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Sheet1

SUMMARY OF AND RESPONSE TO PUBLIC COMMENTS MADE BY THE July 14, 2006 DEADLINE: PROPOSED AMENDMENT OF SECTION 2632.5(c)(2): MILEAGE VERIFICATION

Commenter	Date of Comment	Date of Proposed Text Addressed	Comment	Response	Analysis
IBA	6/30/06	Not stated.	Thank you for the changes the Department has made to its proposed "Mileage Verification" regulation; in particular, the decision to eliminate provisions that would have expressly permitted insurers to require independent agents to verify odometer readings if they met with applicants or policyholders. With the elimination of these provisions, IBA West's opposition to the regulations is hereby withdrawn.	Accepted.	
ISO	7/6/06	6/27/06	Revise the last sentence of Section (B)(i) as follows:An insurer may, if not conducting a three year verification, use the annual mileage figure from the expiring policy or use a reasonable objective mileage	Accepted in part and not accepted in part.	Section (B)(i) has been changed. Section (B)(i) of the current version of the regulation permits an insurer that is not conducting a verification with its policyholder to use the mileage figure from the expiring policy or

estimate based upon information in its possession.		use a reasonable objective mileage estimate solely based on the information set forth in (C), (D) and (E). The Department believes these provisions strike a reasonable and realistic balance, providing the insurer several methods to verify estimated mileage without placing an unnecessary burden on an applicant or policyholder.
Revise (B)(iii) as follows: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 or use a reasonable objective mileage estimate based upon information in its possession. 2. The policyholder does not provide the information requested pursuant to (i) and (ii) above, 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 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 and approved by they Commissioner pursuant to California Insurance Code Section 1861.02.	Accepted in part and not accepted in part.	Section (B)(ii) of the regulation has been changed to permit an insurer that receives none or some of the information requested in (i) to, amongst other things, use a reasonable objective mileage estimate based upon the information set forth in (C), (D) and (E) or if the insurer lacks sufficient information to determine a reasonable estimate, to renew the policy using a default annual mileage figure. The Department believes these provisions strike a reasonable and realistic balance, providing the insurer several methods to verify estimated mileage without placing an unnecessary burden on an applicant or policyholder.
The reasons for the	Accepted in	See the immediately

		changes suggested above are: 1) the latest draft of the regulation allows insurers to use a reasonable mileage estimate for new business, but not for renewal business. The revision provides for the use of a reasonable mileage for both new and renewal business and insures that new and renewal business is treated consistently; and 2) provides insurers with the flexibility to use all available information to estimate annual mileage when underwriting and re-underwriting and is not limited to just the specific information provided by the insured.	part and not accepted in part.	preceding response. The regulation has been changed to permit insurers to use reasonable objective mileage for both new and renewal business under certain circumstances. The Commissioner determined to commence this rulemaking proceeding after the Department received a number of insurance industry requests for the development of regulations setting forth methods for determining annual mileage. Moreover, at least one insurer has been sued relative to its practices. That insurer (and others) has supported a regulation that clarifies acceptable practices. Accordingly, as set forth in the Initial Statement of Reasons, the Department believes this regulation is necessary to clarify the types of information an insurer is allowed or required to collect to determine estimated annual mileage to comply with CIC Section 1861.02 (a). (cont'd) (cont'd) The Department believes the regulation strikes a reasonable and realistic balance, providing an insurer several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder.
PIFC	7/14/06	Background on PIFC is provided on p.1.	This comment is irrelevant pursuant to Government	

	Code Section 11346.9(a)(3) as not specifically directed at the action proposed in the Proposed Regulation Text.	
It is critical to make the "miles driven annually" rating factor more predictive than the current regulations allow. CDI is pursuing another regulatory change, RH 03029826, to require insurers to give more "weight" to the "miles driven annually" rating factor. This mandated increase in weight would be well beyond the actual risk of loss associated with the "miles driven annually" rating factor. Therefore, if CDI desires an increase in weight of this rating factor, it is appropriate for CDI to review mileage verification rules with the hope of improving the accuracy of the "miles driven annually" rating factor.	This comment is irrelevant pursuant to Government Code Section 11346.9(a)(3) as not specifically directed at the action proposed in the Proposed Regulation Text.	The purpose of this regulation is to improve the accuracy of annual miles driven.
Continuing need for flexibility: the regulations, as amended, still do not recognize possible future development techniques or technologies to improve mileage verification. More flexibility in the regulations would help carriers regularly pursue more cost-efficient and more accurate mileage assessments. We feel it	Not accepted.	If the commenter believes further information should be allowed, it was not specified and the Department, therefore, cannot consider it.

would be much easier for both the Department and the industry to build such flexibility into the regulations now rather than face the time consuming process to amend it down the road.		
Flexibility can be addressed by either of two methods: 1) the regulations could permit an insurer to petition the CDI in the future to consider new techniques or technologies without the need for an amended regulation; 2) amend the regulations to allow for the use of new technologies by: i) deleting the word "only" in the lead-in sentence to current sections (A) and (B) [Estimated annual mileage shall be determined *only* as follows"] and (ii) by including the following paragraph (C) in Section 2632.5(c)(2): "Nothing set forth in this Section 2632.5(c)(2) shall preclude an insurer from using technologies to determine estimated or actual miles driven provided such technologies have been filed with and approved by the Commissioner. An insurer may file, and the Commissioner may approve, a discount for insureds who choose to use such technologies."	Accepted in part and not accepted in part.	The regulation has been amended to provide, in section (D) that: "[a]n insurer may request but shall not require an applicant or policyholder to provide the following information . . . the use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle mileage information." The Commissioner has determined not to include the discount language at this time.
Renewal Process Simplification: Section (B)(iii) can be simplified and made to function similarly to (A)(iii): "[a] policyholder provides the information requested	Accepted in part and not accepted in part.	While it does not directly address discrepancies that appear during the renewal process, Section (B) permits an insurer to renew a policy based on a reasonable objective

