~~

~~(vii) An insurer may request but shall not require an applicant to provide prior documentation, such as prior vehicle maintenance records or prior smog certificates, in order to confirm mileage driven because, for a variety of reasons, applicants may not have access to this documentation.~~

~~(viii) (v) In no event shall an insurer require an applicant to provide information from a prior insurer to confirm mileage estimated or driven.~~

~~(vi) 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.~~

~~(B) For renewal business:~~

~~(i) Prior to policy During the renewal process, an insurer shall, at least every three years, require a policyholder to provide confirm the miles he or she expects to drive the insured each vehicle to be insured will be driven during the 12 month period following policy inception renewal, and reasonable information necessary to support the estimate. The insurer may also require reasonable information from the policyholder during the renewal process, as set forth below, necessary to support the estimate. An insurer may, if not conducting a three-year verification, use the mileage figure from the expiring policy. Except as otherwise set forth in this section, an insurer shall use the policyholder's estimated annual mileage.~~

~~(ii) "Reasonable information" consists of the following: the location of the applicant's workplace if the vehicle is used for commute purposes, the number of days per week the vehicle is used for commuting, an estimate of the number of miles driven for pleasure or other purposes, the approximate total number of miles driven the previous year, and the reason for any differences in the estimate for the upcoming year and the miles driven the previous year:~~

- ~~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, the approximate 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 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.~~

~~An insurer may request but shall not require service records which document the odometer reading:~~

~~(ii) To substantiate the estimated annual mileage, an insurer may require all policyholders to provide, at policy renewal, the current odometer reading of the vehicle to be insured or the insurer may obtain the odometer reading from the California Department of Motor Vehicles smog certification program;~~

~~(iii) If an insurer markets using an independent or captive agency system, and a policyholder meets with an agent in connection with policy renewal, the insurer may require the agent to verify the odometer reading of the vehicle insured under the policy, and the policyholder shall allow the agent to do so;~~

~~(iv) (iii) If, during the renewal process:~~

~~1. The insurer receives no confirmation as provided in (i) above, the insurer may renew the policy using the mileage figure used for the previous policy;~~

~~2. A policyholder does not provide the information set forth in requested pursuant to (i) and (ii) above and the insurer has no other means reasonably to estimate the miles to be driven during the 12 month period following renewal of the policy, and the insurer has clearly indicated the consequences of not providing that information, and the insurer has informed the policyholder of the mileage figure it will use to rate the policy, the insurer may 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;~~

~~3. A policyholder provides the information requested pursuant to (i) and (ii) above, but the reasonable information establishes that the estimate is not reliable and the insurer has no other means reasonably to estimate the miles to be driven during the 12 month period following renewal of the policy, and the insurer has clearly indicated the consequences of not providing that information, the insurer may renew the policy using a default annual mileage figure which has been filed with and approved by the Commissioner. In the event reasonable information establishes that an explanation for more than one policy period has not been reliable, the insurer may require the policyholder to provide odometer readings every three months;~~

~~Upon receipt of the information set forth in (i) and (ii) above, the policy shall be rated using that information. The insurer may choose to re-rate all policies as of the date it receives the information, or as of policy inception. However, an insurer shall apply the same method for every policy;~~

~~(v) (iv) All mileage rating rules that direct the selection of a mileage rating relativity shall be~~

~~filed with and approved by the Commissioner. This includes use of multiple mileage rating bands and use of default and/or average mileage rating relativities.~~

~~(vi) In no event shall an insurer rate a policy unilaterally changing the mileage estimate provided without notifying the policyholder of that change and providing the policyholder a reasonable opportunity, no less than fifteen days from the date of mailing of that notice, to challenge the insurer's determination.~~

~~(vii) An insurer may request but shall not require a policyholder to provide prior documentation, such as prior vehicle maintenance records or prior smog certificates, in order to confirm mileage driven because, for a variety of reasons, policyholders may not have access to this documentation.~~

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

~~(vi) 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. 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 to estimate annual miles driven.

(F) 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.

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

(H) 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.

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

~~¹ Proposed new language is indicated in underline. Additions to the proposed text are indicated in double underline; deletions are indicated in double strike-through.~~ Because of the number of changes proposed to the regulation text over time, including reformatting changes, the Department has stricken the prior text and indicated the proposed new text in *italics*.

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