SUMMARY OF AND RESPONSE TO PUBLIC COMMENTS MADE BY THE June 13, 2006 DEADLINE: PROPOSED AMENDMENT OF SECTION 2632.5(c)(2): MILEAGE VERIFICATION REGULATION

Commenter	Date of Comment	Date of Proposed Text Addressed	Comment	Response	Analysis
ACIC	05/04/06	04/14/06	ACIC requests a public discussion prior to the June 13, 2006 scheduled hearing.	Accepted.	During a telephone call on May 9, 2006, ACIC and the Department agreed to hold a May 25, 2006 conference call to provide a public forum for all comments in advance of the June 13, 2006 scheduled hearing. A letter dated May 9, 2006 to ACIC confirmed the date and time of the conference call. A Notice of Conference Call was mailed on May 9, 2006, notifying interested parties that a conference call had been scheduled for May 25, 2006 at 2:00 P.M.
Robert Hogeboom, Barger & Wolen (no representation is mentioned in this letter.)	05/31/06	April 14. 2006	This letter contains the following: 1) background on Proposition 103 and current language of Section 2632.5(c)(2) on p. 1; 2) an overview of insurers' practices on p.1; 3) a summary of the Department's position on pp. 1-2; and 4) the legal position taken under the current regulation on p. 2.	These portions of the comment are 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).	

			While work-related mileage is somewhat verifiable, pleasure miles are not.	Not accepted.	Whether or not pleasure miles are verifiable, Proposition 103 requires rates and premiums be based on, among other things, annual miles driven.
			The regulations provide no way to verify the previous year's estimate from the consumer.	Not accepted.	An insurer is provided a number of options to verify the previous year's estimate from the consumer. During the application process, an insurer may require an applicant to provide, pursuant to section (C), the approximate total number of miles driven for any time period within the previous 24 months; the reasons for differences between the upcoming 12 months and the miles driven the previous 12 months; and the current odometer reading. Section (D) also permits an insurer to request but not require service records containing the odometer reading and the use of technological devices that collect vehicle mileage information. Section (E) further permits an insurer to obtain smog check odometer readings from the California Bureau of Automotive Repair to estimate miles driven. During the renewal process, all items obtained during earlier policy periods as well as the information set forth in: (C) may be required, (D) may be requested but not required, and (E) may be obtained by an insurer to verify the previous year's estimate.
			Many non-standard insurers are concerned that asking customers questions such as: providing the location of workplace and the days the car is used for commuting and the number of miles estimated for pleasure use, will invite inaccurate responses in order to generate lower miles and thus lower premiums. The Department of Insurance responds to this concern by allowing an insurer to substantiate the customer's estimated mileage by requesting the current odometer reading from the customer or obtaining it directly from the DMV Smog Certificate program. Insurers note that the current odometer reading is not a basis to test a future estimate without an accurate past odometer reading.	Not accepted.	The Department disagrees that asking customers to provide workplace location, number of days the vehicle will be used for commuting and an estimate of miles to be driven will invite inaccurate responses. Moreover, the commenter has failed to provide any support for this contention. The Department further disagrees with the implication that an accurate past odometer reading is required as a basis to determine future annual mileage estimates. The regulation, in section (C), permits an insurer to require a number of items (including those mentioned by the commenter here) to verify the mileage estimate provided by an applicant or policyholder. The regulation, in section (D), also permits an insurer to request, but not require, information such as service records and the use of

					technological devices that accurately collect vehicle mileage information. As set forth by the commenter, an insurer may also obtain smog check odometer readings from the California Bureau of Automotive Repair to estimate annual miles driven pursuant to section (E) of the regulation. (cont'd.)
					(cont'd) The Department believes this strikes a reasonable and realistic balance, not limited to current odometer readings, to provide the insurer several methods to verify estimated mileage without placing an unnecessary burden on an applicant or policyholder.
			Insurers would be faced with a regulation that encourages "low-balling" by consumers without any reasonable means to verify the estimate given. The only recourse given to an insurer is if the customer fails to provide the information after notice. Then and only then can an insurer use a default mileage number.	Not accepted.	See the immediately preceding explanation. Sections (A)(ii) and (B)(ii) set forth the circumstances in which an insurer may use a reasonable objective mileage or a default annual mileage figure. Resort to a default annual mileage figure is not limited to a situation in which a customer "fails to provide the information requested after notice."
			Accuracy demands that mileage be based on past mileage indicators with the burden on the consumer to provide past mileage documentation as well as reasonable information to support any expected change in the upcoming year.	Not accepted.	The Department disagrees that accuracy demands past mileage indicators with a burden on the consumer to provide documentation and information to support any expected change. However, the regulation, in section (c)(5) permits an insurer to require a consumer to explain the differences between the estimate for the upcoming 12 months and the miles driven the previous 12 months.
			Insurers should be able to design their own methods to underwrite 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.

			The proposed regulations do not strike a reasonable balance between protecting the consumer and allowing the insurer to take reasonable means to achieve the most accurate mileage estimate. If regulations must be promulgated, a balance must be struck on the need for insurers to obtain documentation and those instances in which the insured does not possess documentation that can verify mileage.	Not accepted.	The Department believes this 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 commenter does not indicate why the regulations do not strike a reasonable balance, making a more specific response impossible.
AAA So. Cal.	06/13/06	06/07/06	Background concerning the regulation and the workshop held on May 25, 2006 is addressed on p. 1.	This portion 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).	

			The draft does not address an insurer's ability to decline or non-renew based on insured's failure to provide requested information. This is inconsistent with: 1)10 California Code of Regulations Section 2632.19(b)(1) (refusal or failure to provide information necessary to accurately underwrite or classify the risk could be a substantial increase in hazard that permits cancellation or non-renewal); and 2) California Insurance Code Section 1861.03(c)(policy may be cancelled or non-renewed for fraud or material misrepresentation.) However, it appears that the proposed regulation would prohibit declination, cancellation or nonrenewal even if the applicant or insured fails to provide any information on mileage or provides information that does not support the estimate and appears to constitute intentional misrepresentation. Recommend: an amendment to allow an insurer to either adopt a default mileage or decline or nonrenew for failure to provide the requested information. Insurers should always be able to decline a risk for fraud or material misrepresentation with respect to mileage. In any event, insurers should be able to decline a risk for fraud/material misrepresentation with respect to mileage.	Accepted. Changes to the regulation were made based on this comment.	
			An insurer must be able to require all applicants to provide the odometer reading (the best source of distance traveled during the policy period on an ongoing basis) and take reasonable steps (use any reasonable means) to substantiate the information (i.e., accuracy of the odometer reading) including obtaining odometer reading from the California Department of Motor Vehicles smog certification program when necessary. DMV information can be up to two years old and is, at best, a secondary source. Where a policy is being renewed, an insurer must also be able to require odometer readings prior to policy renewal.	Accepted in part, not accepted in part.	Sections (C) and (E) of the current version of the regulation directly address the commenter's concerns. Section (C) of the regulation permits an insurer to require an applicant or a policyholder to provide, amongst other several things, the current odometer reading of the vehicle to be insured. Moreover, Section (E) permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair. In addition to sections (C) and (E), section (D) of the regulation also permits an insurer to request but not require certain information such as service records and the use of technological devices that collect vehicle mileage information. After considering all comments, the Commissioner has determined that these regulations do allow

					insurers use of all reasonably-identified means to verify estimated annual mileage. 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.
			An insurer should have the ability to require an agent or other representative to visually verify the reading as necessary or appropriate for either new or renewal business, regardless of the type of marketing or agency used.	Not accepted.	In response to other comments, the Department deleted this provision of the regulations.
			For both new and renewal business, 30 days is provided for the insured to explain inconsistencies between the insured's estimate and objective information obtained by the insurer. This is reasonable. However, a requirement that an insurer accept an insured's estimate (accurate or not) for 60 days if the insured fails to respond is not reasonable and could result in an incorrect premium for up to 1/6 of the policy term for a one-year policy and 1/3 of the term for a six-month policy. If no satisfactory explanation is provided within 30 days, the insurer should be allowed to use its own reasonable estimate or a default mileage.	Accepted.	Former subsection (v) of (A) and (B) set forth the procedure by which an insurer could require the customer to explain discrepancies between the estimated annual mileage figure and reasonably objective information in the insurer's possession. These subsections also addressed the amount to be charged during this process. These subsections were stricken based upon concerns that the process would be costly and inefficient, not feasible for 6-month automobile policies and could result in the incorrect premium being charged. The regulation now provides, in section (A)(ii), that 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 during the renewal process; however, subsection (ii) permits three options where an insurer receives none or only some of the information requested. (cont'd)
					(cont'd) These options include: renewal using the expiring policy's mileage figure or using a reasonable objective mileage estimate or a default annual mileage figure. The regulations now allow

					insurers flexibility to address discrepancies.
			Recommends a new section which permits an insurer to cancel or nonrenew a policy for fraud or material misrepresentation affecting the policy or the insured as set forth in California Insurance Code Section 1861.03(c). The proposed section permits an insurer that chooses not to use a default annual mileage figure to cancel or nonrenew for refusal or failure by the insured to provide, within 30 days after written request to the insured, information necessary to accurately underwrite or classify the risk as set forth in 10 California Code of Regulations Section 2632.19(b)(1).	Accepted in part, not accepted in part.	Section (H) of the 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." This provision is intended to clarify that an insurer maintains a right to cancel or nonrenew for fraud or material misrepresentation pursuant to California Insurance Code Section 1861.03(c) and 10 California Code of Regulations Section 2632.19(b)(1); however, it is written in a manner to capture any applicable law.
FTCR (Foundation for Taxpayer and Consumer Rights)	06/13/06	April 14, 2006 and, to some extent, June 7, 2006	Background on: 1) FTCR and the regulation is addressed on 1:18 -2:2; 2) Proposition 103 and the background related to this regulation is addressed at 2:4-3:2; 3) a summary of the proposed regulation is provided at 3:4-6:13 (with the exceptions of footnotes 7, 10 and 14, and three comments at 5:3-7, 5:12-17 and 5:21-6:3 which are addressed below).	These portions of the comment are 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).	