pursuant to (i) and (ii) above, but the information does not support the mileage figure used for the previous policy or the policyholder's more recent estimate and the insurer has informed the policyholder of the mileage figure it will use to rate the policy, the insurer may issue the policy using a reasonable objective mileage estimate based upon the 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."		mileage estimate based upon the information set forth in (C), (D) and (E) or, if the insurer lacks sufficient information to determine a reasonable estimate, using a default annual mileage figure which has been filed with and approved by the Commissioner. As partly suggested by PIFC, subsection (B)(iii) has been changed to require an insurer to provide the applicant written notice that highlights the mileage figure for the expiring policy and the mileage figure for the renewal policy. The Department believes these provisions strike a reasonable and realistic balance, providing the insurer several methods to verify estimated mileage without placing an unnecessary burden on an applicant or policyholder.
Section 2632.5(c)(2)(A)(iv) references "approval by the Commissioner." What would this procedurally entail and what would be the timetable for approval?	Accepted in part and not accepted in part.	Sections (A)(ii) and (B)(ii) 2 of regulation provides that an insurer may use a default annual mileage figure "which has been filed with an approved by the Commissioner." Section (F) further provides that "[a]ll mileage rating rules that direct 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." The procedure that applies to approval of class plans will apply to this

					requirement. The timetable for each matter is the class plan timetable and will depend on the request and based on the factual circumstances.
			In (A)(i), the second to last sentence needs to be amended to address situations where a vehicle is added after the policy is issued. We recommend the following language: "The insurer may also require, during the application process or when a vehicle is being added to the policy, reasonable information, as set forth below, from the applicant or insured that is necessary to support the estimate."	Accepted in part and not accepted in part.	Section (A)(i) provides as follows: "[f]or new business or vehicles added during the term of the policy:"
			Insurers need to be able to determine the miles driven during the previous 12 and 24 months. The following language should be added to (A)(ii)(4) and (B)(ii)(4): "[t]he approximate total number of miles driven the previous 12 and 24 months."	Accepted in part and not accepted in part.	Section (C) permits an insurer to require "[t]he approximate total number of miles driven for any time period within, but not to exceed 24 months."
			In (B)(i) , the term "three-year" should be deleted in "three-year verification" to accommodate those insurers that may choose to verify more frequently.	Accepted.	
Progressive West	7/10/06	6/27/06	Prefatory remarks are provided on p.1.	This comment is irrelevant pursuant to Government Code Section	

	11346.9(a)(3) as not specifically directed at the action proposed in the Proposed Regulation Text.	
We encourage the Department to anticipate the technological tools that will likely be developed by insurers to accurately determine miles driven, and to draft the regulation with enough flexibility to allow insurers to use such tools. We feel it would be much easier for both the Department and the industry to build such flexibility into the regulation now rather than face the time consuming process to amend it down the road.	Accepted in part and not accepted in part.	The regulation provides, in section (D) that: "[a]n insurer may request but shall not require an applicant or policyholder to provide the following information . . . the use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle mileage information."
While the regulation has been revised, the regulation contemplates significantly different processes for new and renewal policies. Some differences make sense, however, the renewal process can be simplified even more and made more like the new business process.	Accepted.	
Technology. We would like to see the regulation amended to be compatible with existing and future technologies that provide efficient, accurate tools for obtaining actual miles driven over a certain time period. This information would be very similar to odometer	Accepted in part, and not accepted in part.	The regulation provides, in section (D) that: "[a]n insurer may request but shall not require an applicant or policyholder to provide the following information . . . the use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle

information. We envision use of technologies as optional at the insured's discretion. We also feel that an insurer should be able to provide a discount to consumers who choose to use the technologies.		mileage information." The Commissioner has determined not to include the discount language at this time.
The current draft regulation can be amended to allow for the use of new technologies by: i) deleting the word "only" in the lead-in sentence to current sections (A) and (B) [Estimated annual mileage shall be determined only as follows"] and (ii) by including the following paragraph (C) in Section 2632.5(c)(2): "Nothing set forth in this Section 2632.5(c)(2) shall preclude an insurer from using technologies to determine estimated or actual miles driven provided such technologies have been filed with and approved by the Commissioner. An insurer may file, and the Commissioner may approve, a discount for insureds who choose to use such technologies."	Accepted in part and not accepted in part.	See the immediately preceding response.
Renewal Process Simplification. While much improved, the June 27 version contemplates a different process for new and renewal policies. We feel that (B)(iii) can be simplified and made to function similarly to (A)(iii). We recommend the following language for (B)(iii)(3): " [a] policyholder provides the	Accepted in part and not accepted in part.	Section (B) permits an insurer to renew a policy based on a reasonable objective mileage estimate based upon the information set forth in (C), (D) and (E) or, if the insurer lacks sufficient information to determine a reasonable estimate, using a default annual mileage figure which has been filed with and approved by the

