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Sheet1

SUMMARY OF AND RESPONSE TO PUBLIC COMMENTS MADE BY THE September 22, 2006 DEADLINE: PROPOSED AMENDMENT OF SECTION 2632.5(c)(2): MILEAGE VERIFICATION

Commenter	Date of Comment	Date of Proposed Text Addressed	Comment	Response	Analysis
ISO	9/22/06	Not stated.	Background on ISO 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.	
			Substantive changes in the latest version of the regulation: The "Notice of Availability of Revised Text" for	Not accepted. Because the substance of the comments	As set forth in Government Code Section 11346.8(c), the question is whether the changes, including the

	the regulation states that "the changes made are either non-substantial, solely grammatical in nature, or are sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. Accordingly, pursuant to the provisions of Government Code Section 11346.8(c), the Commissioner is soliciting written public comment on the changes." ISO disagrees. Removal of certain provisions that were in previous proposed versions of the regulation represents a "substantive" change that significantly alters the impact of the regulation; therefore, the written comment period should be 45 days as provided in Government Code Section 11346.4(a).	is addressed below, a response is provided below.	deletions, are "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." While the commenter may not agree with the deletions recently effected, the Department believes that the deletions meet the standard set by Section 11346.8(c).
	ISO's recommended changes: (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	Not accepted.	The Department believes these provisions strike a reasonable and realistic balance, providing the insurer several methods to verify estimated mileage without placing an

	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 other 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. Before doing so, the insurer shall inform the applicant of the mileage figure which it will use to rate the policy. (cont'd)	unnecessary burden on a policyholder, and that permitting an insurer to use information other than that provided pursuant to sections (C), (D) and (E) would place the policyholder at an unnecessary disadvantage. Earlier versions of this regulation contained provisions that provided an applicant or policyholder the opportunity to challenge an insurer's use of information. Those provisions were stricken based upon concerns that such a procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged. Accordingly, the Department does not consider this option viable.
	(cont'd) If the insurer uses a reasonable objective mileage estimate based upon information other than the applicant's estimated annual miles or the information provided pursuant to sections (C), (D) and (E) below, the insurer must provide the applicant with a reasonable	

opportunity to confirm or challenge the insurer's mileage figure. If the applicant does not agree with the mileage figure, the insurer shall use: 1) a reasonable objective mileage estimate based upon the applicant's estimated annual miles and the information provided pursuant to sections (C), (D) and (E) below; or 2) if a reasonable estimate cannot be determined, the default annual mileage figure which has been filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02.		
Revise the last sentence of Section (B)(i) as follows: 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 or other information in its possession.	Not accepted.	The Department believes the regulation as it is currently drafted strikes 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 Department believes the information in sections (C), (D) and (E) is generally sufficient to

			determine mileage (or premium).
	Revise (B)(ii)(1) as follows: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 or other information in its possession, whichever it determines is the most reasonable.	Not accepted.	See the immediately preceding response.
	Revise Section (B)(iii) as follows:(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. If the insurer uses a reasonable objective mileage estimate based upon information other than the applicant's estimated annual miles or the information provided pursuant to sections (C), (D) and (E) below, the insurer must provide the applicant with a reasonable opportunity to	Not accepted.	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, and that permitting an insurer to use other information would place the policyholder at an unnecessary disadvantage. Earlier versions of this regulation contained provisions that provided an applicant or policyholder an opportunity to challenge an insurer's use of

confirm or challenge the insurer's mileage figure. If the applicant does not agree with the mileage figure, the insurer shall use:· a reasonable objective mileage estimate based upon the applicant's estimated annual miles and the information provided pursuant to sections (C), (D) and (E) below; or· the mileage figure from the expiring policy; or · if a reasonable estimate cannot be determined, the default annual mileage figure which has been filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02.		information. Those provisions were stricken based upon concerns that such a procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged. Accordingly, the Department does not consider this option viable.
Rationale for Recommended ChangesThe goal of this regulation should be to attain the most accurate estimate of annual miles driven. Achieving this goal insures the fairest rates for both California drivers and California insurance companies. In addition, a specific requirement to allow policyholders to	Accepted in part, and not accepted in part.	An objective of this regulation is an accurate annual mileage estimate. 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

	confirm or challenge a company's estimate applies the proper level of checks and balances to the process. Finally, deferring to the policyholder's estimate if the policyholder continues to dispute the insurer's estimate provides the policyholder with appropriate consumer protection.	mileage. Moreover, at least one insurer has been sued relative to its practices. That insurer has supported a regulation that clarifies acceptable practices. Accordingly, as set forth in the Initial Statement of Reasons, the primary objective of this regulation is clarification of the types of information an insurer is allowed or required to collect to determine an accurate estimated annual mileage to comply with California Insurance Code Section 1861.02(a). The Department believes that these objectives can be accomplished while balancing the burdens on those involved. Earlier versions of this regulation contained provisions that provided an opportunity to challenge an insurer's use of information. (cont'd) (cont'd) Those provisions were stricken based upon comments that such a procedure would be costly, inefficient, not feasible for 6-month policies and could

			result in incorrect premiums being charged. The Department does not, therefore, consider this option viable.
	California Insurance Code Section 1861.02(a) provides, in relevant part, that rates and premiums for an automobile policy ...shall be determined by application of mandatory rating factors including....the number of miles driven annually. California Code of Regulations, Section 2632.5(c)(2) provides that the number of miles driven annually means "..the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy".Since insurers in California are limited by California law to using only certain mandatory rating factors to rate automobile insurance, it is critical that insurers have the tools necessary to accurately calculate the factors they are permitted to use, including the	Accepted in part, and not accepted in part.	The Department generally agrees with the substance of this comment; however, the Department has determined that the methods set forth in this regulation do allow insurers to determine the annual miles driven rating factors. The "tools" the commenter would like to use are not specified; therefore, the Department cannot provide a detailed to response.

	estimated annual mileage for the insured vehicle.		
	The California Insurance Code and the Code of Regulations do not limit the information an insurer may consider when estimating the annual mileage driven. In order to properly underwrite and rate automobile policies in California, insurers require access to all available tools and information to accurately estimate annual mileage. This includes the mileage estimate provided by the insured, actual odometer readings of the insured vehicle, additional information provided by the insured, third party data available to the insurer and other information the insurer has access to or has in its possession.	Accepted in part, and not accepted in part.	The commenter is correct that, currently, there is no regulation detailing the methods of obtaining a mileage estimate; this regulation is intended to fill that gap. 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 California Insurance Code 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 and that the information in sections (C), (D) and (E) is generally sufficient to determine mileage (or premium). (cont'd) (cont'd) To the extent the commenter would like to expand the