			Footnote 7 at 4:21-23: FTCR's understanding is that allowing insurers to utilize their online access to obtain the most recent odometer reading from the DMV Smog Certificate Program means that consumers will not be required to provide a smog certificate.	Accepted in part, and not accepted in part	Section (E) has been amended to clarify that insurers may obtain smog check odometer readings from the California Bureau of Automotive Repair to support estimated annual miles. The items an insurer is permitted to require from an applicant or policyholder for the purposes of supporting an estimate of annual mileage is limited to those items set forth in section (C) of the regulation. Smog check odometer readings are not listed in section (C); accordingly, customers cannot be required to provide a smog certificate.
			Footnote 10 at 5:25-26: In the June 7, 2006 version, section A (iv), the following language has been omitted "[h]owever, an insurer shall apply the same method for every policy." This elimination makes it unclear as to the date "of which" the policy must be re-rated.	Not accepted.	Section (A)(iv) of the April 14, 2006 version of the regulation was deleted based on comments that re-rating would be costly, inefficient, not feasible for 6-month policies and could result in the incorrect premium being charged.
			At 5:3-5:7: Subsections (A)(iv) and (vi) together provide that an insurer may not unilaterally change the mileage estimate provided by the consumer simply because the insurer disagrees with the information provided by the consumer, but must provide notice to the consumer and allow the consumer an opportunity to respond before the insurer can re-rate the policy to use the default or other objective information.	Not accepted.	Sections (iv) and (vi) of (A) and (B) of the April 14, 2006 version have been deleted based on comments that re-rating and a notice procedure for opportunity to respond would be costly and inefficient, not feasible for 6-month automobile policies and could result in the incorrect premium being charged. Relative to a unilateral change: the regulation now states, 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 that appear during the renewal process; 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 mileage figure.

			At 5:11-17: Pursuant to California Insurance Code Section 1861.02(a) and amended 10 California Code of Regulations Section 2632.8, insurers must demonstrate in their class plans that the mileage rating factor, including both the use of multiple mileage rating bands and the use of a "default and/or average mileage rating relativities," complies with the required ordering of factor weights. Existing regulation section 2632.5(e) makes clear that the annual mileage rating factor (whether determined by the use of mileage rating band relativities or "default and/or average mileage rating relativities") may not be used in combination with any other 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.	
			At 5:21-6:3: Proposed Sections 2632.5(c)(2)(A)(i) - (iii) and (B)(i)-(iii) specify the universe of information and documentation an insurer may require an applicant or policyholder to provide to substantiate his/her mileage estimate and for the insurer to obtain, the insurer may only use the information specified in (i) - (iii) or any further information voluntarily provided by the applicant or policyholder to change the mileage estimate after notice and the opportunity to challenge the insurer's determination have been given.	Accepted in part, and not accepted in part	Section (C) of the regulation sets forth an exclusive list of items an insurer may require from an applicant or policyholder to support the annual mileage estimate. An insurer may also request but not require those items set forth in section (D). Moreover, an insurer may obtain and use smog check odometer readings mentioned in section (E) from the California Bureau of Automotive Repair to develop a reasonable objective mileage estimate as set forth in section (A)(ii) and (B)(i) and (ii). These sections specify the items an insurer is allowed or required to collect to support estimated annual mileage; however, in some circumstances, default annual mileage figures can also be used to change a mileage estimate. See sections (A)(ii) and (B)(ii)2. As noted above, sections related to notice and opportunity to challenge the insurer's determination have been deleted based on comments that this procedure would be costly, inefficient, not feasible relative to 6-month policies and could result in the incorrect premium being charged.

			Footnote 14 at 6:22-23: The June 7, 2006 version, (A)(iv), changed "prior vehicle maintenance records or prior smog certificates" to "prior service records." It is not clear whether "service records" is intended to cover prior smog certificates, but in FTCR's view it should, as that is not an item allowed to be requested under (i) - (iii).	Not accepted.	Section (C) of the regulation sets forth an exclusive list of items an insurer may require from an applicant or policyholder to support the annual mileage estimate. Service records, addressed in section (D), are among the documents an insurer may request but not require. Neither Section (C) nor (D) specifically addresses prior smog certificates; accordingly, smog certificates can neither be required nor requested from an applicant or policyholder. An insurer may, however, obtain and use smog check odometer readings from the California Department of Automotive Repair pursuant to section (E) if it chooses.
			Background on California Insurance Code Section 1861.02(a) is provided on pp. 6:16-7:18.	This section 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).	
			At 7:21-22: In all instances, the policy must be rated using the consumer's estimate and reasonable information provided.	Not accepted.	The regulation does not require the policy, in all instances, to be rated using the customer's estimates and reasonable information provided. An insurer may rate the policy using a reasonable objective mileage estimate pursuant to section (A)(ii), (B)(i) or (B)(ii). An insurer may also rate the policy based on a default annual mileage figure as set forth in sections (A)(ii) or (B)(ii)2. Further, section (E), as referred to in sections (A)(ii), (B)(i) and (B)(ii), permits an insurer to obtain and use odometer readings from the

					California Bureau of Automotive Repair.
			At 7:24: Only after proper written notification to consumers and an opportunity to respond, should an insurer be allowed to re-rate the policy using an approved default or objective information that differs from the consumer's estimate.	Not accepted.	The regulation has been amended to omit re-rating; therefore, notice and response related to re-rating need not be addressed. However, the current version permits an insurer to use a reasonable estimate or an approved default under the circumstances specified in sections (A)(ii) and (B)(i) and (ii). The Department believes the revisions strike a reasonable and realistic balance, providing an insurer several methods to verify mileage, not all of which are based on the consumer's estimate or the information provided by the consumer.
			At 8:1-4: The regulations must specify that any "objective information" allowed to be used to change the customer's estimate (after providing proper written notice and an opportunity to explain any discrepancy) is only that information allowed to be requested or obtained by the insurer pursuant to subdivisions (i) - (iii).	Not accepted.	As set forth in section (A)(ii) and (B)(ii) and (iii), sections (C), (D) and (E) set forth the exclusive list of information that can be used to change a customer's annual mileage estimate to a reasonable estimate.
			At 8:6-9: 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.	The Department believes that a notice advising that a consumer may seek resolution through the Department would be more costly than beneficial. There is no reason to believe that complaints related to mileage verification are not being referred to the Department. Moreover, altering the form of applications or adding pages to existing applications would increase insurers' costs during the application and renewal process. The suggestion is also beyond the scope of this rulemaking proceeding.

			At 8:11-13: Nothing in the procedures specified should allow the insurer to deny coverage; rather these procedures to obtain accurate mileage information only apply to rating the policy.	Not accepted.	The Department disagrees with this comment. There are circumstances in which an insurer is 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."
			At 8:15-20: Amendments to proposed section 2632.5(c)(2) may be needed to clarify that insurers must demonstrate that use of default mileage values meet the requirements of amended 10 California Code of Regulations Section 2632.8, and are not used in combination with any other optional or prohibited rating factor.	Not accepted.	Sections (A)(ii) and (B)(ii) specify that default annual mileage figures must be filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02.
			At 8:22-9:5: Proposed (c)(2)(A)(i) could be read to suggest that the insurer does not need to obtain the applicant's mileage estimate and supporting information until the policy commences ("at the inception of a policy"). This is too late for the insurer to rate the policy based on that information and would prevent applicants from obtaining accurate quotes. Section (c)(2)(A)(i) should be further revised to read "Upon application for a policy" so the insurer does not delay seeking information until a later date in the application process.	Accepted.	
			At 9:5-14: The following should be added to (A)(i) and (B)(i): "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 this regulation will be necessary to support the estimate. The application [or policy renewal] documents shall also conspicuously inform the applicant or policyholder] that failure to provide	Not accepted.	As set forth in section (A)(i) of the regulation, before issuing a policy to an applicant that does not provide the estimated annual miles/information required pursuant to section (C) or who provides information that 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

			the required mileage information may lead to significant changes in the policy premium."		for the renewal policy. The Department believes this regulation strikes a realistic balance and that an insurer will provide notice of the items required pursuant to section (C) and the consequences of failing to providing that information as part of the application and renewal process.
			At 9:15-21: It may be misleading to request the address where one works if the car is used for commute. FTCR suggests additional language for (A)(i) and (B)(i) to request "the number of miles the applicant/policyholder drives to work daily, and whether another form of transportation, such as public transit used for some or all of the daily commute to the workplace."	Accepted in part.	Section (C)(1) and (2) have been changed to permit an insurer to require the following information: "1. [i]f a vehicle is used for commute purposes, the location of the workplace, school or other destination where the vehicle will be driven and, if applicable, an estimate of the number of miles the vehicle will be driven in the course of employment; 2. The number of days per week the vehicle will be used for commuting."
			At 9:22-24: The approximate date of purchase of the vehicle should be clarified to refer to the date the vehicle was purchased by the applicant or policyholder.	Not accepted.	The reference to the purchase date has been omitted from the regulation.
			At 9:25-27: In section (c)(2)(B)(i), it should read "during the 12 month period following policy renewal" rather than "inception."	Accepted.	
			At 10:1-4: The requirements (for allowing an insurer to use the default annual mileage figure only if the consumer fails to provide the information requested in (i) - (ii) and only if no other reasonable information is available) should be set forth in a separate subdivision from the requirements (for changing the estimate to use other "objective information" obtained by the insurer).	Accepted in part, and not accepted in part	The regulation has been amended to clarify the circumstances under which a default annual mileage figure and a reasonable objective mileage estimate can be used. See sections (A)(ii) and (B)(i) and (ii). As options available to an insurer, default and a reasonable estimate must be addressed in the same section. As amended, the Department believes the meaning of these sections is clear.
			At 10:9-12: Notice and an opportunity to respond should be required both before an insurer may rate the policy using a default or other objective information.	Not accepted.	Sections (A)(ii) and (B)(iii) require an insurer to provide an applicant or policyholder notice of the mileage figure it will use before using a reasonable estimate or default annual mileage figure. However, the Department declines to require a notice and opportunity to respond procedure here based on comments that such a procedure would be costly, inefficient, not feasible

					for 6-month policies and could result in incorrect premiums being charged.
			At 10:18-21: Subdivisions (A)(iv) and (B)(iv) use the phrase "clearly indicated" which does not make it clear that notice to the consumer and an opportunity to respond is required under (A)(vi) and (B)(vi) before the insurer may use the approved default. Additionally, this provision should refer back to the notice requirements that FTCR has proposed to be added to subdivisions (A)(i) and (B)(i).	Not accepted.	See the immediately preceding response to comments.
			At 10:22-11:16: When an insured provides the required information after policy inception, the policy should be rated with that information as of the date of policy inception. FTCR proposes the following revision: (iv) If an applicant/policyholder does not provide the information set forth in (i) and (ii) above, and the insurer has no other ~~means reasonably~~ reasonable objective information in its possession to estimate the miles to be driven during the 12 month period following inception of the policy, and the insurer has ~~clearly indicated~~ notified the applicant/policyholder in writing of the consequences of not providing that information in accordance with the notice requirements set forth in (i) and (vi), then the insurer may issue the policy using a default annual mileage figure, which has been filed with and approved by the Commissioner pursuant to (v) below. Upon receipt of the information set forth in (i) and (ii) above, the policy shall be rated using that information. (cont'd)	Not accepted.	The regulation has been revised to delete references to re-rating based on comments that such a process would be costly, inefficient, not feasible for 6-month policies and could result in charging incorrect premium. For the same reasons, notice and opportunity to respond provisions set forth in an earlier version of the regulation have been deleted.
			(cont'd) The insurer ~~may choose to~~ shall re-rate all policies as of the date ~~it received the information, or as~~ of policy inception. ~~However, an insurer shall apply the same method for every policy.~~ Reasonable objective information as used in this section means only that information allowed to be requested or obtained by the		