information requested pursuant to (i) and (ii) above, but the information does not support the mileage figure used for the previous policy or the policyholder's more recent estimate and the insurer has informed the policyholder of the mileage figure it will use to rate the policy, the insurer may issue the policy using a reasonable objective mileage estimate based upon the 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."		Commissioner. As partly suggested by PIFC, subsection (B)(iii) requires an insurer to provide the applicant written notice that highlights the mileage figure for the expiring policy and the mileage figure for the renewal policy. The Department believes these provisions strike a reasonable and realistic balance, providing the insurer several methods to verify estimated mileage without placing an unnecessary burden on an applicant or policyholder.
1. In (A)(i), the second last sentence needs to be amended to address situations where a vehicle is added after the policy is issued. We recommend the following language: "[t]he insurer may also require, during the application process or when a vehicle is being added to the policy, reasonable information, as set forth below, from the applicant or insured that is necessary to support the estimate."	Accepted in part and not accepted in part.	Section (A)(i) provides as follows: "[f]or new business or vehicles added during the term of the policy:"
2. In (A)(ii)(4) and (B)(ii)(4), insurers need to be able to determine the miles driven during the previous 12 months in addition to the previous 24 months. We	Accepted in part and not accepted in part.	Section (C) permits an insurer to require "[t]he approximate total number of miles driven for any time period within, but not to exceed 24 months."

			recommend the following language: "The approximate total number of miles driven the previous 12 and 24 months."		
			3. In (B)(i), we recommend that the term "three-year" in "three-year verification" be deleted. Some insurers may elect to verify more frequently than every three years, so it may be best to refer to the process more generically.	Accepted.	
ACIC	7/14/06	6/27/06	Background on ACIC is provided on p.1.	This comment is irrelevant pursuant to Government Code Section 11346.9(a)(3) as not specifically directed at the action proposed in the Proposed Regulation Text.	
			Section 2632.5(A)(iii) - This section continues to suffer from the basic defect that mileage, as one of the three mandatory rating factors, must be capable of accurate determination in order to adequately rate an automobile insurance policy. Although the proposed revised language recognizes instances in which an applicant may not provide any information to support a mileage estimate or that information provided	Accepted in part and not accepted in part.	Section (H) of the regulation recognizes that declination to issue a policy is an option that may be available to an insurer. As set forth section (H): "[n]othing 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."

may not support the applicant's estimate, the revision falls short of clearly stating a third alternative that is, and should be, available to an insurer where such information is not forthcoming. That third alternative is declination of the application. Declination should be expressly stated in the regulation as a valid alternative response by an insurer because without information supporting a mileage estimate, an insurer cannot comply with Proposition 103 which mandates that policies be rated on the basis of the mandatory factors, including the "number of miles he or she drives annually."		
Section 2632.5(B)(iii) - the revision fails to recognize a critical third alternative which is lawfully available to insurers. That alternative is the option to non-renew the policy. This option is already recognized by the Department in Section 2632.19(b)(1) which defines a "substantial increase in the hazard insured against" as the failure of the insured to provide "information necessary to accurately underwrite or classify the risk." And the "mileage factor" is one of the mandatory factors that must be utilized by insurers to rate policies in compliance with Proposition 103. That objective cannot be	Accepted in part and not accepted in part.	Section (H) of the regulation recognizes that non-renewal of a policy is an option that may be available to an insurer. As set forth section (H): "[n]othing 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." However, the regulation does not permit declination to issue, cancellation or nonrenewal for failure to provide a mileage estimate. See sections (A)(ii) and (B)(ii).

achieved without reasonable verification of the mileage rating factor.		
The Department must take the next regulatory step and recognize in this regulation that insurers have the right to decline, non-renew or cancel policies if the mileage estimate is not provided or totally lacks factual support.	Accepted in part and not accepted in part.	Section (H) of the regulation recognizes that declination to issue, non-renewal or cancellation of a policy may be options available to an insurer. As set forth section (H): "[n]othing 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."
Technology - the revised language continues to ignore the role that technology can play in ascertaining reliable data regarding the miles driven in automobiles. Because insurance follows the vehicle, knowing the amount of use that a vehicle experiences is essential to an accurate assessment of risk, and technology already exists that could be utilized for that purpose if insurers choose to do so. The Department should recognize the existence of that technological capacity and allow for its optional use by insurers. Such use would assure fair treatment of customers in applying the mandatory mileage rating factor to their insurance applications.	Accepted.	The regulation in section (D) provides that: "[a]n insurer may request but shall not require an applicant or policyholder to provide the following information . . . the use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle mileage information."
Nowhere in Proposition 103 is there any mention of "estimates" of miles	Not accepted.	The commenter is failing to examine a relevant Regulations Section. 10

			driven. More importantly, there is no authority even implied for the Department to require both that insureds provide an estimate and that insurers accept it without full authority to verify actual mileage through lawful means available for determining that mileage. Customers are entitled to be rated on the basis of actual mileage, and insurers are obligated to rely on that data in rating automobile insurance policies.		California Code of Regulations Section 2632.5(c)(2), which construes California Insurance Code Section 1861.02(a), provides that the "Second Mandatory Factor," the number of miles the insured drives annually, "means the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy."
State Farm	7/14/06	6/27/06	Prefatory remarks are provided on p.1	This comment is irrelevant pursuant to Government Code Section 11346.9(a)(3) as not specifically directed at the action proposed in the Proposed Regulation Text.	
			Insurers should be expressly permitted to use DMV and other objective data. Prior versions of the proposed regulation permitted insurers to obtain and use DMV smog certification data to verify odometer reading and mileage. This option has been deleted. State Farm suggests that this option be re-inserted. DMV odometer readings are obtained by neutral persons and are potentially the best objective data currently	Accepted in part and not accepted in part.	Section (E) of the regulation has been revised to permit an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair to estimate annual miles driven.