			items an insurer may consider pursuant to sections (C), (D) and (E), the suggested items should be specified. This comment does not provide such a list; accordingly, no further response is possible.
	Problems with Current RegulationThe current draft of the regulation limits the insurer's ability to accurately estimate annual miles driven by restricting the information upon which an insurer may base its annual mileage estimate to ONLY the estimated annual miles provided by the insured or a "reasonable objective mileage estimate" based ONLY upon information listed in Sections (C), (D) and (E) of the regulation, or an annual default mileage figure which has been filed and approved by the Commissioner.	Accepted in part, and not accepted in part.	The commenter's summary is, in parts, correct and incorrect. The word "solely" (translated by the commenter as ONLY) appears only once in the regulation, at section (B)(i). As used in that section, an insurer is permitted to, if not conducting a verification, use the mileage figure from the expiring policy or use a reasonable objective mileage estimate solely based upon the information set forth in (C), (C) and (E). The summary also fails to mention the quantity of information available to an insurer in sections (C), (D) and (E) to support a mileage estimate. The comment does not specify exactly what other information should be permitted, so a further response is not possible.
	Section (C) of the	Accepted in	Section (C) lists

	current regulation lists specific information, including commute distance and workplace location, days commuting, pleasure miles driven, and the current odometer reading of the vehicle. However, all information allowed under this section would be self-reported by the insured. There is no allowance in the regulation for independent verification of this information by insurers using third party data sources, GPS maps, or other tools.	part, and not accepted in part.	those items an insurer may require; therefore, it is axiomatic that all the information in section (C) could be self-reported by the customer. However, the Department disagrees that there is no allowance for independent verification using third parties sources or tools. In particular, section (D) permits an insurer to request but not require technology and section (E) permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair.
	Section (D) of the current regulation lists service records of the vehicle and other technological devices (i.e. EDR's) that accurately verify or collect mileage information. These are valuable tools, but they are only available on a very small number of insured vehicles in California.	Accepted in part, and not accepted in part.	As set forth in section (D)2, an insurer may request but not require a customer to provide information from the use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle mileage information. The Department takes no position relative to the extent to which such devices may be available. The Department agrees that service records are likely to be available for only a

		small number of insured vehicles. That is why they cannot be required, only requested.
Section (E) allows an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair. However exclusions in the California law eliminate a company's ability to gather smog check odometer readings on 45-55% of insured vehicles. As of January 1, 2005, vehicles 6 or less model-years old were exempt from the biennial Smog Check inspection requirement. For vehicles with registration renewals due in the 2006 calendar year, this exemption includes model-years 2001, 2002, 2003, 2004, 2005 and 2006. Also as of January 1, 2005, vehicles 4 or less model-years old were exempt from the Smog Check inspection requirement upon change of ownership and transfer of title transactions with DMV. In 2006, this exemption includes model-years 2003, 2004, 2005 and	The Department neither agrees nor disagrees with this comment.	The Department takes no position relative to the extent to which devices that accurately collect vehicle mileage information may be available.

2006.		
The current regulation allows insurers to use a default annual mileage figure filed with and approved by the Commissioner. However, such a figure would necessarily be an overall average figure that would not accurately reflect risk of loss for a particular insured. The current average mileage figure for drivers in California is estimated at approximately 12,500 miles. This figure would be significantly lower for many drivers regularly commuting in California and would result in inaccurate rating and underwriting and place an unfair burden on policyholders who drive less than the average or default number of miles. The current draft of the regulation would actually encourage policyholders who drive more than the average or default miles to not provide the insurer with any information and ultimately pay less than their fair share because they would	Accepted in part, and not accepted in part.	Section (F), which addresses filing and approval of default figures, does not restrict the number of filings. Accordingly, an insurer's defaults may (or may not) not reflect the risk of loss for a particularly insured. For the same reason, the Department further disagrees that: 1) these options "place an unfair burden on policyholders who drive less than the average or default number of miles"; and 2) default annual mileage figures filed with and approved by the Commissioner "would result in inaccurate rating and underwriting." The Department also disagrees that this regulation will have the effect of encouraging policyholders who drive more than the average or default miles not to provide an insurer with information. Instead, the commenter's objection relates to the availability of defaults in general. The Department believes the regulation strikes a realistic balance. The regulation provides several methods to

	be rated using the default figure.	verify a mileage estimate, but permits resort to a default mileage figure under certain circumstances. These options, as a whole, permit an insurer to accurately rate and underwrite risks. (cont'd) (cont'd) The obverse, a system permitting several verification methods without resort to a default, would appear to present greater accuracy and underwriting difficulties. Finally, 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 10 California Code of Regulations Section 2632.19(b)(1). The Department believes that these options

		represent reasonable alternatives that are consistent with California Insurance Code Section 1861.02(a)(2) (number of miles he or she drives annually) and 10 California Code of Regulations Section 2632.5(c)(2) (estimated annual mileage for the insured vehicle).
These limitations all point out the need for an insurer to have the ability to use other reasonable, objective information in its possession to accurately estimate annual mileage or to verify mileage figures provided by the insured.	Not accepted.	See the immediately preceding substantive response (in two parts). Had the comment specified the precise information it seeks to use, the Department could have considered adding it. Insurers and consumers alike are entitled to know exactly what will be expected.
The current draft of the regulation eliminates language which had appeared in previous versions of the regulation, which would have allowed an insurer to use "...other information in its possession" in addition to the information provided by the insured and the information contained in Sections (C), (D) and (E). Re-insertion	Not accepted.	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. The Commissioner determined to commence this rulemaking proceeding after the Department received

of this language in the regulation provides insurers with the flexibility to use all available information to estimate annual mileage when underwriting and rating auto risks in California.		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. (cont'd) (cont'd) 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 California Insurance Code Section 1861.02(a).
Current Draft of the Regulation will Result in Underreporting of Mileage FiguresThe current draft of the regulation will result in incorrect underwriting and rating based on significant underreporting of mileage figures. As	Not accepted. Because the substance of the comments is addressed below, a response is provided below.	The Department disagrees with this comment. Because the substance of the comments is addressed below, a response is provided below.

a result, auto premiums will not accurately reflect risk of loss, and some California drivers who should be paying more will be subsidized by other California drivers who should be paying less.		
ISO conducted a detailed study in California comparing mileage figures used for rating purposes with mileage figures verified by odometer readings and found that mileage is systematically underreported. For example, whereas the study found 17 % of insured vehicles were actually driven over 20,000 miles per year, only 4 % of vehicles were actually rated in this category. Self-reported mileage errors result not just in lost premium dollars but also undermine risk management. Providing insurers with tools that allow them to more accurately estimate annual mileage, and rate vehicles accordingly will improve the credibility of the data in the high mileage categories, thus	Accepted in part, and not accepted in part.	The regulation permits an insurer "tools" to support a customer's estimated annual mileage in addition to "self-reporting." 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. ISO provided no details about the study; accordingly, the Department is unable to specifically respond to that study.