			insurer in (i) - (iii) or any additional information voluntarily provided by the consumer.		
			At 11:17-21: It should be made clear that the insurer may only use the "default annual mileage figure" if the applicant/policyholder has not provided the information set forth in subdivisions (i) and (ii) *and* if the insurer has otherwise complied with the requirements of subdivision (iv).	Not accepted.	The Department disagrees that these are the only circumstances in which resort to a default annual mileage figure should be permitted. As set forth in sections (A)(ii) and (B)(ii)2 of the regulation, an insurer may use a default annual mileage figure where a reasonable estimate cannot be determined for an applicant or where, upon renewal, the insurer lacks sufficient information to determine a reasonable estimate.
			At 11:21-22: The insurer should be prohibited from "unilaterally changing" the provided mileage estimate under any circumstances.	Not accepted.	The Department disagrees with this comment. There are circumstances where an insurer should be permitted to change the mileage estimate. For example, an insurer should be permitted to change the estimate where a reasonable estimate cannot be determined. See Sections (A)(ii) and (B)(ii)).
			At 11:22-23: The insurer should be required to provide written notice before being permitted to use a default annual mileage figure.	Accepted in part and not accepted in part.	Subsections (A)(ii) and (B)(ii) require an insurer to inform the applicant or policyholder of the mileage figure it will use to rate the policy before issuing the policy. Section (B)(ii) requires this notice to be written.
			At 11:23-12:10: Proposed subdivisions (A)(vi) and (B)(vi) should be amended as follows: (vi) In no event shall an insurer rate a policy by ~~unilaterally~~ applying the approved default annual mileage figure ~~changing the mileage estimate provided without~~ unless all the conditions of subdivision (iv) have been satisfied and the insurer notifies the applicant/policyholder a reasonable opportunity, no less than ~~fifteen~~ thirty days from the date of mailing of that notice, to challenge the insurer's use of the default ~~determination~~. The notice shall also specify that if the applicant/policyholder disagrees with the insurer's determination to use the default figure, then the applicant/policyholder may request assistance through the Department's consumer complaint	Accepted in part, and not accepted in part	FTCR's proposed paragraph is similar in substance to sections (A)(ii) and (B)(ii) with a couple notable exceptions. Subsections (A)(ii) and (B)(ii) require an insurer to inform the applicant or policyholder of the mileage figure it will use to rate the policy before issuing the policy. Only section (B)(ii) , which relates to renewals, requires written notice. Next, a notice and a procedure for opportunity to respond procedure was considered and was stricken based upon comments that the procedure would be costly, inefficient, not feasible for 6-month policies and could result in the incorrect premium being charged. Finally, the Department believes that a notice advising that a consumer may seek resolution through the Department would be more

			division and provide the toll-free number.		costly than beneficial. There is no reason to believe that complaints related to mileage verification are not being referred to the Department. Moreover, altering the form of applications or adding pages to existing applications would increase insurers' costs during the application and renewal process.
			At 12:11-13: The April 14 draft did not adequately describe under what circumstances an insurer could change the applicant or policyholder's estimate to rate the policy using other objective information that the insurer is allowed to obtain.	Accepted in part, and not accepted in part	Section (A)(ii) permits an insurer to use a reasonable objective mileage estimate based information described in Sections (C), (D) and (E) where: 1) the applicant does not provide the annual miles expected to be driven; 2) the applicant does not provide the information the insurer requires pursuant to Section (C); or 3) information provided does not support the applicant's estimated miles. This section also permits an insurer to use a default annual mileage figure where one of the three conditions above exists and a reasonable estimate cannot be determined. Section (B) permits an insurer to use a reasonable objective mileage estimate solely based on the information described in Sections (C), (D) and (E) where it receives none or only some of the information requested. Section B also permits an insurer that receives none or only some of the information requested to renew using the mileage figure from the expiring policy. (cont'd)
					(cont'd) An insurer may use a default annual mileage figure where it cannot determine a reasonable objective mileage estimate for an applicant or it lacks sufficient information to determine a reasonable estimate for a policyholder. Before using a reasonable estimated mileage figure or a default annual mileage figure, an insurer must inform the applicant or policyholder of the mileage figure it will use. See sections (A)(ii) and (B)(iii).

			At 12:13-15: In all instances, the consumer's estimate substantiated with the reasonable information allowed to be requested under (i) - (iii) and any additional information voluntarily provided must be used to issue and rate the policy.	Not accepted.	There are circumstances where an insurer should be permitted to change the mileage estimate. For example, an insurer should be permitted to change the estimate where a reasonable estimate cannot be determined or the insurer lacks sufficient information to determine a reasonable estimate. See Sections (A)(ii) and (B)(ii)).
			At 12:15-18: Under no circumstances should an insurer be allowed to deny coverage for failure to provide any of the allowable requested information. This would run afoul of the Good Driver statutory provisions at Insurance Code Section 1861.02(b).	Not accepted.	The Department disagrees with this comment. There are circumstances in which an insurer is 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."
			At 12:18-20: Any failure to provide the allowable requested information should only affect the premium charged, and then, only by using an approved default or acceptable objective information after proper notice and an opportunity to respond.	Not accepted.	The Department disagrees with this comment. There are circumstances in which California recognizes an insurer's right to decline to issue or renew a policy, 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). Moreover, notice and an opportunity to respond were considered and stricken from the regulation based on comments that such a procedure would be costly, inefficient, not feasible for 6-month policies and could result in the incorrect premium being charged. The Department believes these provisions revisions strike a reasonable and realistic balance, allowing a changed mileage estimate or using a default annual mileage figure as set forth in sections (A)(ii) and (B)(i) and (ii).

			At 12:20-13:19: The following should be inserted: "(##) If an applicant/policyholder does not provide the information set forth in (i) and (ii) above, and the insurer has notified the applicant/policyholder in writing of the consequences of not providing that information in accordance with the notice requirements set forth in (i), and the insurer notifies the applicant/policyholder in writing of the intent to use a mileage estimate based on other reasonable objective information in the insurer's possession specifying that estimate and provides the applicant/policyholder a reasonable opportunity, no less than thirty days from the date of mailing of that notice, to challenge the insurer's use of the estimate based on other reasonable objective information to estimate mileage. (cont'd)	Not accepted.	The substance of this comment is addressed in the responses to FTCR's comments above.
			(cont'd) The notice shall also specify that is the applicant/policyholder disagrees with the insurer's determination to use a different mileage estimate based on other reasonably objective information, then the applicant/policyholder may request assistance through the Department's consumer complaint division and provide the toll-free number. Upon receipt of the information set forth in (i) and (ii) above, the policy shall be rated using that information. Reasonable objective information as used in this section means only that information allowed to be requested or obtained by the insurer in (i) - (iii) or any additional information voluntarily provided by the consumer.		

			At 13:20-14:3: The following should be inserted: (##) In no event shall an insurer re-rate a policy by changing the mileage estimate used to issue the policy to use other reasonable objective information during the policy term unless in response to a request from the insured or as a result of receiving new information that conflicts with the applicant's/policyholder's estimate. Prior to re-rating the policy, the insurer must notify the applicant/policyholder of the proposed change in writing and provide the applicant/policyholder a reasonable opportunity, no less than thirty days from the date of mailing of that notice, to challenge the insurer's use of the estimate based on other reasonable objective information. The notice shall specify that if the applicant/policyholder disagrees with the insurer's determination to use a different mileage estimate based on other reasonable objective information, then the applicant/policyholder may request assistance through the Department's consumer complaint division and provide the toll-free number.	Not accepted.	The substance of this comment is addressed in the responses to FTCR's comments above.
			At 14:4-9: FTCR has grave concerns with the application and enforcement of the proposed regulation's provisions that purportedly authorize the use of a "default annual mileage figure, which has been filed and approved by the Commissioner." Based on some of the comments made by the insurers' representatives during the public discussion held by the Department by teleconference on May 25, 2006, FTCR foresees this provision as a potential vehicle for abuse.	Not accepted.	Sections (A)(ii) and (B)(ii)2 require default annual mileage figures to be filed with and approved by the Commissioner. Beyond this, the commenter has not provided any details as to the possible abuse which can be addressed here or elsewhere. Accordingly, a detailed response cannot be provided.

			At 14:10-16: An approved "default annual mileage figure" is only allowed to be used if the consumer fails to provide the acceptable forms of reasonable information (as identified in proposed subdivisions (A)(i)-(ii) and (B)(i)- (ii)) to support his or her annual mileage estimate <u>and</u> only if the insurer has informed the consumer of the consequences of failing to provide the information <u>and</u> has no other means to reasonably estimate the consumer's annual mileage. Under no other circumstances is an approved "default annual mileage figure" to be used.	Not accepted.	This comment reflects an interpretation of the April 14, 2006 text of the regulation. This text has been changed. Section (A)(ii) permits an insurer to use a default annual mileage figure where: the applicant does not provide the annual miles expected to be driven; or the applicant does not provide the information the insurer requires pursuant to Section (c); or the information provided does not support the applicant's estimated miles and a reasonable estimate cannot be determined. Section (B)(ii) permits an insurer to use a default annual mileage figure where it receives none or only some of the information requested and the insurer lacks sufficient information to determine a reasonable estimate. Before using a default annual mileage figure, an insurer must inform the applicant or policyholder of the mileage figure it will use. See sections (A)(ii) and (B)(iii).
			At 14:17-25: In order to ensure that insurers do not use any "default annual mileage figure" to circumvent, FTCR believes that insurers should be required to demonstrate in their class plans that use of any "default annual mileage figure" complies with the factor weight ordering requirements of Insurance Code Section 1861.02(a) and amended 2632.8. FTCR suggests a provision to be added to (A)(v) and (B)(v): "(v) . . . <u>An insurer must demonstrate in its class plan that any proposed default and/or average mileage rating relativities comply with Insurance Code Section 1861.02(a) and section 2632.8."</u>	Not accepted.	Sections (A)(ii) and (B)(ii)2 require default annual mileage figures to be filed with and approved by the Commissioner. The Department believes that the filing and approval procedure will result in an appropriate review of default annual mileage figures for compliance with the California Insurance Code and the regulations.
			At 15:1-15: Annual mileage, whether measured by the consumer's substantiated estimate or the approved "default annual mileage" figure" cannot be combined with any other optional factor. Some insurer representatives inquired on the May 25 teleconference as to the propriety of using default mileage categories based on "geography" or "type of vehicle." (cont'd)	Accepted.	Sections (A)(ii) and (B)(ii)2 require default annual mileage figures to be filed with and approved by the Commissioner. The Department believes that the filing and approval procedure will result in an appropriate review of default annual mileage figures for compliance with the California Insurance Code and the regulations.