widely available. State Farm suggests a sentence be added at the end of subpart (i)(6) of both parts (A) and (B) as follows: "[a]n insurer may obtain the odometer reading from the ([(A) applicant]/(B) insured], or from the Department of Motor Vehicles Smog Certification program or may obtain a copy of the car registration from the Department of Motor Vehicles stating odometer reading."		
State Farm suggests that the express authorization of the use of objective information be broadened to accommodate future developments that may occur during the effective period of the regulation. This could be accomplished by adding an additional item of "reasonable information" - item 8. in subpart (A)(i) and item 7. in subpart (B)(i) - encompassing "[a]ctual mileage information obtained by a means as to which the insurer has obtained the Commissioner's prior approval."	Not accepted.	The Department believes the information an insurer may require and may request from the customer along with the odometer readings from the California Bureau of Automotive Repair is sufficiently broad to permit an insurer to underwrite the risk without placing an unreasonable burden on the customer. The Department believes the regulation is sufficiently specific so as to provide guidance as to what would be acceptable.
State Farm notes its continued concern with the limitation on what constitutes "reasonable information" as discussed in its comments submitted June 13, 2006.	Not accepted as not directed at the amendments contained in the June 27, 2006 version of the regulation.	This comment reflects an incorporation of comments previously provided which addressed an earlier version of the regulation. Accordingly. no response to the incorporated comments is required in these responses to the current version of the regulation.
As State Farm	Accepted in	This language has been

	understands it, the Department has attempted to address concerns with the following resolution: While "reasonable information" includes "the reason for any differences between the estimate for the upcoming 12 months and the miles driven the previous 12 months," the "information provided" would not "support the applicant's estimated annual miles" ((A)(iii)) if the reason given were implausible or contradicted by other "reasonable information." That is, in the case of an implausible explanation, the insurer would not be required to use the applicant's/policyholder's estimate.	part and not accepted in part.	deleted in the final version of the regulation.
	Another resolution to a concern: If an applicant or policyholder supplies a reasonable explanation of a difference between actual mileage determined by odometer reading and the applicant/policyholder estimate, the insurer must accept that reasonable explanation the first time. If, however, the same policyholder continues to offer mileage estimates in subsequent policy periods that are inconsistent with actual mileage as determined by odometer reading, the insurer may treat the estimate as not reliable, and may use historical mileage as determined	Accepted in part and not accepted in part.	As set forth in section (C), where an applicant or policyholder provides a reason (including an inconsistent reason) for any differences between the estimate for the upcoming 12 months and the miles driven the previous 12 months, an insurer may take it into consideration along with the other items set forth in (C) and those provided pursuant to section (D).

by odometer reading for all subsequent policy periods.		
Another clarification is necessary. Part (B) does not address the circumstance that the policyholder provides the information requested pursuant to (i) and (ii) but the reasonable information establishes that the estimate is not reliable *and the insurer does not have a means reasonably to estimate the miles to be driven during the twelve month period following renewal.* In that case, State Farm believes the Department intended to allow the insurer to use actual historical mileage based on odometer reading to supply the estimate. Presumably, it would be desirable to make the estimate specific to that policyholder rather than use a generic default figure. State Farm suggests that the regulations so specify.	Accepted in part and not accepted in part.	The regulation has been changed. Section (B)2 provides that an insurer that lacks sufficient information to determine a reasonable estimate may renew the policy using a default annual mileage figure.
Subpart (iii) of parts A and B permits an insurer to use a "default annual mileage figure" if the applicant/insured has not provided the information requested pursuant to subparts (i) and (ii), and the insurer "has informed the [applicant] [policyholder] of the mileage figure it will use to rate the policy." When? It would not seem to be in the applicant's best interest to compel delay of issuance of the policy until such time as the	Not accepted.	The Department believes the regulation allows insurers flexibility in this area.

entire underwriting process for the mileage category can be completed. Can the classification be changed mid-term, consistent with a policy provision for providing for that action. State Farm believes that permitting mid-term reclassification would be in the best interests of the policyholders in that instance, and requests that the regulation specify that mid-term classification is acceptable.		
As to renewal business, State Farm understands that this requirement would be applied in connection with renewal notice requirements governed by Insurance Code Section 663. That is, the communication would occur by the time required for the renewal notice, however it is accomplished.	State Farm's understanding is correct.	
The timing requirements with respect to "confirmation" of mileage for existing business are similarly unclear. If the "confirmation" had to be accomplished separately from the renewal notice, that would mean that State Farm would have to send a separate communication on approximately 3 million policies every three years, which would impose an enormous expense. Further, it is unlikely that expense would have a significant return. Based on State Farm's experience,	Accepted in part and not accepted in part.	Section (B) has been changed to provide that the request to provide estimated annual miles "may be made with the renewal notice." See section (B)(i).