improving the insurer's ability to better manage risk.		
Recommended Changes Re-Insert Language Previously Considered AcceptableThe specific change we have recommended, to re-insert the previous language considered acceptable that allowed an insurer to use "other information in its possession" to accurately estimate annual mileage, does not prevent an insurer from basing the mileage estimate solely on information provided by the applicant or information listed in Sections (C), (D) and (E). Rather, this change simply gives the insurer the option to use additional information to properly underwrite and rate the automobile policy.	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 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 California Insurance Code 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.
			Also, we strongly support the recommended language that requires the insurer to "...provide the applicant with a reasonable opportunity to confirm or challenge the insurer's mileage figure" as it allows the applicant further recourse in the event the mileage figure is in dispute. This would allow the applicant to perhaps provide additional information to the insurer to ultimately arrive at the correct mileage estimate for the insured vehicle. This provision also requires the insurer to defer to the applicant's mileage estimate in the event the mileage figure is in dispute.	Not accepted.	Earlier versions of this regulation contained provisions that provided an applicant or policyholder the opportunity to challenge an insurer's use of information. Those provisions were stricken based upon concerns that such a procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged. Accordingly, the Department does not consider this option viable.
Progressive West	9/22/06	8/31/06	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.	
Our only comments regarding the proposed regulation relate to use of technologies that can be used to rate on annual miles driven. We acknowledge that new Section D(2) of the revised regulation contemplates some use of technologies, but in our opinion the use allowed for in that section has some limitations that are unnecessary and do not take full advantage of the underlying laws regarding the "Second Mandatory Factor."	Not accepted. Because the substance of the comments is addressed below, a response is provided below.	
· The use of technology is constrained by the revised regulation to determining "estimated annual mileage." While we understand that the Department has historically interpreted the "Second Mandatory Factor" to be "estimated annual mileage," our assumption is that the Department has	Not accepted.	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

used that interpretation because it has been neither feasible nor practical to determine the rate for a policy term based on the actual miles driven during that term. Technology may soon change that, and make it both feasible and practical for an insurer to rate a policy term based on actual miles driven during that term. We believe that would be the most accurate and fair way to use miles driven, and ultimately the way most consistent with California Insurance Code Section 1861.02(a)(2). We urge the Department to revise the proposed regulation so that technologies approved by the Department can be used to determine actual miles driven during a policy term which in turn can be used to determine the rate for that policy term.		information." The Department believes the regulation strikes a reasonable and realistic balance. The Department does not, however, foreclose the possibility of future amendments to this regulation addressing use of technology. Section 2632.5(c), in a section unchanged by this regulation, permits an insurer to retroactively rate a policy provided proper notice.
· We also urge the Department to insert language in the regulation that authorizes insurers to file, and the Department to	Not accepted.	The Commissioner has determined not to include the discount language at this time.

approve, discounts related to the use of technologies to determine mileage if actuarially supported.		
· Finally, we note that the lead in to Section D purports to describe "information" to be provided by the policyholder, yet subsection (2) deals with a policyholder's "use" of technological devices.	Not accepted.	The Department believes that section (D), which permits an insurer to request but not require a customer to provide information including the use of technological devices, is clear.
To address all of those issues, we recommend (D) be changed to read as follows: "(D) An insurer may request but shall not require an applicant or policyholder to: 1. provide service records that document the odometer reading of the vehicle to be insured. 2. participate in other methods to determine annual mileage for an insured vehicle during the 12-month period following the inception of any new or renewal policy, including vehicles added during a policy term, where (i) the method of determination involves the	Not accepted.	Progressive's proposed text for sections (D) and (D)1 resembles the current regulation text. The Department declines to adopt Progressive's proposed section (D) 2. 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." The Department believes the regulation permits reasonable use of

	voluntary use by insured persons of technology or technological devices to collect mileage information, and (ii) the method of determination is approved by the Commissioner as part of an insurer's rate or class plan filing. An insurer may use such a method to determine estimated annual mileage, but may also, notwithstanding any other provision of Section 2632.5(c.) (2) *et seq*., use such a method to determine actual mileage driven during a policy term and use such actual mileage driven to determine the rate for that policy term. (cont'd)	technology. A file and approval method was considered; however, the Department believes that section (D) provides insurers sufficient technological means to verify mileage estimates without the expense and time required for filings. Finally, the Commissioner has determined not to include the discount language at this time.
	(cont'd) When evaluating whether to approve any filing required under this subsection, the Commissioner shall consider the general availability of the technology, the accuracy of the data that is collected, the degree of difficulty associated with the use of the technology, and the existence of a fair dispute resolution process in situations	

			where the technology does not function properly. Subject to the approval of the Commissioner, an insurer may, but is not required to, offer discounts to those policyholders that choose to use technology or technological devises as a method to determine mileage."			
ACIC	9/22/06	8/31/06	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.		
			The Department continues to rely on statutory authority that does not mention the word "estimate," much less require that insurers rely solely on an applicant's estimate of projected mileage. Insurance Code Section 1861.02(a)(2) specifies the second	Not accepted.	The commenter fails to examine a relevant Regulations Section. 10 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,	

	mandatory factor for automobile insurance as "[t]he number of miles he or she drives annually." This provision unquestionably contemplates insurer reliance on the actual mileage that a vehicle is driven as the basis for rating a policy covering a vehicle. There should be no regulatory restrictions imposed on an insurer's reasonable attempts to ascertain information that enables it to comply with Proposition 103. While underwriting a policy for future insurance coverage necessarily entails utilizing a measure of the miles to be driven during the policy period, there is absolutely no statutory language that delineates or limits the sources that may be utilized by insurers to determine that measure or to verify its reasonableness.	"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. The commenter is correct: there is currently no regulation governing the methods of obtaining a mileage estimate; this regulation is intended to fill that gap. Moreover, using a customer's estimate is consistent with California Insurance Code 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 Government Code Section 11342.2. The Commissioner determined to commence this rulemaking proceeding after the Department received a (cont'd) (cont'd) 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 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 California Insurance Code 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.
	Any estimate of future miles driven is unavoidably imprecise, but that lack of precision should not lead to unnecessary	Not accepted.	The Commissioner determined to commence this rulemaking proceeding after the Department received a number of

	restrictions on insurers' ability to refine estimates based upon information that is relevant to application of this rating factor. These regulations would make more difficult the effort of insurers to charge the proper rate based on the miles a person actually drives. Insurers should be allowed maximum flexibility in reasonably investigating and verifying miles driven as a mandatory factor. There is no consumer downside to insurer flexibility because that insurer flexibility will serve to enhance innovation and competition while preserving the integrity of the rating system and use of mileage as a rating factor.	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 California Insurance Code 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. To the extent this commenter believes that additional methods should be allowed in the interests of flexibility,

		these methods should be set forth for the Department's consideration in this rulemaking proceeding.
Section 2632.5(c)(2): ((A)(i) - New Business: Mandating that insurers require applicants to provide an estimate of miles to be driven "during the 12-month period following policy inception" makes little sense if the policy period is only six months. The estimate sought should be for the length of the policy period.	Not accepted.	California Insurance Code Section 1861.02 provides that "[r]ates and premiums for an automobile insurance policy . . . shall be determined by application of the following factors in decreasing order of importance: . . . (2) the number of miles he or she drives annually." Accordingly, pursuant to Section 1861.02, the estimate shall be for the 12 month period following inception of the policy.
There is no need to specify the reasonable information necessary to support an applicant's estimate because insurers are capable of making that determination for themselves, and they should be allowed flexibility to assess what information is useful in order to ascertain the miles to be driven. The information specified in subsections (C),	Not accepted.	Please see the responses above.