			(cont'd) To the extent that any proposed default categories allow an additional weight for the optional territorial rating factors, or other optional factors such as type of vehicle to be built into the mileage rating factor (just as insurers have been combining optional factors with years of driving experience in order to manipulate the order of factor weights), such default relativities would clearly be prohibited by Insurance Code Section 1861.02(a), the Proposed Regulation Section 2632.8, and current regulation Section 2632.5(e). To the extent that insurers propose to use default mileage values that incorporate, directly or indirectly, relativities for unapproved rating factors, such as age, such proposed mileage defaults should be rejected by the Department and the Commissioner as prohibited by Insurance Code Section 1861.02(a0(4) and Regulation Sections 2632.4-2632.8.		
PIFC	06/13/06	April 14 and June 7.	Background on PIFC, the pre-hearing workshop conducted for this matter, and the relationship between the mileage verification regulation and a separate set of regulations, RH03029826 (the "Auto Rating Factors" regulations) are addressed 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.	
			Flexibility is Needed: CDI should permit an insurer to petition the CDI in the future to consider new techniques or technologies to improve mileage verification without the need for an amended regulation.	Accepted in part, and not accepted in part.	The regulation has been amended to permit insurers to request but not require the use of technology that collects mileage information without the need for petition. As set forth in section (D), "[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."
			It is unclear under (c)(2)(A)(i) whether an insurer is permitted to inquire as to the number of miles driven "as part of the applicant's job" Can an insurer inquire into what route(s) the applicant drives to get to/from work as part of the applicant's daily work time driving?	Accepted in part, and not accepted in part.	The regulation has been changed to permit a similar inquiry. As set forth in Section (C), an insurer is permitted to require an applicant or policyholder to provide the following information: 1. If the vehicle is used for commute purposes, the location of the workplace, school, or other destination where the vehicle will be driven and, if applicable, an estimate of the number of miles the vehicle will be driven in the course of employment . . ." This section, which sets forth the only items an insurer can require from an applicant or policyholder, and section (D) which sets forth the only items an insurer can request but not require, do not address the route the applicant drives to get to and from work. Accordingly, as set forth in the regulation, this inquiry would not be permitted. 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 regulation is unclear as to whether an insurer would be permitted to obtain mileage verification information directly from the DMV or though other vendors. An insurer should be permitted to obtain odometer reading information from a third-party vendor.	Accepted in part, and not accepted in part.	Section (E) permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair (BAR) to estimate annual miles driven. As set forth in this section, insurers are permitted to obtain and use this information, provided it is from BAR. Nothing prevents insurers from insurers from obtaining the information from a third-party vendor; however, the regulation does not permit use of such information.
			CDI should permit other means beyond agents to enable mileage verification in section (c)(2)(A)(iii). This should include brokers and other service providers.	Not accepted.	Sections (A)(iii) and (B)(iii) of the April 14 and June 7 versions has been deleted in response to comments. This section previously addressed an insurer's ability to require an agent to verify mileage when the agent met with a policyholder in connection with the application or policy renewal.

			Additional clarification is required in section (C)(2)(A)(iv) which permits an insurer to use default annual mileage if a customer fails to provide "reasonable information" and the insurer has "clearly indicated the consequences of not providing that information"; what level of specificity is required?	Accepted in part, and not accepted in part.	This section was deleted from the regulation. Section (A) permits an insurer to use a default annual mileage figure where a reasonable objective mileage estimate cannot be determined based upon the information provided pursuant to sections (C), (D) and (E). Similarly, section (B) permits an insurer to use a default annual mileage figure where it lacks sufficient information to determine a reasonable objective mileage estimate. Pursuant to sections (A) and (B), an insurer must inform an applicant or policyholder of the mileage figure (including a default mileage figure) it will use to rate the policy before issuing the policy. Section (B)(iii) requires that the notice be written.
			Section 2632.5(c)(2)(A)(v) refers to "approval by the Commissioner." What would this entail procedurally and what would be the timetable for approval?	Not accepted.	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." Stated otherwise, the procedure that applies to approval of class plans will apply to this requirement. The timetable for each matter will depend on the request and the factual circumstances; however, class-plan timetables will apply.
			Section 2632.5(c)(2)(A)(vi) why does the notice have to be mailed and what must the notice say? Would it be acceptable to provide verbal notice, email notice or notice printed on the application for insurance or posted on the carrier's website?	Accepted in part, and not accepted in part.	Section (A)(vi) of the April 14 version of the regulation stated that "[i]n no event shall an insurer rate a policy unilaterally changing the mileage estimate provided without notifying the applicant of that change and providing the applicant a reasonable opportunity, no less than fifteen days from the date of mailing of that notice, to challenge the insurer's determination." This section has been changed. Section (A)(ii) requires an insurer to inform an applicant of the mileage figure it will use to rate the policy before issuing the policy. Section (B)(iii) requires an insurer to provide the applicant-policyholder

					written notice that highlights the mileage figure for the expiring policy and the mileage figure for the renewal policy before renewing the policy. The Department believes that under these sections: 1) verbal notice is acceptable in the case of an initial applicant; 2) written notice is required for a policyholder renewal; 3) the substance of the notices is clearly (cont'd)
					(cont'd) set forth; 4) the substance of the renewal notice precludes notification by website posting; and 5) e-mail notification that meets the requirements of these sections is acceptable.
			Section 2632.5(c)(A)(vii) permits an insurer to re-rate a policy to correct the amount of premium, including the previous 60-days if a consumer is unable to provide a credible explanation for a deviation between the customer's estimated mileage and other reasonable objective information. Is this CDI's intent?	Accepted.	Section (A)(vii) of the June 7, 2006 version of the regulation (which limited an insurer's ability to modify the estimated mileage; addressed significant inconsistencies between the insured's estimated mileage and the newly obtained reasonable objective information; and the premium to be charged during the explanation procedure) was deleted in response to comments that such a procedure would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged. The current version of the regulation does not address or permit re-rating.
			The regulation does not address situations where there are multiple vehicles scheduled under a policy.	Accepted.	

State Farm	06/13/06	06/07/06	Introductory remarks are provided on page 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.	
			"Reasonable" support for a mileage estimate should not be confined to the listed categories of information in subpart (i) of proposed parts A and B. Greater flexibility is appropriate. What constitutes reasonably available and helpful information may vary on a case-by-case basis, and may evolve over time. Local driving accounts for a greater proportion of annual miles than commuting, but the only objectively supported inquiry permitted by the list of "reasonable information" addresses work commutes. Companies should be permitted to devise questionnaires that range more broadly or would focus on specific red flag areas for certain files. The regulations would not permit a company to require specific information concerning a school rather than workplace commute. The concept of "reasonableness" defies a specific, confined list. Any Department concerns about over-reaching can be addressed through the filing and review requirement.	Accepted in part and not accepted in part.	The sections referred to by the commenter have been changed. The information an insurer may require or may request from an applicant or policyholder to support estimated annual mileage is addressed in sections (C) and (D). The list of items in (C) and (D) has been expanded beyond "reasonable information" contained in the June 7, 2006 version of the regulation. Relative to the concern that local driving accounts for a greater proportion of miles than commuting: section (C) permits an insurer to require information concerning commute and pleasure miles. The Department believes these figures will include local miles. Section (C) also permits an insurer to require an estimate of miles the vehicle is "used for commute purposes, the location of workplace, school or other destination where the vehicle will be driven." While the regulation does not permit case-by-case questionnaires, an insurer may red flag areas for certain files. (cont'd)
					(cont'd) It may issue a policy using a reasonable objective mileage estimate if the information provided by an applicant or policyholder does not support the estimate. See sections (A)(ii) and (B)(ii). An insurer may, under certain circumstances, use 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.
			Reasonable underwriting requires greater flexibility in considering individualized information. The regulation assumes that applicants/policyholders always provide the information requested or completely fail to respond. State Farm's experience is that policyholder responses frequently vary from the requested information and require flexible and iterative treatment. The regulations thus require greater flexibility. Subpart (v) of parts A and B appear to require an insurer to accept the applicant/policyholder's explanation of a discrepancy between annual mileage measured by odometer reading and the applicant/policyholder's estimate of future miles, without regard to reasonableness of the explanation, no matter how many times the policyholder's estimate has proven to be understated. That is not a reasonable balance. The regulation should not require an insurer to accept an explanation that is not credible either because it is inherently so, or is made not credible by objective underwriting information. (cont'd)	Accepted in part and not accepted in part.	These sections have been revised. Section (A)(ii) and (B)(ii) address situations where applicants or policyholders provide some, but not all, of the information requested. Section (A)(ii), for example, addresses the situation in which an "applicant does not provide . . . the information required pursuant to (C) below." Section (B)(ii) specifically addresses the circumstances in which an insurer receives "none or only some of the information requested in (i) above." Further, section (A)(ii) has been revised to address discrepancies between the applicant's estimated mileage and the information provided. These sections do not require an insurer to accept an applicant or policyholder's explanation of a discrepancy without regard to the reasonableness of that explanation.
			(cont'd) Subpart (v) should require a reasonable explanation. Recommendation, change the language in the last sentence of subpart (v) to provide: "If, after 60 days, an reasonable explanation is not provided to support the estimate . . ."		
			The insurer should not be required to accept an unsupported explanation after the initial underwriting experience establishes that the objective information is more reliable. Recommendation: a sentence should be added at the end of subpart(B)(v) stating: "The insurer need not accept the policyholder's unsupported	Accepted in part and not accepted in part.	See the immediately preceding response. Under sections (B)(i) and (B)(ii), an insurer may renew using the mileage figure from the expiring policy or a reasonable objective mileage estimate.

			explanation if objective information establishes that an explanation for a prior policy period was not reliable."		
			Mandatory underwriting of all policyholders is not practical or necessary: Subpart B(i) of the revised text would require an insurer to affirmatively re-underwrite every policyholder as to annual mileage classification every three years; this requirement imposes an undue expense and unnecessary burden on large insurers with numerous policyholders. Affirmative underwriting can be tailored to files as to which there are indicators suggesting that a check on annual mileage is warranted. Recommendation: changing the first sentence of subpart B(v) (*sic* - (B)(i)) to read: "~~Prior to policy renewal, a~~ *A*n insurer ~~shall, at least every three years~~ *may* require a policyholder to provide . . ." (cont'd)	Accepted in part, not accepted in part.	As insurers are aware, mileage and mileage estimates change. Accordingly, insurers should periodically update their mileage estimates on a consistent basis. Three years is a reasonable balance which conforms with the three-year good driver requirement.
			(cont'd) If the Department wishes to mandate re-underwriting to this factor for the book of business, subpart B(v) (sic - (B)(i)) could be changed to read : An insurer shall continue to monitor annual mileage for accurate classification. The insurer may monitor by re-underwriting all policies or by selecting policies for re-underwriting using reasonable criteria to identify policies as to which there is a heightened concern regarding the accuracy of the mileage classification. As to policies identified for re-underwriting, the insurer shall, at least every three year . . . "		