			removing the population of actively re-underwritten risks plus voluntarily reported changes, the response rate on the confirmation notice would be extremely small.		
			In order to avoid the unnecessary large expense (explained above), State Farm requests that the proposed regulation allow for the following confirmation notice as part of the renewal notice. This could be done by adding, after the first sentence of subpart (B)(i), the following: "The request for confirmation shall be made with the renewal notice. Any class adjustments resulting from a response to the notice shall be made within thirty days after receiving the response."	Accepted in part and not accepted in part.	See the immediately preceding response.
			Clarification as to application of Part (A): State Farm requests the following clarification to subpart (A)(i): add the words "or replaced" after the words "is/are being added." This would clarify any question regarding the applicability of part (A) to replacement vehicles.	Accepted.	
WIAA	7/14/06	6/27/06	Background on WIAA is provided on p. 1.	This section of the comment is not specifically directed at the action proposed in	

		the Proposed Regulation Text; accordingly, this comment is irrelevant pursuant to Government Code Section 11346.9(a)(3).
We believe the Commissioner has failed to establish that the Proposed Mileage Verification Regulations are necessary. Under California law, regulations must be "reasonably necessary" to effectuate the purpose of the statute. Cal. Gov't Code Section 11342.2. The Commissioner's determination that the regulations are necessary must be supported by substantial evidence. Gov't Code Section 11350(b)(1).	Not accepted.	The Commissioner determined to commence this rulemaking proceeding after the Department received a number of insurance industry requests for the development of regulations setting forth methods for determining annual mileage. Moreover, at least one insurer has been sued relative to its practices. That insurer (and others) has supported a regulation that clarifies acceptable practices. Accordingly, as set forth in the Initial Statement of Reasons, the Department believes this regulation is necessary to clarify the types of information an insurer is allowed or required to collect to determine estimated annual mileage to comply with CIC Section 1861.02 (a).
California Insurance Code Section 1861.02(a) provides that "rates and premiums for an automobile insurance policy shall be determined by the application of . . the number of miles he or she drives annually." A plain reading of this statute leads one to the inescapable conclusion	Not accepted.	The commenter is failing to examine a relevant Regulations Section. Regulations Section 2632.5(c)(2), which construes CIC Section 1861.02(a), provides that the "Second Mandatory Factor," the number of miles the insured drives annually, "means the estimated annual mileage for the insured vehicle

that carriers are required to base a policyholder's rate upon the actual number of miles driven, rather than an estimate. There is no statute governing the methods of obtaining an estimate of mileage, nor any absolute requirement that a mileage estimate provided by a policyholder be the sole source of mileage a carrier may rely upon.		during the 12 month period following inception of the policy." Moreover, using a customer's estimate is consistent with CIC Section 1861.02 (a) which requires an insurer to charge premiums based on an individualized determination, "the number of miles he or she drives." See Gov't Code Section 11342.2. Finally, the Department believes the regulation strikes a realistic balance, providing an insurer several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder. Existing regulations allow an insurer to retroactively modify mileage if proper notice is provided.
Instead of restricting carriers' ability to determine the annual miles driven, this regulatory proposal should provide carriers with the ability to verify annual miles driven using the means carriers determine provides them with accurate mileage data. Prescribing the specific means that carriers may use to support a mileage estimate will prohibit carriers from using mileage verification methods not even contemplated today. These unforeseeable means may result in a more precise determination of actual, as opposed to estimated, annual mileage.	Not accepted.	The Commissioner determined to commence this rulemaking proceeding after the Department received a number of insurance industry requests for the development of regulations setting forth methods for determining annual mileage. Moreover, at least one insurer has been sued relative to its practices. That insurer (and others) has supported a regulation that clarifies acceptable practices. Accordingly, as set forth in the Initial Statement of Reasons, the Department believes this regulation is necessary to clarify the types of information an insurer is allowed or required to collect to determine estimated

			annual mileage to comply with CIC Section 1861.02 (a). (cont'd) (cont'd) The Department believes the regulation strikes a reasonable and realistic balance, providing an insurer several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder. If insurers believe additional methods should be allowed, they should provide them for consideration in this rulemaking proceeding.
	The means by which carriers verify and estimate mileage varies from carrier to carrier. Existing statutes and regulations provide carriers flexibility to verify and estimate mileage accurately, and charge the appropriate rate based upon the miles a person has actually driven. We believe this flexibility is essential. Sound public policy considerations should lead to regulations that maximize the ability of carriers to preserve the integrity of the automobile rating system. Existing law maintains such integrity and these proposed regulations do not.	Not accepted.	The Department agrees that how carriers verify and estimate mileage varies from carrier to carrier. However, the Commissioner determined to commence this rulemaking proceeding after the Department received a number of insurance industry requests for the development of regulations setting forth methods for determining annual mileage. Moreover, at least one insurer has been sued relative to its practices. That insurer (and others) has supported a regulation that clarifies acceptable practices. Accordingly, as set forth in the Initial Statement of Reasons, the Department believes this regulation is necessary to clarify the types of information an insurer is allowed or required to collect to determine estimated annual mileage to comply with CIC Section 1861.02