(D) and (E) is certainly information that may be sought in many circumstances, but there is no reason to limit insurers to ascertaining only that information. Other legitimate sources may exist, and there is no reason to arbitrarily preclude their use. Insurers should be allowed to utilize whatever approach they determine is practicable under the circumstances.		
(A)(ii): Language from the previous draft would have allowed insurers to use a "reasonable objective mileage estimate based upon information in its possession" but that provision is not present in the current proposal. ACIC believes that language should be reinstated to assure insurers flexibility to making a determination that is fair and reasonable for both the insurer and the insured.	Not accepted.	Please see the responses above.
Section (A)(ii): Clarity of this subsection would be enhanced by adding language as follows: "using a default annual mileage	Not accepted.	The Department believes the language in section (A)(ii) that "an insurer may issue a policy using a reasonable objective mileage

estimate which has been filed."		estimate . . . or, if a reasonable estimate cannot be determined, using a default annual mileage figure which has been filed with and approved by the Commissioner" is clear.
Section (B)(i) - Renewal Business: There is no reason to require that insurers request mileage estimates from policyholders every three years if the insurer views the request as unnecessary.	Not accepted.	Section (B)(i) requires an insurer to, during the renewal process, ask a policyholder to provide estimated annual mileage at least every three years. The Department believes this provision, which requires a request once every three years, is reasonable to an insurer. Moreover, the benefits of updated information outweigh this limited burden. Policyholders are required to be rated based on current mileage.
Section (B)(i) is internally inconsistent because the first sentence mandates the insurer's request, and the fourth sentence suggests the requirement is actually permissive.	Not accepted.	The commenter misunderstands this section. Section (B)(i), in the first sentence, requires an insurer to, during the renewal process, request a policyholder to provide estimated annual mileage at least every three years. The fourth sentence gives an insurer certain

		mileage estimate options in the event it is not requesting the updated information described in the first sentence.
Section (B)(i): An insurer that seeks to verify actual miles driven by a policyholder should be able to require that policyholders provide information necessary to support that rating factor including the specific sources designated in subsection (D).	Not accepted.	As set forth in the second sentence of section (B)(i), an insurer that is asking a policyholder, during the renewal process, to provide estimated annual mileage (pursuant to the first sentence) may require or request information as set forth in sections (C) and (D). The Department disagrees that insurers should be permitted to require information set forth in section (D). With respect to service records: 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. With respect to technology: the Department believes that requiring applicants and

		policyholders to use technologies chosen by insurers to collect vehicle mileage information is problematic for a number of reasons.
Section (B)(i): requiring that a "reasonably objective mileage estimate" be based solely on information specifically set forth in the regulation is unnecessarily restrictive. There is no need for such a restriction as insurers should be allowed to use any information that supports the mileage estimate. An insurer should be allowed flexibility here, and that includes the ability to deal with its own book of business in an appropriate manner. Insurers practices may vary between existing policyholders and applicants, and there is no reason to abolish that permissible distinction so long as consumers are treated fairly.	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 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 California Insurance Code 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 and will result in insurers treating customers similarly. The Department would consider adding other information to the list in section (C), however specific information has not been suggested.
	Section (2)(D): Although some applicants may not have prior documentation regarding mileage driven, that is no reason to prohibit an insurer from requiring that information generally from applicants. There is no reason, statutory or otherwise, to prohibit insurers from requiring information that is reasonably available to insurance applicants to verify a mandatory rating factor. The mileage rating factor is far too important to mandate acceptance of unsupported estimates provided by insurance applicants. As noted,	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. The Department disagrees that this approach is unsupported or that it will lead to the evisceration of actual miles driven as a reliable rating factor. The Department believes that the current version of the mileage verification regulation permits carriers to accurately

			that unsupported approach will lead to evisceration of actual miles driven as a reliable rating factor for automobile insurance.		reflect its customers risk of loss exposure. The Department believes that, as amended based upon comments from the industry, the mileage verification regulation provides carriers more than adequate discretion to determine estimated annual mileage.
			Section (2)(D): authorizing insurers to "request" but not "require" information reasonably necessary to determine miles driven is a hollow gesture. Service records and technology can provide accurate information that will enhance the credibility of the mileage factor in the rating of automobile insurance policies.	Not accepted.	See the immediately preceding response. The Department believes that requiring applicants and policyholders to use technologies chosen by insurers to collect vehicle mileage information is problematic for a number of reasons.
			Section (F): ACIC recommends the following clarifying language: "This includes use of multiple mileage rating bands, defaults for the elements required in (C)1 through (C)3 . . . "	Not accepted.	The Department believes the language in section (F) is clear.
State Farm	9/22/06	8/31/06	Background on the regulation is	This comment is	

provided on p.1.	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(c)(2)(A)(ii): identifies three contingencies which may result in the insurer employing the alternatives described in the subpart. The contingencies are: 1) "the applicant does not provide the estimated annual miles he or she expects to drive"; 2) "the applicant does not provide . . . the information required pursuant to (C) below"; and 3) "the information provided (pursuant to (C)] does not support the applicant's estimated annual miles. The subpart then identifies alternatives available to the insurer in the event of these contingencies. State Farm interprets the first sentence of this	Accepted.	State Farm's interpretation is correct.

subpart to mean that if *any* of the three contingencies identifies in that section occur, the insurer is entitled to employ the alternatives provided. This would necessarily be the case, as the circumstances envisioned in (3) presuppose that (1) has occurred.	
Section 2632.5(c)(2)(B): the revised text provides that an insurer may make the mandatory three-year request for a mileage estimate with the renewal notice. This is helpful as it eliminates the necessity to send two mailings on 1/2 of the policies every year. But, in the absence of a provision authorizing a mid-term premium change raises questions as to the manner for implementing any change indicated by a policyholder response.	Because the substance of the comments is addressed below, a response is provided below.
The renewal notice must be provided 20 days before termination of the current policy period. CIC Section 663(a). It must state the premium the	Because the substance of the comments is addressed below, a response is

	policyholder must pay to renew the policy. Further, proposed subpart 2532.5(c)(2)(B)(iii) requires written notice "that highlights" the mileage figure used for the expiring policy period and the mileage figure for the renewal period "[b]efore renewing a policy."	provided below.	
	The cumulative effect of these provisions is unworkable as to timing. It would be virtually impossible to organize a timeline that meets each of these criteria, that allows the insurer to charge the policyholder a rate that accurately reflects the risk of loss. If the estimate or information indicates that the policyholder should be in a different mileage category, the insurer would be unable to make the change consistently with the these timing requirements unless the insurer required the policyholder to respond to the inquiry within an extremely short period of time, or provided the renewal notice so far in advance of renewal	Not accepted.	The Department believes that an appropriate time-table (which, amongst other things, enables an insurer to change a policyholder to a different mileage category without requiring that insurer to rely on responses to an earlier notice) can be developed.

that the insurer could meet the statutory 20-day period with a replacement notice changing the premium amount based on the policyholder response to the original notice. (cont'd.)		
(cont'd.) In either case, the insurer may have exposure. If, on the other hand, the insurer made no change although a change was indicated, the insurer would always be charging a certain group of policyholders a rate that is either excessive or inadequate, depending upon whether the indication would call for classifying the policyholder in a shorter or longer mileage category. This, too, could create exposure.		
To avoid this problem, State Farm suggests permitting mid-term policy reclassification. with the indicated premium adjustment, to conform the policy to the appropriate mileage classification.	Not accepted.	The Department believes that an appropriate time-table (which enables an insurer to change a policyholder to a different mileage category without requiring that insurer to rely on responses to an earlier notice) can be developed.