			Subpart B(ii) appears to confine insurers to obtaining underwriting information regarding mileage to policy renewal, even though this may be inconsistent with 10 California Code of Regulations Section 2632.19(b)(1); this does not permit insurers to contain or moderate the expense of underwriting by other possible disseminations of requests for underwriting information, or by other distribution plans for collection of DMV smog certificate information.	Accepted in part, not accepted in part.	Under the current version of the regulation, insurers are limited to obtaining certain underwriting information from policyholders during the policy renewal *process*. However, an insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair at times other than during this process. See section (E). Finally, as specifically recognized in 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," including 10 California Code of Regulations, Section 2632.19(b)(1). The Department believes the current version strikes a reasonable and realistic balance between an insurer's need to obtain information required for underwriting without placing an unnecessary burden on a policyholder.
			It is unclear what "at policy renewal" means in subpart B(ii).	Accepted.	The regulation has been amended to refer to "the renewal process." See section (B)(i). "Renewal process" is intended to refer to the period of time during which a policy is being renewed, and is intended to refer to a time period greater than "at policy renewal."
			The proposed regulation is inconsistent as to its treatment of midterm reclassifications: Subpart (vii) in parts A and B appear to limit an insurer's ability to reclassify midterm in a way that is inconsistent with subpart (v) of A and B. Subpart (v) requires an insurer to classify a policy based on a policyholder estimate that is inconsistent with objective information pending the sixty-day response period. But if the policyholder does not respond during the sixty day period (or if the policyholder does not provide a reasonable response), under subpart (v), the insurer may reclassify the policy. This would be a midterm reclassification which subpart (vii) appears to prohibit. Subpart (vii) should make clear that the midterm reclassification permitted by subpart (v) is not prohibited by subpart (vii).	Accepted in part, not accepted in part.	Sections (A)(vii) and (B)(vii) which prohibited an insurer from modifying the estimate mileage unless acting on the insured's request or as the result of receiving new objective, significantly inconsistent information have been deleted. Sections (A)(ii) and (B)(ii) reflect the revised versions of sections (v) of (A) and (B) relative to an insurer's options for issuing policies where some or all of the information requested is not provided. Sections (A)(ii) and (B)(ii) do not address or permit midterm reclassifications.

			Relationship to Proposed "Weight" Regulation: Insurers have noted that proposed amendments to 10 California Code of Regulations Section 2632.8 and 2632.5(e) may create a new emphasis on the annual mileage rating factor, increasing the imperative to accurately underwrite with respect to this rating factor. State Farm cautions that no amount of accuracy can give annual mileage more "weight" -as calculated under the proposed amendments - than years driving experience, the third mandatory factor. Consequently, accurate underwriting cannot prevent the rating distortions that would result from the impact of the proposed amendments on these two mandatory factors.	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 disagrees with a portion of this comment. Three factors are to be considered in determining automobile insurance rates and premiums, in descending order of importance. Factor two is the number of years he or she drives annually. Factor three is the number of years of driving experience the insured has had. See California Insurance Code Section 1861.02. Accordingly, contrary to the comment, the Insurance Code requires an insurer to place greater "weight" on factor two than factor three.
			Accurate underwriting may, however, limit the impact of the undesirable effects of the proposed amendments to 10 California Code of Regulations Sections 2632.8 and 2632.5(e). One possible mode of compliance with these sections would be extreme pumping of annual mileage relativities. This will result in rates distorted up for higher annual mileage drivers and distorted downward for lower annual mileage drivers. Once higher annual mileage drivers are asked to pay rates that are higher in relation to risk than they should be - as mandated by proposed sections 2632.8 and 2632.5(e) - there will be increased incentive to misreport annual mileage data to avoid these disproportionately high rates.	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 regulation is insufficient to enable accurate underwriting as against deliberate misreporting occasioned by the enforced imposition of unfair rates. That is because the regulation does not allow an insurer to require independent verification of an odometer reading.	Accepted in part and not accepted in part.	As set forth in the responses above, the Department believes the regulation enable accurate underwriting and fair rates. However, the regulation as amended permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair as independent support of an mileage estimate.

Alliance of Ins. Agents and Brokers	06/13/06		Background on the Alliance of Insurance Agents and Brokers is provided at 1:17-27.	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.	
			Footnote 1 at 2:26-28: In its separate comments, the Alliance, in association with Western Insurance Agents Association, conclude that the proposed regulation would eliminate the flexibility carriers currently have. In that regard, the proposed regulation forces insurers to rely on "estimates" of miles driven provided by applicants and policyholders, rather than undertaking verification through alternate sources. This serves no one's legitimate interest.	Accepted in part and not accepted in part.	The Department agrees that the regulation specifies certain actions taken by carriers to verify estimated annual mileage. However, the Department disagrees that the regulation will force insurers to rely on "estimates" rather than undertaking verification through other sources. For example, section (E) of the regulation permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair as independent support of an mileage estimate. Further, the Department disagrees that the approach set forth in the regulation serves "no one's legitimate interest." 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. (cont'd)
					(cont'd) 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).
			At 2:1-10: Insurance Code Section 1861.02 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 the policyholder drives annually. This regulation impairs an insurer's ability to determine and verify the actual miles driven. The Commissioner is attempting to legislate an amendment to Insurance Code Section 1861.02 to the effect that insurers must use the insured's stated miles driven. The requirement that insurers accept the insured's own statement of mileage at face value is not a reasonable interpretation of Insurance Code Section 1861.02 nor is it sound policy.	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.	As set forth in the current version of 2632.5(c)(2), the "Second Mandatory Factor" is the number of miles the insured drives annually. This section further provides that "[t]his factor means the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy." This comment addresses the substance of an existent regulation, and is not directed at the action proposed in the Proposed Regulation text, including any of the versions of Proposed Regulation text. Nothing in the regulation requires an insurer to accept the insured's own mileage statement at face value in all circumstances.
			At 2: 11-19: The proposed regulation is inconsistent with Insurance Code Section 1861.02 and 10 California Code of Regulations Section 2632.5(c)(2) because it unreasonably limits an insurer's ability to determine actual mileage by: 1) requiring an insurer to accept the insured's mileage estimate and limiting the insurer's ability to verify such estimate or cancel a policy for failure of the insured to provide information such as odometer readings and 2) effectively precludes insurers from retroactively adjusting premium based on the inability of insurers to obtain odometer readings and forcing insurers to use a default mileage number to be filed with and approved by the Commissioner.	Accepted in part, not accepted in part.	The current version of the regulation requires an insurer to accept the insured's mileage estimate except as set forth in the section. However, the regulation has been changed to expand the information an insurer is permitted to require to support estimated annual mileage. Amongst these items is the current odometer reading of the vehicle to be insured. Moreover, an insurer's right to decline to issue, cancel or non-renew a policy is specifically recognized in section (vi) of (A) and (B). This section, thus, recognizes an insurer's right to cancel under 10 California Code of Regulations Section 2632.19(b)(1) where an applicant refuses or fails to provide information necessary to accurately underwrite or classify the risk which results in a substantial increase in hazard. (cont'd)

					(cont'd) The Department disagrees that the regulation precludes insurers from obtaining odometer readings. Section (C) permits an insurer to require the current odometer reading. Section (D) permits an insurer to request but not require service records and section (E) permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair as independent support of an mileage estimate. However, insurers are not permitted to retroactively adjust premiums; once a premium is selected by an insurer, that premium should remain in effect for the term of the policy.
			Background on Proposition 103 is provided at 2:20-3:9.	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 3:9-24: Each insurer has adopted procedures pursuant to the general premise that they may use any reasonable method in order to determine estimated annual mileage. Among the methods currently used by insurers are: 1. Using the estimate of the applicant for the initial policy period and seeking from the insured odometer readings in conjunction with policy renewals; 2. Underwriting the "business use" of the miles by calculating miles from home to office; 3. Requiring the applicant/insured to provide odometer readings at the beginning of the policy period and again at the end of the policy period in order to verify actual miles driven; 4. Requiring	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	

			the applicant/insured to provide third party automobile service records, smog check forms, etc. which reflect odometer readings in order to verify odometer readings provided by applicants and insureds; 5. Adjusting unreasonable estimates provided by the consumer to a default value based on studies on average miles driven in California.	Text.	
			At 3:25-28: Insurers generally do not check the odometer readings through insurer personnel or licensed agents as the expense of checking odometer readings in this manner is not economically feasible. Insurers generally accept the odometer readings provided by applicants and existing customers or require verification by requiring the applicant/insured to provide third-party automobile service records, smog check forms, etc. which reflect odometer readings.	Accepted.	Former sections (A)(iii) and (B)(iii), which addressed agent verification where an insurer markets using an independent or captive agency system and the applicant or policyholder met with an agent in connection with the application/policy renewal, has been deleted. As set forth in the regulation, "an insurer shall use the applicant's/policyholder's estimated annual mileage" except as otherwise set forth. As touched upon in the immediately preceding response, an insurer may request but cannot require verification of mileage estimates by requiring an applicant or policyholder to provide service records. See section (D). An insurer is permitted, however, to obtain and use smog check odometer readings from the California Bureau of Automotive Repair as independent support of an mileage estimate.

			At 4:1-9: A number of insurers use a default value in accordance with a Department of Insurance Notice dated November 8, 2002 which states "**Annual Miles:** Pursuant to California Insurance Code Section 1861.02(a) and Title 10, California Code of Regulations, Section 2632.5(c)(2), the second mandatory automobile rating factor is the estimated number of miles driven annually for the twelve months following policy inception. This should be based on the applicant's estimate and does not authorize an insurer arbitrarily to estimate the number of miles a policyholder will drive, based on, for example, statewide or nationwide averages. Any unilateral change to an insured's estimated mileage, done without the insured's knowledge, is impermissible. California average miles may be acceptable in certain limited circumstances. For example, an insurer may use the California estimate until an insured provides mileage information. (cont'd)	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.	
			(cont'd) Additionally, if specific information provided (such as miles driven between home and work) conflicts with the total mileage estimate, the insurer may use the higher provable mileage if the insured has an opportunity to rebut the insurer's calculated mileage."		
			At 4:10-17: A premium surcharge is provided to the insured by insurers who adjust based on the use of a higher default mileage number or retroactively adjust the mileage based on comparing odometer readings at the beginning and end of the policy period. The policy is subject to cancellation if the insured fails to remit the premium surcharge. If an applicant fails to provide the odometer reading or other information required by the insurer to verify the insured's mileage estimate, the insurer may choose to cancel or non-renew the policy under Section 2632.19(b)(1) based on the inability of the insurer to underwrite the risk.	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 4:19-27: The proposed regulation and its effect on mileage estimates: The proposed regulation establishes the basis under which estimated miles are determined. It includes in paragraph (i) the mandatory requirement to obtain the applicant's estimate of miles for the upcoming year plus optional information which the insurer may or may not seek which the Proposed Regulation defines as "reasonable information necessary to support the estimate." This optional information includes the address, days used for commute purposes, estimate of pleasure and other miles, i.e., non-business commute miles, the approximate number of miles driven in the last two years, reason for any difference in the estimate for the upcoming year and miles driven the previous and approximate date of vehicle purchase.	Accepted in part and not accepted in part.	See section (C) for the changes in items the insurer may require from the applicant or policyholder.
			At 5:1- 3: Subsection (ii) allows the insurer to collect from the applicant a current odometer reading or to obtain the odometer reading from the California Department of Motor Vehicles.	Accepted in part and not accepted in part.	Section (D) permits an insurer to require the current odometer reading. Section (E) permits an insurer to obtain and use smog check odometer readings from the California Bureau of Automotive Repair to estimate annual miles driven. An insurer may obtain both of these items and is not required to choose between them.
			At 5:3-5: Smog certification from the Department of Motor Vehicle is costly and takes time. Smog certificates are not required for newer automobiles manufactured within the last five years and automobiles that are over 25 years old.	Accepted in part and not accepted in part.	The Department recognizes that there are costs and time involved in obtaining smog check odometer readings. The Department agrees that there are certain limitations to the data available from the California Bureau of Automotive Repair. To the extent this comment implies that the smog check odometer readings are not, by themselves, sufficient, sections (C) and (D) permit an insurer to obtain information other than smog check odometer readings from the California Bureau of Automotive Repair to support estimated annual mileage. This language was added in response to public comments. Obtaining the information is not required.