		(a). (cont'd) (cont'd) The Department believes the regulation strikes a reasonable and realistic balance, providing an insurer several methods to verify mileage "during the renewal process" without placing an unnecessary burden on an applicant or policyholder. The regulations allow insurers considerable flexibility as to what information it will request. Upon notice, an insurer can rate based upon miles actually driven.
	Why should carriers lose the ability to use the means appropriate for their business practices and books of business in determining what information is useful and what information is not useful in determining annual mileage? Tying the hands of carriers with language in the proposed regulation that requires *reasonable information necessary to support the estimate* not only removes flexibility from carriers, but may also be expensive, unnecessary, and simply not useful in some instances. Carriers are capable of making such determinations for themselves.	The Commissioner determined to commence this rulemaking proceeding after the Department received a number of insurance industry requests for the development of regulations setting forth methods for determining annual mileage. Moreover, at least one insurer has been sued relative to its practices. That insurer (and others) has supported a regulation that clarifies acceptable practices. Accordingly, as set forth in the Initial Statement of Reasons, the Department believes this regulation is necessary to clarify the types of information an insurer is allowed or required to collect to determine estimated annual mileage to comply with CIC Section 1861.02 (a). The Department believes the regulation strikes a reasonable and realistic balance, providing an insurer

					several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder. (cont'd) (cont'd) The regulations allow insurers considerable flexibility. If other information should be added, it should be specified so the Department can consider it.
Alliance of Insurance Agents and Brokers	7/14/06	6/27/06	A prefatory comment is provided at 1:18-21; a summary of changes to the proposed text is provided at 1:22-2:18.	This comment is irrelevant pursuant to Government Code Section 11346.9(a)(3) as not specifically directed at the action proposed in the Proposed Regulation Text.	
			At 2:20-3:4: Summary of general position on the proposed amendments: By precluding insurers from obtaining service records or other verifications of odometer readings both at the beginning and end of the policy period and by the limitations afforded insurers in (iii) upon failure to provide information necessary to underwrite the mileage factor in paragraph (iii), the Proposed Amendments preclude insurers from determining the actual miles driven. This conflicts with California Insurance Code Section	Not accepted.	The Department disagrees that mileage verifications at two different points earlier in time is required. Sections (C) and (D) of the regulation permits an insurer to require or request an applicant or policyholder to provide several points of information. Moreover, an insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair. Further, the regulation has been changed to add Section (H) which clarifies that an insurer maintains a right to cancel or nonrenew for

1861.02, which requires insurers to determine automobile insurance rates according to "[t]he number of miles [the policyholder] drives annually." The unambiguous import of this language is that insurers must, to the extent possible, use the *actual* miles that the policyholder drives annually.		failure to provide information necessary to accurately underwrite the policy. Finally, the commenter fails to examine a relevant Regulations Section. Regulations Section 2632.5(c)(2), which construes CIC Section 1861.02(a), provides that the "Second Mandatory Factor," the number of miles the insured drives annually, "means the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy." Accordingly the Department disagrees that carriers are required to base a policyholder's rate upon the actual number of miles driven. (cont'd) (cont'd) However, an insurer can retroactively rate a policy upon providing proper notice.
At 3:5-12: Under existing regulation section 2632.5, insurers are permitted to retroactively adjust mileage estimates after the period ends. See 10 CCR Section 2632.5(c)(2). This provision is consistent with the goal of rating insureds based on actual annual miles driven. The Proposed Amendments, however, strip the provision of any real utility by prohibiting insurers from verifying mileage. Verified odometer readings are essential to an insurer's ability to determine mileage accurately. Without that information,	Not accepted.	Contrary to the comment, verification of odometer readings is permitted under the proposed amendments to the mileage verification regulation. Section (C) permits an insurer to require the current odometer reading during the application process and during the renewal process. Further, insurers are permitted, under section (E) to obtain and use smog check odometer readings from the California Bureau of Automotive Repair. Nothing in this regulation affects an insurer's rights under 10 California Code of Regulations Section

the insurer has no effective information with which to retroactively adjust the previous mileage estimate.		2632.5(c)(2).
At 3:13-18: Furthermore, if an insurer must accept the applicant/insured's estimate of mileage at the beginning of the policy period and is effectively prohibited from adjusting that estimate to reflect the real miles driven at the end of the policy period because the insurer cannot require the applicant/insured's odometer reading, the insurer is clearly obstructed from rating based on actual mileage figures.	Not accepted.	See the immediately preceding response.
At 3:19-21: While the Proposed Amendments reflect improvements, there are still a number of other legal problems. As discussed below, proposed section 2632.5 fails to meet the clarity standard for valid regulations and conflicts with governing law.	Because the substance of the comments is addressed below, a response is provided below.	
At 3:24-4:9: "Reasonable objective mileage estimate" is not viable option for insurers": The proposed amendment which provides that insurers may use a "reasonable objective mileage estimate," does not resolve the problem that insurers are essentially left with no viable alternative but to rate applicants that fail to provide requested information using a	Not accepted.	The Department disagrees that insurers are left with no viable alternative but default where an applicant fails to provide the requested information. An insurer may, where no information is provided, use a default annual mileage figure or decline to issue the policy.

default mileage estimate (which must be approved by the Commissioner.) As a practical matter, the Proposed Amendments structure the application process such that if the applicant does not provide the requested information, insurers will have no information "in its possession" to make a "reasonable objective mileage estimate" that reflects an *accurate* estimation of annual miles driven. See (A)(iii). For instance, if the applicant provides the estimated miles as well as commute miles, but does not provide the estimate of pleasure and other miles per (ii)(3) the insurer would have no basis to make an accurate estimate of the annual miles driven by the applicant. (cont'd) (cont'd) Also, if the applicant provides a current odometer reading but refuses to provide any service records, the insurer has no way of verifying if the odometer figure is accurate.		
At 4:10-13: The effect of section (A)(iii) is to place the insurer in the position of using a default mileage figure that must be approved by the Commissioner. However, the Commissioner has provided no information regarding how he would review a default application or what standards he would	Not accepted.	Section (F) states that "[a]ll mileage rating rules that direct 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." Accordingly, the procedure and standards that applies to