		The Department also believes that this time-table will allow an insurer to obtain accurate information enabling an insurer to rate the policy.
State Farm interprets subpart 2632.5(c)(2)(B)(i) to permit requests for underwriting information set forth in (C) and (D) to be sent during the policy period, as part of the "renewal process" for the next renewal period. It would greatly increase expense to require an insurer to compress the time period within which an insurer must request and process information.	Accepted.	State Farm's interpretation is correct.
State Farm interprets subpart 2632.5(c)(2)(B)(iii) to permit the insurer to state the mileage figures for the expiring policy and the renewal policy in the form of a range, as long as each mileage figure does not encompass multiple mileage classifications. In State Farm's experience, available information does not enable a single figure estimate in most cases. Providing a	Accepted.	State Farm's interpretation appears to be acceptable.

			single figure estimate rather than a range can lead to policyholder confusion, as policyholders would be likely to interpret such a single figure estimate to be more precise than possible.		
Alliance of Insurance Agents and Brokers	9/22/06	8/31/06	A prefatory comment is provided at 1:17-19; AIA incorporates its July 14, 2006 comments at 1:20-2:23.	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 regulations restrict the ability of insurers to obtain information especially from new applicants in order to underwrite the estimate of the applicant. This is because the Regulations limit the information that insurers can require from applicants in subsection (C) and force insurers to rely on further estimates of applicants in the form of pleasure	Not accepted.	Contrary to the comment, the regulation provides means other than those set forth in section (C) that permit an insurer to verify estimates. See sections (D) and (E). The Department disagrees that the regulation shields an estimate from the ability to underwrite and verify that estimate. Again, see sections (C) and (D). Moreover, the Department

	miles and past miles driven. Since the applicant is not required to provide service records or other means in which the insurer can verify these estimates by using past miles as an indicator (subject to explanation for change in driving habits) the regulations shield the applicant's estimate from the insurer's ability to underwrite and verify mileage. Thus, the regulations are inconsistent with the requirement of Section 1861.02(a)(2) which bases rates on the number of miles the driver drives annually.	disagrees that the regulation is inconsistent with California Insurance Code Section 1861.02. The commenter is failing to examine a relevant regulation. See 10 California Code of Regulations Section 2632.5(c)(2), which construes California Insurance Code Section 1861.02(a) and 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. However, contrary to the implication of the comment, service records are not, by themselves, an accurate mileage indicator. (cont'd) (cont'd) For example, the fact that 400 miles were driven since purchasing new tires a month ago does not mean 400

			miles will be driven every month.
	The regulations also provide no recourse for the insurer in the event that the applicant fails to provide the information necessary for the insurer to underwrite mileage since the insurer will not be able to make a reasonable objective mileage estimate as contemplated in Subsection A. This forces the insurer to use a default mileage number per that section.	Accepted in part and not accepted in part.	The Department believes that using a default annual mileage figure is a reasonable solution where: the applicant fails to provide estimated annual miles or the information provided by the applicant does not support the estimate, and the insurer cannot determine a reasonable objective mileage estimate based upon the information provided pursuant to sections (C), (D) and (E). Moreover, section (H) provides an option wherein it 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."
	The regulations will encourage consumers to manipulate their mileage estimates by giving false information and underestimating mileage to obtain lower rates. Because insurers	Not accepted.	Sections (C) and (D) are not the only source of information available to an insurer. Pursuant to sections (A)(ii) and (B)(ii), an insurer that receives no information from an applicant or policyholder may

	are not given the tools in the regulations to obtain information to verify the estimate, ultimately more losses will be sustained in the lower mileage bands instead of the proper mileage bands which over time will result in increases in rates for all drivers in those bands to offset the fraudulent estimates.	determine a reasonable objective mileage estimate based on smog check odometer readings from the California Bureau of Automotive Repair or use a default. See section (E). 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 customer's failure to provide information necessary to accurately underwrite or classify the risk as set forth in 10 California Code of Regulations Section 2632.19(b)(1). (cont'd) (cont'd) The Department believes that these options represent reasonable alternatives consistent with California Insurance Code Section 1861.02(a)(2) (number of miles he or she drives annually) and 10

				California Code of Regulations Section 2632.5(c)(2) (estimated annual mileage for the insured vehicle). The Department disagrees that this regulation will encourage consumers to provide false information. Beyond generalities that insurers require additional tools, little has been provided in the way of specifics which the Department could consider adding to section (C).
FTCR (Foundation for Taxpayer and Consumer Rights)	September 8/31/06 22,2006	Background on FTCR is provided at 1:18-22; summary of FTCR's submissions is provided at 1:25-2:5. FTCR incorporates its previous comments by reference at 2:5.	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.	
		Two of FTCR's most important prior recommendations have not been addressed in the August 31 version: 1) Providing the consumer with written notice and	Not accepted.	This comment relates to prior versions of the regulation; accordingly, no response is required.

the opportunity to correct the insurer's selected "reasonable objective mileage figure" when there is a discrepancy between the consumer's estimate and supporting information provided and the insurer's determination, as did prior drafts of the regulation; and 2) Requiring the insurer to use the consumer's estimate in the first instance to issue/renew the policy. Our comments below provide suggested amendments to address these primary concerns.		
FTCR also notes that the latest version has reinserted a provision that allows insurers to obtain odometer readings from the Bureau of Automotive Repairs (BAR). It is our understanding from conversations with BAR staff, that neither BAR nor the DMV have verified odometer readings compiled and readily accessible in a reliable manner. As we have stated previously, FTCR recognizes the need for insurers to	Not accepted.	The Department has confirmed with the Bureau of Automotive Repair (BAR) that smog check data, including odometer readings, are available to the public. BAR has further confirmed that third parties currently avail themselves of this service through the BAR's Applications division. The Department has no reason to believe this information is not generally accurate.

objectively verify mileage through odometer readings or otherwise. FTCR suggests that before the final regulation is adopted that there be a teleconference or meeting with DMV staff, the Department, and any participants from this proceeding who wish to participate to discuss what odometer information is available to insurers, in what form, by what means, and its accuracy.	
FTCR also continues to urge the Department to 1) carefully scrutinize insurers' class plan filings to ensure that any proposed default annual mileage relativities comply with section 1861.02 and amended Regulation § 2632.8, and 2) carefully monitor insurers' practices in the field to ensure that: a) they are not using their own estimates in place of the consumer's unless the insurer has notified the consumer of the value it intends to use and can demonstrate that its estimate is actually supported by other	Accepted.