			At 5:6-7: Subsection (iv) prohibits an insurer from requiring insureds to provide service records which document the odometer reading at a particular date within the last three months.	Accepted in part and not accepted in part.	Section (D) provides that an insurer may request but not require service records which document the odometer reading of the vehicle to be insured. This limitation exists, regardless of the date of the service record. To the extent this comment implies that an insurer will have insufficient information in the absence of service records to support estimated annual mileage, the Department disagrees. 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.
			At 5:8-15: paragraph (v) provides the limitation on what the insurer may do if the applicant/insured fails to provide the information requested. It has two options: 1) use the most "reasonable estimate if it is able to reasonably estimate the mileage;" or 2) use a default mileage figure to be filed with and approved by the Commissioner. The insurer is not provided an option to cancel or nonrenew if information is not provided as permitted in Section 2632.19(b)(1).	Accepted.	As set forth in the current version 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." There are circumstances in which an insurer may be permitted to decline to issue or renew a policy under California law.
			At 5:16-22: A "reasonable estimate" referred to in subsection (v) need not have any relationship to the actual miles driven as insurers are prohibited from requiring verified odometer readings and are otherwise encouraged to accept the insured's stated estimate of mileage.	Not accepted.	The regulation was revised to omit subsection (v) and the reference to a "reasonable estimate." Sections (A)(ii) and (B)(ii) state that an insurer may issue a policy using a reasonable objective mileage estimate which is based upon the information provided or obtained pursuant to sections (C), (D) and (E). The Department disagrees that the information which can be obtained pursuant to sections (C), (D) and (E) have no relationship to estimated annual mileage. Each section includes item(s) that bear upon estimated annual mileage. Actual mileage is not the relevant inquiry here. 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."
			At 5:21-22: As a practical matter, the insurer can never make an estimate of miles that approaches the actual miles driven if it does not possess odometer readings.	Not accepted.	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. Finally, the premise of this comment is incorrect. As set forth in Regulations Section 2632.5, "the number of miles he or she drives annually" means "the estimated annual mileage for the insured vehicle during the 12 month period following the inception of the policy." Accordingly, estimated annual miles is the information sought here.
			At 5:23- 28: If the applicant fails or refuses to provide an odometer reading, the only verifiable information on which an insurer could base a mileage estimate is the insured's "business miles." These mileage calculations would clearly be insufficient as they would exclude significant "pleasure miles" driven on weekends and other non-business uses.	Accepted in part and not accepted in part.	The information an insurer may require or may request has expanded to include an estimate of the number of miles to be driven for pleasure and other purposes. See also sections (C), (D) and (E) generally. If an insurer lacks sufficient information, it need not issue the policy. Current odometer readings alone do not demonstrate mileage driven.

			At 5:28-6:4: The regulation does not contemplate business uses other than simple commuting. Thus, the effect of the proposed regulation is that the insurer is left with the option of estimating miles based only on business miles, which in all likelihood will not reflect the actual annual miles, or utilizing a default mileage that must be filed with and approved by the Commissioner pursuant to an unknown standard.	Accepted in part and not accepted in part.	The regulation has been changed to reflect business uses other than simple commuting, such as an estimate of the number of miles the vehicle will be driven in the course of employment. The Department disagrees with the conclusion that an insurer is left with an estimate that will not reflect actual annual miles or a default (reflecting an unknown standard). The information an insurer may require or may request has expanded. See sections (C), (D). Moreover, insurers are permitted to obtain and use smog check odometer readings from the California Bureau of Automotive Repair to support estimated annual mileage. Further, as set forth in existing Regulations Section 2632.5, "the number of miles he or she drives annually" means "the estimated annual mileage for the insured vehicle during the 12 month period following the inception of the policy." Accordingly, estimated annual miles is the information sought here, not actual annual miles.
			At 6:5-7: If the applicant refuses to provide odometer readings, the insurer will be effectively precluded from making retroactive adjustments to the premium at the end of the policy period as permitted in the existing and maintained in the regulation.	Not accepted.	The regulation has been amended to address options available to an insurer where the policyholder does not provide the information requested pursuant to section (C). The Department disagrees that a refusal to provide odometer readings will effectively preclude an insurer from retroactive adjustments of the premium based on actual miles. 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. No change is proposed to existing section 2632.5(c)(2) with regard to the provision that provides:"[i]nsurers may not retroactively adjust premiums based on actual miles driven unless notice is provided to the policy holder prior to the effective date of the policy."

			At 6:8-11: The effect of the regulation will be to incentivize some applicants not to provide odometer readings preferring, without threat of cancellation, to accept a default mileage number, i.e., as the default mileage number, which is based on a California average, could result in a lower mileage calculation for that applicant.	Not accepted.	The regulation has been amended to address options available to an insurer where the policyholder does not provide the information requested pursuant to section (C) or where the information provided by the applicant or policyholder does not support the applicant's estimated annual miles. See sections (A)(ii) and (B)(ii). Further, section (vi) of (A) and (B) provide that "[n]othing in this section shall be construed to affect the ability of an insurer to decline to issue, cancel or non-renew a policy in accordance with any other applicable provision of California law." To the extent the commenter believes that the regulation, with these changes, provides incentive to some applicants not to provide odometer readings preferring a lower default annual mileage figure, the commenter has offered no support for this contention. The Department believes that, to the extent such incentive exists, it is decreased by the options made available to an insurer in this regulation.
			At 6:13-6:14 and 6:20-27: The proposed regulation fails the Government Code's "clarity" requirement. "Reasonable estimate" is not defined and does not specify when an insurer will be deemed to be "able to reasonably estimate." There is no clarity as to what such an estimate could be based on in the absence of information from the consumer.	Not accepted.	The regulation was revised to omit subsection (v) and the reference to a "reasonable estimate." As set forth in sections (A)((ii) and (B)(i) and (ii), a reasonable objective mileage estimate must be based on the information provided in sections (C), (D) and (E).
			At 6:14-19 and 6:28- 8:3: The proposed regulation does not allow the insurer to require verified odometer readings subject to cancellation or non-renewal and is, therefore, inconsistent with Insurance Code Section 1861.02(a)(2) which requires the use of a*ctual miles driven* in establishing automobile insurance rates. The Commissioner is, in essence, attempting to legislate an amendment to Insurance Code Section 1861.02 -i.e., that insurers must use the *insured's stated* miles driven. The requirement that insurers accept the insured's own statement of mileage at face value is not a reasonable	Not accepted.	As set forth in the current version of 2632.5(c)(2), the "Second Mandatory Factor" is the number of miles the insured drives annually. This section further provides that "[t]his factor means the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy." Accordingly. this comment addresses the substance of this existent regulation, and is not directed at the action proposed in the Proposed Regulation text, including any of the versions of Proposed Regulation text. Further, while the proposed regulation does not permit an insurer to require verified odometer readings, the

			interpretation of section 1861.02 nor is it sound policy.		regulation states that "[n]othing in this section shall be construed to affect the ability of an insurer to decline to issue, cancel or non-renew a policy in accordance with any other applicable provision of California law." The Department believes that this, and the other provisions contained in the regulation, constitute a reasonable interpretation of Section 1861.02 and 10 California Code of Regulations Section 2632.5(c)(2) and promote sound public policy.
			At 8:4-7: The proposed regulation is not reasonably necessary to effectuate the purpose of Insurance Code Section 1861.02(a)(2). The Commissioner has failed to provide a statement of necessity for the regulations or provided any evidence for the need for the regulation.	Not accepted.	The Department believes that the proposed mileage verification regulation is necessary to effectuate the purposes of California Insurance Code Section 1861.02(a)(2) and 10 California Code of Regulations Section 2632.5(c)(2). The Department disagrees that the Commissioner has failed to provide a statement of necessity supporting the regulation or provided any evidence establishing the need for the regulation. 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. Consistent with this, 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).
			At 8:7-12: Section 1861.02 implies that insurers would be able to use reasonable methods for obtaining information on the annual miles driven. At very least, there is nothing in section 1861.02 that would prohibit the same. Thus, there is no basis in law or policy for the Commissioner's prohibition against an insurer requiring service	Not accepted.	The regulation permits an insurer to require and request numerous types of information, set forth in section (C), (D) to verify estimated annual mileage. It also permits insurers so obtain smog check odometer readings from the California Bureau of Automotive Repair. The regulation prohibits requiring past service records because,

			records to verify odometer readings.		for a variety of reasons, consumers may not retain or possess them. 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, therefore, the regulation reflects sound policy.
IBA	06/13/06	April 14, 2006 and June 7, 2006	Background on IBA 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).	
			The proposed regulations are not necessary. The regulations fail to explain why the regulations are necessary.	Not accepted.	The Department believes that the proposed mileage verification regulation is necessary to effectuate the purposes of California Insurance Code Section 1861.02(a)(2) and 10 California Code of Regulations Section 2632.5(c)(2). To the extent this commenter contends the Commissioner has failed to provide a statement of necessity supporting the regulation, the Department disagrees. 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. Consistent with this, 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 proposed regulations would actually harm customers by forcing insurers to raise their prices. Insurers are well aware that applicants and policyholders routinely under-report mileage. But in a competitive market, the vast majority of insurers are willing to accept customer estimates rather than attempt to document mileage because documentation will likely result in a higher, less competitive quote and the loss of business to another insurer. To the extent these regulations result in increased documentation of higher mileage, California drivers will see higher insurance prices; insurers will be forced to raise prices to comply with rating plans already filed with and approved by the Commissioner.	Not accepted.	The commenter has failed to provide support for these contentions. Currently, there are no regulations that specifically indicate the information an insurer is allowed or required to collect to determine the number of miles driven annually. Once implemented, the mileage verification regulation, will apply to equally all private automobile insurers issuing policies in California resulting in a level and more competitive playing field. Certain insurers may be required to file new rating plans to comply with the mileage verification regulation; others may not.
			The Commissioner has no authority to adopt proposed Sections 2632.5(c)(2)(A)(iii) and (B)(iii). The Commissioner has no authority to compel third-party independent contracts - i.e., captive or independent agents - to verify odometer readings.	Accepted in part and not accepted in part.	Former subsections (A)(iii) and (B)(iii) which permitted an insurer to, under certain circumstances, require an agent who meets with an applicant or policyholder to verify the odometer reading has been stricken based on IBA's concerns (provided below) related to potentially disproportionate impact on agents in rural areas.