(apply to) approve the default mileage (figure).		approval of class plans will also apply to defaults, as indicated in further revisions.
At 4:13-16: In addition, the Proposed Amendments allow an applicant who drives a large number of miles to avoid higher rates by not providing information and thereby choosing to be subject to the default alternative. This conflicts with the intent of Section 1861.02(a)(2) which requires that mileage be based on the "actual miles driven."	Not accepted.	Sections (C) and (D) are not the only sources of information available to an insurer. Section (E) permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair. Pursuant to sections (A)(ii) and (B)(ii), an insurer that receives no information from an applicant or policyholder may determine a reasonable objective mileage estimate based on smog check odometer readings from the California Bureau of Automotive Repair or use a default. Moreover, section (H) recognizes that "[n]othing 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." This provision is intended to clarify that an insurer maintains a right to decline to issue a policy based upon a failure to provide information necessary to accurately underwrite or classify the risk as set forth in California Code of Regulations Section 2632.19(b)(1).e of Regulations Section 2632.19(b)(1). (cont'd) (cont'd) The Department believes that these options represent

		reasonable alternatives that are consistent with Section 1861.02(a)(2) (number of miles he or she drives annually) or Regulations Section 2632.5(c)(2)(estimated annual mileage for the insured vehicle).
At 4:17-22: In order to provide the best estimate on the actual miles driven, insurers need the ability to collect any reasonable information and not be precluded from same. As reflected in our earlier filing, this would include the option for the insurer to require applicants to provide verification of odometer readings through service records during the application and renewal process. Insurers should be permitted to decline or non-renew the policy for failure to provide such information.	Not accepted.	The current version of the regulation states that an insurer may request but shall not require service records which document the odometer reading. This limitation has been placed in the regulation because, amongst other things, service records may not be available to the applicant or policyholder. Sections (C) and (D) set forth those items an insurer is permitted to require and request from an applicant or policyholder. Section (E) permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair. The Department believes these provisions, and section (H) which recognizes an insurer's right to decline to issue, non-renew or cancel a policy, strike a reasonable and realistic balance, providing the insurer several methods to verify estimated mileage without placing an unnecessary burden on an applicant or policyholder.
At 4:24-5:3: The proposed amendments lack clarity. Government Code Section 11349 provides that agency regulations must have	Because the substance of the comments is addressed below, a response is	

"clarity." A regulation does not satisfy the "clarity" standard if, amongst other things (1) it can reasonably (be) interpreted to have more than one meaning; (2) its language conflicts with the Agency's description of its effect; or (3) it uses terms which do not have generally familiar meanings to those directly affected by it and the terms are not defined. *See* 10 CCR Section 16. The proposed amendments lack clarity for a number of reasons.	provided below.	
At 5:4-17: The language in the Proposed Amendments conflicts with the Commissioner's description of its effect. Section (A)(vi) of the Proposed Amendment claims the section will not "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." This suggests that an insurer will remain able to decline, cancel or nonrenew coverage under section 2632.19(b)(1) which permits insurers to cancel or nonrenew policies based on an insured's failure to provide information necessary to underwrite the risk. However, proposed section 2632.5 provides only two alternatives to the requirement that an insurer **shall** use the applicant's estimated annual mileage: where	Not accepted.	Section (H) of the proposed regulation provides that "[n]othing 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." Accordingly, as an example, the proposed regulation recognizes an insurer's right to decline to issue, cancel, or nonrenew a policy in accordance with section 2632.19(b)(1) based upon an applicant or policyholder's failure to provide information necessary to underwrite the risk. The fact that this option is mentioned in section (H), rather than in the preamble does not mean the proposed regulation lacks clarity.

an applicant does not provide the requested information, an insurer can use a reasonable objective estimate or a default mileage figure. Accordingly, section (A)(i) conflicts with (A)(vi) and there is no clarity as to whether an insurer is permitted to decline, cancel or nonrenew coverage based upon an applicant's failure to provide the requested info.		
At 5:18-26: Section (A)(iii) provides that, if an applicant does not provide the requested information, an insurer "may" rate the policy based upon a reasonable objective mileage estimate "or" a default mileage figure. The structure of this provision can lead to two reasonable interpretations: 1) it means the insurer may, but is not required to, issue a policy to the applicant using the permitted alternative methods of estimating annual mileage; *or* 2) it means the insurer must issue a policy to the applicant but may use either a reasonable objective mileage estimate or an approved default figure to rate the risk.	Not accepted.	Section (A)(ii), the current version of former section (A)(iii), provides that: " . . . an insurer *may* issue a policy using a reasonable objective mileage estimate . . . or . . . using a default annual mileage figure . . . " As set forth in the text, the permissive word "may" plainly modifies the word issue. Accordingly, an insurer may, but is not required to, issue the policy using one of the permitted alternate methods of estimating annual mileage. Nothing in section (A)(ii) requires an insurer to issue a policy; such an interpretation would contradict section (H) which recognizes an insurer's right to decline to issue the policy.
At 5:27-28: The provision that insurers use the "reasonable objective estimate" lacks clarity as it can mean any number of things, yet the phrase is undefined.	Not accepted.	As set forth in sections (A)(ii), (B)(i) and (B)(ii), a reasonable objective estimate is an estimate of annual miles based upon the information provided pursuant to sections (C), (D) and (E).