reasonable objective information provided, and b) that they do not use mileage verification procedures as an excuse to unlawfully deny, cancel or nonrenew a policy. Based on the results of the Department's scrutiny in this regard, it may determine that these regulations need to be further amended to ensure their workability and compliance with the law.		
COMMENTS ON PROPOSED REGULATIONS FTCR reiterates its view that the following overarching principles should be made explicit in the regulations:· In all instances, the policy must be issued or renewed in the first instance using the consumer's estimate and reasonable information provided. This principle has not been clearly articulated in the latest version of the proposed regulations.	Not accepted.	The Department disagrees and believes the regulation clearly requires an insurer to use the applicant's estimated annual mileage unless the circumstances fall within one of the exceptions set forth in the section. As set forth in the regulation, "[e] stimated 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 . . . "
· Only after proper written notification to consumers and an opportunity to	Accepted in part and not accepted in part.	This comment relates to prior versions of the regulation; accordingly, no

respond, as discussed further below, should an insurer be allowed to re-rate the policy using an approved default or objective information that differs from the consumer's estimate. The August 31 version of the proposed regulations does not allow consumers, as did prior versions, the opportunity to correct an insurer's estimate with which it disagrees.		response is required.
· The regulations must specify that any "reasonable objective information" allowed to be used to change the consumer's estimate (after providing proper written notice and an opportunity to explain any discrepancy) is limited to only that information allowed to be requested or obtained by the insurer pursuant to subdivisions (C), (D) and (E). FTCR notes that this concern appears to have been addressed in the August 31 version by the language in (A)(ii) and (B)(ii)1, stating that an insurer may use a reasonable	Accepted in part and not accepted in part.	The Department agrees the regulations currently specify that "reasonable objective information" is limited to the information requested pursuant to subsections (C), (D) and (E). The Department has determined that the language in sections (A)(ii) and (B)(ii) is sufficiently clear. Procedures for written notification and opportunity to respond were deleted based on concerns that such a procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged.

objective mileage estimate, "based upon the information provided pursuant to sections (C), (D) and (E) below...." However, to be absolutely clear and consistent, the language in (A)(ii) and (B)(ii)1. should mirror the language used in (B)(i) in this regard, which states that the insurer may "use a reasonable objective mileage estimate solely based upon the information set forth in (C), (D), and (E) below." (Emphasis added.)		
· The application materials and required written notices to consumers should also inform the consumer that if the consumer still disagrees with the insurer's determination to use a default or objective information other than the consumer's substantiated estimate, then the consumer may seek further resolution through the Department's consumer complaint division.	Not accepted.	This comment relates to prior versions of the regulation; accordingly, no response is required.
· Nothing in the procedures specified should allow the	Not accepted.	There are circumstances in which an insurer is

	insurer to deny coverage, or improperly cancel or nonrenew a policy; rather, these procedures to obtain accurate mileage information only apply to rating the policy.		and should be permitted to decline to issue or renew a policy under California law, including situations in which an applicant or policyholder fails to provide information necessary to accurately underwrite the policy. See 10 California Code of Regulations Section 2632.19(b). As recognized in section (H) of the regulation, "[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 Department believes that nothing in the procedures should or does allow or an insurer to improperly cancel or nonrenew a policy.
	To address these overarching principles, FTCR proposes the following specific amendments to the August 31 revised text: (1) As stated in FTCR's June 13 and July 14 comments, it is essential that consumers be informed at the time of application or	Not accepted.	This comment relates to an unchanged portion of the regulation which is, therefore, irrelevant; accordingly, no response is required.

renewal of their responsibility to provide an accurate mileage estimate and reasonable supporting information and the consequences of their failure to provide that information. The August 31 version does not address this concern. FTCR therefore reiterates that the following paragraph should be added to subdivisions (A) and (B):The insurer shall conspicuously inform the applicant [or policyholder] in writing in the application [or policy renewal] documents of the requirement to provide the mileage estimate and what reasonable information as set forth in subdivision (C) the insurer will require to support the estimate. The application [or policy renewal] documents shall also conspicuously inform the applicant [or the policyholder] that failure to provide the required mileage information may lead to significant changes in the policy premium.		
(2) Regarding	Not	Former subsections

proposed (A)(ii) and (B)(ii), FTCR's most critical concern is that the August 31 proposed text continues to omit consumer notice requirements or allow a period for the consumer to respond before an insurer makes the decision to use "a reasonable objective mileage estimate based upon the information set forth in (C), (D) and (E)." FTCR notes that even the Automobile Club of Southern California (AAA) thought that a prior draft, which allowed the insured 30 days to explain discrepancies between the insured's estimate and other objective information provided to the insurer, was reasonable. AAA proposed that rather than requiring the insurer to use the consumer's estimate for 60 days, however, as the June 7 draft required, that the insurer be allowed to use either its own reasonable estimate or a default mileage if the consumer failed to provide a satisfactory explanation of any discrepancies	accepted.	(A)(v) and (B)(v) (which contained a notice and opportunity to respond procedure for the purposes of addressing discrepancies between estimated annual mileage figure and objective information in the insurer's possession) were stricken based upon concerns that the time required for this process would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged.

	between its estimate and the other reasonable objective information within 30 days. This would be a reasonable compromise, in FTCR's view.		
	State Farm also presented a viable alternative in its July 14 comments. State Farm suggested at page 3 of its July 14 comments that, "As to new business, all underwriting information may not be received prior to the issuance of the policy. 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 entire underwriting process for the mileage category can be completed. Can the classification be changed mid-term, consistent with a policy provision providing for that action? State Farm believes that permitting mid-term reclassification would be in the best interests of policyholders in that instance, and requests that the regulation specify that mid-term reclassification is acceptable."	Not accepted.	This comment relates to prior versions of the regulation; accordingly, no response is required.

	Provided that the insurer issued the policy using the consumer's estimate, gave the applicant explicit notice of the reasonable objective mileage estimate it intended to use if the consumer failed to provide reasonable supporting information or if that information failed to substantiate the consumer's estimate, and gave a reasonable opportunity to dispute that estimate, FTCR would be amenable to State Farm's suggestion to allow mid-term reclassification.	Not accepted.	See the immediately preceding response.
	There are three phrases in subdivision (A)(ii) of the August 31 version that FTCR particularly believes will lead to significant disputes as drafted: · First: "or if the information provided does not support the applicant's estimated annual mileage": As drafted, the decision as to whether the information provided "supports" the applicant's estimate is left entirely in the	Not accepted.	FTCR's interpretation is correct: it is within an insurer's reasonable discretion to determine whether the information supports the customer's estimate. Notice and opportunity provisions similar to those proposed here were deleted based on comments that such a procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being

	hands of the insurer. This should not be a basis for allowing a mileage figure other than the consumer's estimate to be used to issue the policy, but only to re-rate the policy if certain conditions are met. If the insurer believes that the information provided does not support the consumer's estimate, the insurer should still be required to issue the policy using the consumer's estimate and provide 30 days (or longer) for the consumer to explain any discrepancies. As noted above, AAA also thought this was reasonable. (cont'd)	charged. The Department believes the same objection applies to the suggestion proffered here. The regulation now provides, in section (A)(ii), that where information provided does not support the applicant's estimated annual miles, an insurer may issue a policy to an applicant using a reasonable objective mileage or, if a reasonable objective mileage cannot be determined, using a default. Section (B), which deals with renewal policies, does not directly address discrepancies; however, subsection (ii) permits three options where an insurer receives none or only some of the information requested. These options include: renewal using the mileage figure from the expiring policy or using a reasonable objective mileage estimate or using a default annual (cont'd)
	(cont'd) State Farm appears to believe, as noted above, that the insurer could wait until sometime just prior to the mid-	(cont'd) mileage figure. The Department believes the regulation strikes a realistic balance and provides insurers