			The regulations are unclear and ambiguous. As drafted, the regulations could be construed to require (or, at a minimum, not prohibit insurers from compelling) agents to meet with applicants and policyholders to verify odometer readings - a requirement that would work a significant hardship on agents and could harm consumers even more severely. The Commissioner misapprehends the extent to which insurance consumers presently "meet" with agents. Face to face meetings are exceedingly rare, at least in most urban and suburban areas of California. To the extent the Commissioner intends, or insurers interpret, these regulations as authority for insurers to require agents to meet in-person with every new application and every existing policyholder on renewal, consumers and agents will be forced to incur significantly time, expense and effort solely to effect policy issuance or renewal.	Accepted.	
			Proposed sections 2632.5(c)(2)(A)(iii) and (B)(iii) would severely impact small business: The regulations would disproportionately impact small agents and their policyholders in rural areas where face-to-face meetings are more common. The Commissioner is incorrect in his statement in the Initial Statement of Reasons that "[t]he proposed amendment only affects insurance companies . . . [and] does not impact small businesses." (A)(iii) and B(iii) would severely impact small businesses, especially those in rural areas not only in terms of the time and expense required to verify odometer readings on every new policy and every renewal, but in terms of the business that agents will expect to lose because of price increases that verified odometer readings could produce.	Accepted.	However, the Department disagrees that verified odometer readings are likely to result in price increases.

IBA	June 13, 2006 oral comment at hearing		At 31:8-32:1: An insurer should be permitted to require an applicant or policyholder to submit data from a prior insurer with respect to mileage.	Not accepted.	This restriction is consistent with Proposition 103, specifically, California Insurance Code 1861.02(c) which states that absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums or insurability. It is also consistent generally with California Insurance Code Section 1861.02 which states that rates and premiums shall be determined by application of the following factors in decreasing order of importance: (1) the insured's driving safety record; (2) the number of miles he or she drives annually; and (3) the number of years of driving experience the insured has had; (4) those other factors that the commissioner may adopt that have a substantial relationship to risk of loss.
21st Century	06/13/06	06/07/06	Background on 21st Century 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).	

			21st Century cannot find any authority for the Department to issue these regulations, dictating the process by which insurers must conduct their ordinary course of business. Proposition 103 does not provide the authority to adopt these regulations.	Not accepted.	As set forth in Insurance Code Section 1861.02(e), a section of Proposition 103, "[t]he commissioner shall adopt regulations implementing this section . . . " Moreover, the California Supreme Court has recognized the Insurance Commissioner's broad discretion to adopt rules and regulations as necessary to promote the public welfare in this context. *Cal Farm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 at 824 (1989). Accordingly, regulations defining the second mandatory factor of Proposition 103, the number of miles an insured drives annually, is within the Department's authority. The Department further disagrees with the conclusion that this regulation dictates the process by which insurers conduct their ordinary course of business. This regulation, instead, clarifies 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).
			Several changes should be made to provide an insurer with the ability to maintain or change its business model without being in conflict with these proposed regulations. The emphasis on manual collection of data, rather than a technological solutions provides a disservice to many customers. The Department should strive for greater flexibility in the regulations.	Accepted in part, and not accepted in part.	The substance of these comments is addressed below.

			An insurer should be permitted, but not required, to determine estimated mileage as set forth in the June 7, 2006 version of the regulation and using any other method filed with and approved by the Commissioner.	Not accepted.	The options available to an insurer to support estimated annual miles have been changed in the August 31, 2006 version of the regulation. However, the Department disagrees that an insurer should be permitted to use "any other method filed with and approved by the Commissioner." 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 Department also believes that a file and approval process would impose unnecessary costs and burdens on insurers without commensurate benefits.
			"Reasonable information" should not be limited to the items set forth in the June 7, 2006 version of the regulation.	Not accepted.	The categories of information an insurer may require and may request have been expanded to several items. See section (C). Moreover, an insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair. 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.

			In (A)(i) and (B)(i), instead of "the approximate total number of miles driven the previous two years," the regulation should read "the approximate total number of miles driven in the previous twenty four months."	Accepted in part, and not accepted in part.	Section (C)4 of the regulation states as follows: "[a]n insurer may require an applicant or policyholder to provide the following: . . .4. The approximate total number of miles driven for any time period within, but not to exceed, the previous 24 months."
			"Reasonable information" should include the reasons for any differences in the estimate for the upcoming year and "the miles previously driven," rather than "the miles driven the previous year."	Not accepted.	A reference to "the miles previously driven" would permit an insurer to request the reasons for any differences in the current estimated annual mileage and any other year. This would be an onerous and unnecessary burden on an applicant or policyholder and could lead to arbitrary cancellations or non-renewals without relation to change in risk. Moreover, the Department believes that the miles driven the previous 12 months are more likely to reflect next year's mileage absent a change in circumstances.
			An insurer should be permitted to require verification of odometer readings by an agent or third party, regardless of whether the insurer markets using an independent or captive agency system and an applicant meets with an agent in connection with the insurance application or policy renewal.	Not accepted.	Former subsections (A)(iii) and (B)(iii) which permitted an insurer to, under certain circumstances, require an agent who meets with an applicant or policyholder to verify the odometer reading has been stricken based on concerns related to potentially disproportionate impact on agents in rural areas, amongst other things.
ACIC	06/13/06	Not stated.	Background on ACIC 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) .	
			The word "estimated" does not appear in the statute. The only interpretation reasonably placed on the factor is that a consumer is entitled to be rated on the basis of actual miles driven.	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) .	As set forth in the current version of 2632.5(c)(2), the "Second Mandatory Factor" is the number of miles the insured drives annually. This section further provides that "[t]his factor means the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy." Accordingly, this comment addresses the substance of this existent regulation, and is not directed at the action proposed in the Proposed Regulation text.
			Nothing in the statute prohibits an insurer from retroactively adjusting premiums to reflect actual miles driven. In fact, the statute arguably mandates precisely the opposite.	Not accepted.	See the immediately preceding response. Existing regulations permit this if proper notice is given.
			There is no statutory expression describing or limiting the source of the estimate to be relied upon, and there is no requirement that an insurer must rely, without question, on an estimate	Not accepted.	See the immediately preceding substantive response. The regulations do not require reliance, without question, on an estimate.

			provided by an applicant for insurance.		
			The other two mandatory automobile rating factors (driving record and years of driving experience) set forth in Insurance Code Section 1861.02(a) are capable of objective determination and verification. Estimates of future miles driven is unavoidably imprecise. However, that lack of precision should not lead to unnecessary restrictions on insurers' ability or authority to refine estimates based upon information that is relevant to application of this rating factor.	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.
			The proposed Auto Rating Factors would drastically alter insurer's approach to rating. Adoption of these regulations will elevate the importance of the mileage verification regulation. The proposed mileage verification regulation would seriously undermine the use of mileage as a rating factor. The regulations would make more difficult the effort of insurers to charge the proper rate based on the miles a person actually drives.	Not accepted.	The commenter fails to explain how "the mileage verification would seriously undermine the use of mileage as a rating factor" and provides no support for this contention. Accordingly, without more, no response to this comment can be provided.
			Insurers ought to be allowed maximum flexibility in reasonably investigating and verifying miles driven as a mandatory rating factor. How verification is approached varies based upon insurers; analysis of their own books of business and their resources available for this priority. There is no downside to insurer flexibility because this flexibility will serve to enhance competition while preserving the integrity of the rating system and use of mileage as a rating factor.	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). The Department believes the revisions strike a realistic balance, providing an insurer several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder.

			Mandating in (c)(A)(i) 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 "shall" should be permissive, and the estimate sought should be for the length of the policy period.	Not accepted.	CIC 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 CIC Section 1861.02, the estimate must be for the 12 month period following inception of the policy.
			There is no need under (c)(A)(i) to specify the "reasonable information necessary to support the estimate . . . " There is no reason to require insurers to ascertain that information in all instances. Requiring insurers to obtain the specified information in every instance is unnecessary and costly. Insurers should be allowed to utilize whatever approach they determine is practicable under the circumstances.	Accepted in part, not accepted in part.	Section (C) provides that an insurer *may* require an applicant or policyholder to provide certain information. However, the Department disagrees that insurers should be allowed to utilize whatever approach they determine is practicable under the 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). The Department believes the revisions strike a realistic balance, providing an insurer several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder.
			Relative to (c)(A)(i), there is no reason or statutory basis for limiting an insurer's inquiry to those designated items specified by the regulation. Other legitimate sources may exist and there is no reason to arbitrarily preclude their use.	Not accepted.	See the immediately preceding response. Further, as set forth in Insurance Code Section 1861.02(e), a section of Proposition 103, "The commissioner shall adopt regulations implementing this section . . . " Regulations defining the second mandatory factor of Proposition 103, the number of miles an insured drives annually, is within the Department's authority.

			As to subsection (c)(A)(i), insurers should be allowed flexibility in dealing with multiple-car or multiple-driver households.	Not accepted.	This comment fails to explain the flexibility lacking (or desired) with regard to multiple-car or multiple-driver households. Accordingly, without more, no response to this comment can be provided.
			Insurers may not have computers currently programmed to make the inquiries mandated by the regulations and may not find the inquiries useful. There also could be substantial cost associated with such inquiries.	Not accepted.	The Department acknowledges that certain changes will be required to accommodate compliance with the mileage verification regulation; however, computers are re-programmed as a matter of business in compliance with the law. 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. Beyond this, this comment provides no support for its contention and fails to explain or substantiate the costs mentioned; accordingly, a more specific response cannot be provided.
			Subsection (c)(A)(i) contains no provision in the regulations dealing with the use of technology that already exists to track the miles an automobile travels. New technology is not allowed by the proposed regulations.	Accepted.	
			Under subsection (c)(A)(i), insurers are required to use the applicant's estimate of annual mileage in rating the policy even if that estimate is unsupported. There is no authority for the Department to impose this mandate. Insurance Code Section 1861.02(a)(2) requires actual number of miles driven (not an estimate) be used by insurers rating drivers. Subsection (c)(A)(i) is self-contradictory in that it requires insurers to seek information supporting the applicant's estimate, but then prohibits insurers from utilizing that information as a basis for questioning the estimate or for any other purpose. The requirement will benefit the untruthful and harm honest policyholders. This subsection will tend to promote insurance fraud while impending the fair use of miles driven as a rating factor.	Accepted in part, and not accepted in part.	The current version of the regulation does not require an insurer to accept the insured's mileage estimate when not supported. The Department further disagrees that there is no authority to "impose this mandate." As set forth in the current version of 2632.5(c)(2), the "Second Mandatory Factor" is the number of miles the insured drives annually. This section further provides that "[t]his factor means the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy."