At 6:1-3: This lack of clarity in the Proposed Amendments can only lead to extensive, costly and time-consuming litigation between the parties and is, therefore, a significant failing in the regulations.	Not accepted.	See the immediately preceding four responses.
At 6:4-13: The regulatory scheme conflicts with governing law: It is well-established that no regulation is valid that conflicts with the statute authorizing its adoption or otherwise conflicts with governing law. Gov't Code Section 11342.2; *20th Century Ins. v. Garamendi,* 8 Cal.4th 216, 264 (1994). The Proposed amendments are inconsistent with Proposition 103, which requires cost-based rating. They are also inconsistent with section 1861.02, which requires insurers to determine automobile insurance rates according to "[t]he number of miles [the policyholder] drives annually." Moreover, the Proposed Amendments conflicts with Regulation Section 2532,19(b)(1) to the extent they prohibit insurers from declining, canceling or non-renewing policies based on the failure of the applicant/insured to provide requested information.	Because the substance of the comments is addressed below, a response is provided below.	
At 6:14-20: By creating a regulatory scheme in which the insurer is precluded from obtaining information in order to accurately rate mileage,	Not accepted.	The Department disagrees that insurers are precluded from obtaining information which would permit them to accurately rate

without the threat of declination or cancellation, the insurer is forced into using a default mechanism which is contrary to the concept of cost-based rates and which do not equate to actual miles driven. The importance of cost-based rates is reflected in Insurance Code Section 1861.02 which provides that any factors the Commissioner adopts relating to the rating of automobile insurance risks must "have a substantial relationship to the risk of loss."		mileage. The Department believes the regulation strikes a reasonable and realistic balance, providing an insurer several factors to verify mileage without placing an unnecessary burden on an applicant or policyholder. See sections (C), (D) and (E). Moreover, declination of coverage and cancellation may be options available to an insurer. See section (H). Insurers are not being forced to use default annual mileage figures, although this option is available, (along with other options such a using a reasonable objective mileage estimate). See sections (A)(ii), (B)(i) and (B)(ii).
At 6:20-25: Moreover, in Spanish Speaking Citizens Foundation v. Low, 85 Cal.App.4th 1179, 1226 (2000), the court noted that Proposition 103's stated aim in adopting Code Section 1861.02 was to protect consumers from "arbitrary insurance rates." The court found that to mean "rates which do not reflect the cost of providing insurance." Id. The Commissioner's insistence that insurers accept the applicant's stated estimates of annual mileage and the inability of insurers to verify such estimates clearly encourages arbitrary rates and is entirely contrary to cost-based rating.	Not accepted.	See the immediately preceding response. Insurers need not accept the applicant's estimate in all instances, and they are able to verify estimates.

For the same reason, the Proposed Amendments conflict with Section 1861.02's mandate that insurers rate risks using the *actual* annual miles driven. Prohibiting insurers from verifying odometer readings, for example, does not ensure that an insurer is rating risks using actual annual miles driven. In fact, it is directly contrary to that goal.	Not accepted.	The commenter is failing to examine a relevant Regulations Section. Regulations Section 2632.5(c)(2), which construes CIC Section 1861.02(a), provides that the "Second Mandatory Factor," the number of miles the insured drives annually, "means the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy." Accordingly, while insurers may base a policyholder's rate upon the actual number of miles driven if proper notice is provided, there is no requirement that they do so. Moreover, the Department disagrees that the regulation prohibits insurers from verifying odometer readings. See sections (C), (D) and (E). Insurers can retrospectively rate policyholders for annual miles upon providing proper notice.
Neither Proposition 103 nor Code Section 1861.02 is intended to force insurers to lower rates through the placement of arbitrary limitations on their ability to obtain accurate information from applicants/policyholders. As such, the Commissioner would be acting outside his authority in adopting proposed section 2632.5.	Not accepted.	The Department disagrees that the regulations are "intended to force insurers to lower rates through placement of arbitrary limitations on their ability to obtain accurate information from applicants/policyholders." As set forth in the Initial Statement of Reasons, this regulation is intended to clarify the types of information an insurer is allowed or required to collect to determine estimated annual mileage to comply with CIC Section 1861.02(a); it is not intended to lower

					rates or to impose arbitrary limitations on insurers' abilities to obtain estimated annual mileage. The Department believes the regulation strikes a reasonable and realistic balance, providing an insurer several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder. No support is provided for the statement; accordingly, the Department cannot provide a more specific response.
				Under existing law, insurers are permitted to cancel or non-renew a policyholder if he/she fails to provide requested information that is reasonably necessary to underwrite the risk. *See* 10 California Code of Regulations Section 2632.19(b)(1). To the extent the Proposed Amendments can be interpreted as prohibiting the same, they improperly conflict with Regulations Section 2632.19.	Accepted.	Section (H) of the proposed regulation provides that "[n]othing 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." Accordingly, the proposed regulation recognizes an insurer's right to decline to issue, cancel, or nonrenew a policy in accordance with section 2632.19(b)(1) based upon an applicant or policyholder's failure to provide information necessary to underwrite the risk. The fact that this option is mentioned in section (H), rather than in the preamble does not mean the proposed regulation lacks clarity.
FTCR	July 14, 2006 at 5:36 PM	6/27/06		FTCR's comments were not provided by the July 14,	

	2006 at 5:00 p.m. deadline. Accordingly, they are not summarized or responded to herein.
Progressive 7/25/06	Progressive's comments responding to FTCR's comments were not provided by the July 14, 2006 deadline. Accordingly, they are not summarized or responded to herein.

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