term of the policy to allow the consumer to explain discrepancies. In the situation where the consumer fails to respond after 30 days (or by policy mid-term), then the insurer could use other reasonable objective information in its possession, but that information should only consist of the items listed in subdivisions (C), (D), and (E) or other voluntarily provided information.		and consumers reasonable options under the circumstances.
· Second: "the insurer shall inform the applicant of the mileage figure which it will use to rate the policy": The insurer should be required to notify the insurer in writing and allow the insured at least 30 days to respond.	Not accepted.	This comment relates to prior versions of the regulation; accordingly, no response is required.
· Third: "if a reasonable estimate cannot be determined": This language is not sufficiently clear and requires a subjective determination. Instead, to provide a more objective standard, it should read, "if the insurer has no other reasonable objective information in its possession..."	Not accepted.	The Department believes the regulation is sufficiently clear. Relative to FTCR's concern that the regulation places a decision within an insurer's discretion: the Department agrees that this language permits an insurer to determine whether it can develop a reasonable estimate or not. The Department believes

			the regulation, including this section, strikes a realistic balance.
	To address these concerns, FTCR recommends amending subdivision (A)(ii) to make it clear that the only time an insurer may issue a policy using a mileage figure other than the applicant's estimate is when the applicant fails to provide an estimate or the required supporting information. If the applicant provides an estimate and the required supporting information, then the general rule set forth in 10 California Code of Regulations Section 2632.5(c)(2), which states that "except as otherwise set forth in this section an insurer shall use the applicant's estimated annual mileage", must be followed. If an insurer believes that the information provided does not support the applicant's estimate, then the insurer could only re-rate the policy to use another reasonable objective estimate or a default after	Not accepted.	The regulation directs an insurer to use the applicant's estimated annual mileage but provides certain exceptions to that requirement. Beyond this, the Department disagrees with FTCR's analysis. First, the Department disagrees that, under the regulation, the only time an insurer is permitted to issue a policy using other than the customer's estimate is when the applicant fails to provide an estimate or required supporting information. The Department believes an insurer should be permitted to use a mileage figure (other than a customer estimate) where the information provided pursuant to sections (C), (D) and (E) does not support the estimate. See sections (A)(ii) and (B)(ii) which reflect this understanding. Notice and opportunity provisions similar to those suggested by FTCR were considered and deleted based on comments that a

reasonable notice and an opportunity to respond are provided to the policyholder.		notice and opportunity to respond procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged.
(A)(ii)(a) If an applicant does not provide the estimated annual miles he or she expects to drive or the information required pursuant to (C) below that the insurer has explicitly requested, or ~~if the information does not support the applicant's estimated annual miles,~~ and the insurer has notified the applicant in writing of (1) the consequences of not providing that information in accordance with the notice requirements set forth in (i)[ ] above; and (2) the mileage estimate based on other reasonable objective information in the insurer's possession as set forth in (C), (D) and (E) that it intends to use, then an insurer may issue a policy using a reasonable objective mileage estimate based solely upon	Not accepted.	The Department disagrees that written notification (concerning the consequences of failing to provide the requested information) is required. The Department believes the regulation strikes a realistic balance. As set forth in section (A)(i), before issuing a policy to an applicant that has not provided the estimated annual miles/information required pursuant to section (C) or whose information does not support the estimated annual miles, the insurer shall inform the applicant of the mileage figure it will use. See also section (B)(iii) which 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. Moreover, similar notice and opportunity

the information provided pursuant to sections (C), (D), and (E) below, or ~~if a reasonable estimate cannot be determined,~~ if the insurer has no other reasonable objective information in its possession, then using a default annual mileage figure which has been filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02. (cont'd) (cont'd) Before doing so, the insurer shall inform the applicant of the mileage figure which it will use to rate the policy. Upon receipt of the required information that the insurer requested as set forth in (C) below, the policy shall be rated using that information. The insurer shall re-rate all policies as of the date of policy inception and refund any overcharges.		provisions were considered and deleted based on comments that a notice and opportunity to respond procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged.
(b) If the insurer believes that the information provided by the applicant pursuant to (C) below does not support the applicant's	Not accepted.	See the immediately preceding response.

estimated annual miles, then the insurer shall (1) notify the applicant of the mileage estimate based on other reasonable objective information in the insurer's possession as set forth in (C), (D) and (E) that it believes is more accurate, and (2) provide the applicant a reasonable opportunity, no less than thirty days from the date of mailing of that notice, to respond with an explanation as to why the insurer's estimate based on other reasonable objective information is not accurate. If after 30 days, the applicant has not explained the discrepancy, then the insurer may reclassify the policy using a reasonable objective mileage estimate based solely upon the information provided pursuant to sections (C), (D), and (E) below, or if the insurer has no other reasonable objective information in its possession, then using a default annual mileage figure which has been filed with and approved by the

Commissioner pursuant to California Insurance Code Section 1861.02.		
(c) The notice required pursuant to (a) and (b) shall also specify that if the applicant disagrees with the insurer's determination to use a different mileage estimate based on other reasonable objective information, then the applicant may request assistance through the Department's consumer complaint division and provide the toll-free number.	Not accepted.	This comment relates to prior versions of the regulation; accordingly, no response is required.
(3) Regarding the provisions of amended Regulation § 2632.5(c)(2) specifically applicable to renewals in subdivision (B), FTCR has the following concerns: · Subdivision (B)(ii) purports to allow the insurer to use either the mileage figure from the expiring policy or a reasonable objective mileage estimate based upon the information set forth in (C), (D), and (E) if the consumer fails to provide any or "only some of the	Not accepted.	As clearly set forth in the regulation, an insurer cannot *require* the information set forth in section (D) based solely upon section (B)(ii).

information requested in (i) above". Since (i) refers to both information that may be required as set forth in (C) and information that may only be requested but not required as set forth in (D), it would seem that (B) (ii) could be interpreted as allowing insurers to use the old mileage figure or a reasonable estimate if a consumer fails to provide some of the information that an insurer may request but not require. FTCR does not believe that this is the Department's intent. (cont'd) (cont'd) Therefore, subdivision (B)(ii) should be amended to read: "If during the renewal process the insurer receives none or only some of the information ~~requested in (i) above~~ that an insurer may require as set forth in (C) below:"		
· The language in subdivision (ii)2. - "lacks sufficient information to determine a reasonable estimate" - does not provide a clear,	Not accepted.	The Department believes the regulation is clear. The Department agrees that the language in this section permits an insurer to determine

objective standard that can be consistently followed by insurers. Instead, FTCR recommends that the language of (B)(ii) mirror that of (A)(ii) as amended above, to apply to the situation when "the insurer has no other reasonable objective information in its possession." In other words, the requisite order would be (1) use consumer's estimate and reasonable supporting information if provided; (2) if no estimate or supporting information provided by the policyholder then use mileage from expiring policy or reasonable objective mileage estimate based on information set forth in (C), (D), and (E); if no reasonable objective mileage estimate is available, then may use the approved default.		whether it can develop a reasonable estimate or not. The Department believes the regulation strikes a realistic balance.
(4) It is FTCR's understanding that use of the language "may require" in subdivision (C) (as opposed to "shall require" as provided in prior drafts) means that are free to choose from this list the items that it	Accepted in part and not accepted in part.	Section (C) permits an insurer to require certain information from a customer. As clearly set forth, this section is permissive and does not require an insurer to obtain any of the items set forth in the section. Contrary to FTCR's

		may require the consumer to provide. If the insurer chooses to not ask for some or all of those items of reasonable supporting information set forth in (C), then it must accept the consumer's estimate, and it would not be allowed to use any other mileage figure as allowed by subdivisions (A)(ii) and (B)(ii). In other words, subdivision (ii) is only implicated if the insurer has requested that the consumer provide reasonable information to support his or her estimate as set forth in (C) and either the consumer fails to provide it or the information provided is contrary to other reasonable objective information in the insurer's possession. An insurer cannot use a consumer's failure to provide information that the insurer chose not to request as a basis for deviating from the consumer's estimate.	construction, an insurer that opts to request some or none of the items in section (C) need not accept a customer's estimate where, for example, an insurer obtains information provided pursuant to sections (C), (D) or (E) what do not support the estimate. However, the Department agrees that an insurer cannot use a consumer's failure to provide information it did not request as the sole grounds for deviating from the customer's estimate.
		(5) Regarding subdivision (D), FTCR notes that the	Not accepted.	The Department believes the language of section

	introductory clause of this subsection refers to information that an insurer may request but not require, but subdivision (D)2. refers to the use of technological devices, not information that is collected from the device. Because this regulation is aimed at prescribing the type of mileage information an insurer may request and should not in any way be directed at the insurer or the consumer's decision to voluntarily use or not use such a device, this language should be revised grammatically to read: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~~ information collected from the voluntary use by an applicant or policyholder of technological devices provided by the insurer or otherwise made available to the insured that	(D) is clear.

accurately collect vehicle mileage information.	
FTCR is opposed to Progressive's suggested amendment in its September 22, 2006 comments that would allow, subject to approval by the Commissioner, an insurer to offer discounts to policyholders who choose to use technology or technological devices as a method to determine mileage. First of all, no discount may be used unless it is a rating factor adopted by the Commissioner by regulation pursuant to section 1861.02 (a) and is based on evidence that it is substantially related to the risk of loss. Such a determination as to whether using such a device would qualify as an optional rating factor under the standards of section 1861.02 (a) is beyond the scope if this rulemaking proceeding. Second, such a discount necessarily implies a surcharge to those who choose not to use such devices.	Accepted.

Apart from the fact that it seems highly unlikely that whether a person chooses to allow the use of a device that tracks his or her mileage has any relationship to his or her risk of loss, consumers may have legitimate privacy reasons for not wanting to use such a device. (cont'd)		
(cont'd) No one should be surcharged (to offset the discounts to those who choose to use such devices) for choosing to protect his or her personal privacy. FTCR is not opposed to insurers offering consumers the option to voluntarily use such devices, and using the information collected from such devices to determine mileage, but the choice to allow that use should be solely in the hands of the individual consumer.		
(6) FTCR supports the concept in subdivision (E) of allowing insurers to obtain and use smog check odometer readings from the California Bureau of Automotive Repair. However, given what	Not accepted.	The commenter does not detail why BAR information is unreliable and the Department has no basis to conclude that the information is generally unreliable.

FTCR has learned from communicating with BAR and DMV staff regarding the unreliability of such odometer readings, the regulation should make clear that the insurer shall not rely solely on smog check odometer readings as a basis for using a "reasonable objective mileage estimate" that differs from the consumer's estimate.		
According to a DMV staff person, the odometer mileage information received by BAR is recorded by the smog stations when a customer brings their vehicle in for a smog inspection. The smog station technician enters what they see, without a plausibility check. (E.g. a 2006 vehicle with 98,000 miles; a 1980 vehicle with 2,500 miles, or trying to guess whether a vehicle with a 5-digit odometer has 100,000 or 200,000 miles more than the odometer reading.) This DMV staff person also informed FTCR that BAR electronically submits the odometer mileage	Not accepted.	The Department has confirmed with the Bureau of Automotive Repair (BAR) that smog check data, including odometer readings, are available to the public. BAR has further confirmed that third parties currently avail themselves of this service through the BAR's Applications division. Although the commenter notes there are no plausibility checks, it has provided no information quantifying the extent to which this creates problems.

information with the smog status information to DMV, but while DMV stores the smog information, it does not store the odometer mileage information from BAR. While this staff person indicated that insurers may set up accounts to receive information electronically from the DMV, it is not clear to FTCR that any information is available directly from BAR.		
(7) Regarding subdivision (H) of the August 31 revised text, it remains unclear why the Department has included the "decline to issue" language. As noted in footnote three above, when issuing a policy, an insurer is bound by the requirements contained in section 1861.02, subdivisions (b) (Good Driver policy) and (c) (prohibition against using absence of prior insurance to determine eligibility), and the non-discrimination provisions contained in section 11628; moreover, there is nothing in the regulation that has	Not accepted.	California law does not require an insurer to issue a policy when it lacks sufficient information to rate and/or underwrite the policy.

			been cited by insurers - Regulation § 2632.19 - that speaks to allowing insurers to "decline to issue a policy" under any circumstances. Accordingly, FTCR recommends that the "decline to issue" language be stricken from subdivision (H).		
Mercury Insurance Group	9/21/06	Not stated.	We suggest that subsection (A)(i) be amended as follows: "(A) For new business or vehicles added during the term of the policy *or when any other policy change (add or delete driver, change of work location, etc.) occurs that potentially affects vehicle usage:* (i) During the application process, when a vehicle is being added or replaced during the term of the policy, *or when any other policy change (add or delete driver, change of work location, etc.) occurs that potentially affects vehicle usage, . . "*	Not accepted.	This comment relates to prior versions of the regulation; accordingly, no response is required.
			We suggest that subsection (B) be amended as follows: "*(iv) During the term of a renewal policy, the insurer may*	Not accepted.	As clearly set forth in the regulation, the items in sections (C), (D) and (E) are available to insurers during the renewal

	request the same information for renewal business that it may request for new business upon any policy change (add or delete vehicle or driver, change in work location, etc.) that potentially affects vehicle usage.		process.
	We recently experienced a Department consumer complaint in which the Department's analyst expressed the view that mileage estimates must be fixed as of inception or renewal. We do not believe that accurately reflects the Department's position; nor do we believe it comports with the intent of Proposition 103. The foregoing changes are designed to clarify the Department's intent by making it clear that policy changes giving rise to potential mileage adjustments trigger an obligation to provide an updated mileage estimate.	Not accepted.	Responding to the Department's review of a specific, unidentified consumer complaint is beyond the scope of this rulemaking proceeding.

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