			(c)(A)(ii): requiring a single odometer reading is not adequate to verify miles driven. An insurer should be allowed to require documentation showing proof of mileage at two different points in time including previous smog certificates or vehicle maintenance records.	Not accepted.	The Department disagrees that mileage at two different points earlier in time is required or that smog certificates or vehicle maintenance records should be required. Section (C) of the regulation permits an insurer to require an applicant or policyholder to provide several points of information. Section (D) of the regulation permits an insurer to request, but not require, other information. Moreover, an insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair. 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. Finally, the Department disagrees that insurers should be permitted to require previous smog certificates or vehicle maintenance records because, amongst other reasons, this information may not be available.
			(c)(A)(ii): An insurer should be allowed to make a unilateral changes in a mileage estimate so long as there is a clearly delineated process for an insured to challenge the change.	Accepted in part, not accepted in part.	The regulation has been amended to address options available to an insurer where the information provided by the applicant or policyholder does not support the applicant's estimated annual miles. Relative to a new business applicant, an insurer may, in certain circumstances, issue a policy to an applicant using a reasonable objective mileage estimate. An insurer may, in certain circumstances, issue a policy to an applicant or policyholder using a default annual mileage figure. Nonetheless, the current version of the regulation does not permit an insurer to make unilateral changes in a mileage estimate based on the existence of a clearly delineated process for the insured to challenge the changes. Insurer comments on another version of this regulation which provided for a similar process indicated such a system was not workable. 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.
			(c)(A)(iii): the implication of this section is that unless an insurer markets through an independent or captive agency, the insurer cannot verify the odometer reading. This would unnecessarily restrict direct writers. Flexibility should allow an insurer or any party authorized by the insurer to verify odometer readings.	Accepted in part and not accepted in part.	Former subsections (A)(iii) and (B)(iii) which permitted an insurer to, under certain circumstances, require an agent who meets with an applicant or policyholder to verify the odometer reading has been stricken based on concerns related to potentially disproportionate impact on agents in rural areas, among other things.
			(c)(2)(A) should be amended to read as follows: "(iv) if an applicant does not provide the information set forth in (i) and (ii) above or if the information provided does not support the applicant's estimated annual mileage ~~and the insurer has no other means to reasonably to estimate the miles to be driven during the 12 month period following inception of the policy . . . "~~ If this language is not amended, insurers will be unable to utilize the information relating to the mileage estimate even in those cases where the information is received. If an insurer requests information and that information does not support the estimate provided by the applicant, insurers ought to be able to seek corroboration or alter the estimate.	Accepted in part and not accepted in part.	The regulation has been amended to address options available to an insurer where the information provided by the applicant or policyholder does not support the applicant's estimated annual miles. Relative to a new applicant, an insurer may use the information received and, in certain circumstances, issue a policy to an applicant using a reasonable objective mileage estimate. See section (A)(ii). An insurer may, in certain circumstances, issue a policy to an applicant or policyholder using a default annual mileage figure. *Id.* Pursuant to section (E), insurers may seek "corroboration" by obtaining and using smog check odometer readings from the California Bureau of Automotive Repair. The new language suggested has been added.

			(c)(2)(A)(iv): there should be no burden on the insurers to seek some other means to estimate the miles driven for an insurance applicant. The applicant has access to that information and should be able to readily provide it to the insurer.	Not accepted.	The regulation permits an insurer to require the information set forth in (C). An insurer may also request but not require the information listed in section (B). Moreover, an insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair. 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 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. There is no burden on an insurer to seek other means to estimate miles.
			(c)(2)(A)(iv): the Department sets forth no guidance on the criteria for acceptable "default annual mileage" calculations. The best approach may be to allow companies to file with the Department a schedule of defaults that reflect different circumstances for applicants. For example, a default mileage for a person that commutes to work may be different than that for non-commuters.	Not accepted.	The regulation allows insurers flexibility and does not dictate a default annual mileage figure.
			(c)(2)(A)(iv): would require that policies be re-rated when insurers receive information specified by the regulation. There is no authority for the Department to impose this requirement. the insurer should not be required to re-rate a policy when an applicant has unreasonably delayed providing the information necessary to verify a mileage estimate. Insurers should be allowed, but not required, to re-rate policies and adjust premiums based on actual miles driven retroactively to policy inception. Such a provision would implement Insurance Code Section 1861.02(a)(2).	Accepted in part and not accepted in part.	Section (A)(iv) of the April 14, 2006 version was amended to delete the reference to the date as to which the policy can be re-rated based on other comments that re-rating would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged.

			(c)(2)(A)(vi): the fifteen day requirement for opportunity to be heard is unnecessarily quick. Thirty days is an adequate period of time for both parties.	Accepted.	Section (A)(vi) of the April 14, 2006 version was deleted based on comments concerning the costs and inefficiencies of such a process.
			(c)(2)(A)(vii): although some applicants may not have prior documentation regarding mileage driven, there 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 reasonable available to insurance applicants to verify a mandatory rating factor. The mileage rating factor will become too important to mandate the acceptance of unsupported estimates provided by applicants. That approach will lead to evisceration of "miles driven" as a reliable rating factor for automobile insurance.	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 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.
			(c)(2)(B) - same comments as above. Flexibility should be allowed, and that includes the ability of an insurer to deal with its own book of business in an appropriate manner. Insurer practices may vary between existing policyholders and applicants and there is no reason to abolish that permissible distinction as long as consumers are treated fairly.	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. Different provisions apply to new and renewal business. The regulation does allow insurers flexibility as to the information they will request.

WIAA	06/13/06		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).	
			How 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. These proposed regulations are fatally flawed because they restrict carriers' flexibility to authenticate and verify the number of miles a policyholder drives annually. 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). The regulation allows insurers considerable flexibility as to the information they will request. Accordingly, 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.
			A plain reading of Insurance Code Section 1861.02(a) leads one to the inescapable conclusion that carriers are required to base a policyholder's rate upon the actual number of miles driven. The statute is clear in requiring that rate be determined by the number of miles a person drives, rather than an estimate of such mileage. 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. 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.	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. The commenter is correct that there is currently no regulation that governs the methods of obtaining a mileage estimate; this regulation is intended to fill that gap. 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. (cont'd)
					(cont'd) Further, the regulation does not require the estimate to the sole source. 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.

			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. Restricting carriers' ability to cancel a policy when an insured is non-responsive to a carrier's request for a mileage estimate, instead requiring a "reasonable" estimate or approved default mileage figure, is also imprudent.	Accepted in part and not accepted in part.	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. The regulation allows flexibility to insurers to determine the information they will seek. An insurer need only require the applicant's estimate. (cont'd)
					(cont'd) Moreover, sections (A)(ii) and (B)(ii) address the options available to an insurer in the event an applicant or policyholder is non-responsive to a request for a mileage estimate. Section (H) has been added to address concerns about preserving insurers' cancellation rights.
			Further, why limit a carrier's inquiry to those designated items specified in the regulation? Other reasonable and legitimate sources may exist, and there is no reason to prohibit their use if they are probative of the number of miles a person drives.	Not accepted.	See the immediately preceding response.

ISO	06/13/06	06/07/06	Background on ISO 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 it is the Department's intent, and it is not inconsistent with statute, to permit an insurer to estimate the annual mileage figure and then provide that estimate to the applicant or insured for acceptance. Under this scenario, where the mileage figure is provided to the insured for acceptance, we do not believe it is the intent of the proposed rule that the procedure used in determining the mileage figure would have to be filed with and approved by the Commissioner. To confirm our understanding of this intent, we recommend a revision to the proposed rule to make it clear that the procedure used in determining the mileage figure does not have to be filed. We suggest two minor revisions to the rule (shown on the attached markup), as follows: (cont'd)	Not accepted.	The Department disagrees that under the regulation an insurer is permitted to estimate annual mileage and provide that estimate to the customer for acceptance. The current version of the regulation requires an insurer to accept the insured's mileage estimate except as set forth in the section. Section (iv) of the April 14 version of the regulation (which addressed the options available to an insurer where an applicant or policyholder does not provide certain information) has been changed and the options available have been expanded to permit use of a reasonable objective mileage estimate or a default annual mileage figure and, in the case of renewal, usage of the mileage figure from the expiring policy. See sections (A)(ii) and (B)(ii). However, the Department disagrees that an insurer should be permitted to use a default mileage figure when the applicant or policyholder does not accept the insurer's mileage estimate. (cont'd)

			(cont'd) • modifying the (i) paragraph of A and B by adding the following after the first sentence: "An insurer may supply a mileage estimate to the (applicant) policyholder." • adding the following language in to the first sentence in both paragraphs (iv): "...or accept a mileage estimate provided by the insurer." Stated otherwise, section (iv) should read as follows: "If an applicant does not provide the information set forth in (i) and (ii) above, or accept a mileage estimate provided by the insurer and the insurer has no other means reasonably to estimate the miles driven . . . the insurer may issue the policy using a default annual mileage figure . . . "		(cont'd) For renewals, the insurer shall notify the policyholder of the number it will use for the mileage figure.
Progressive West	06/13/06	06/07/06	Background concerning the Department's actions taken with regard to this regulation are addressed 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.	
			Technology. We would like to see the regulations amended to be compatible with existing and future technologies that will provide efficient, accurate tools for obtaining actual miles driven over a certain time period. This information would be very similar to odometer information. We envision use of the 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.	Accepted in part, not accepted in part.	Section (D) of the regulation permits an insurer to request but 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 declines to allow a discount at this time.

			We feel that the current draft regulation can be amended to allow for the use of new technologies simply by including them in the sections (A)(iv) and (B)(iv) about service records, which insurers can request but not require.	Accepted.	See the immediately preceding response.
			Simplification. While much improved, the June 7 version continues to contemplate certain processes that, while reasonable on their face, will result in a high volume of manual interactions between insurers and their customers. We believe that the consequences for both insurers and their customers are not good. Manual interactions are notoriously expensive for insurers and hard to control. As explained more fully below, some insureds are likely to see their rates change several times during the policy period. We think that will result in higher write-offs, more cancellations, and more complaints to the Department.	Because the substance of the comments is addressed below, a response is provided below.	
			We respectfully encourage the Department to consider amendments that will result in a less complicated approach. For example, under the Department's current approach, an insured who fails to provide all mileage information required by the insurer can be rated initially based on a default mileage value, then based on the insured's mileage estimate if the information provided by the insured results in an inconsistency and the insured fails to respond to or explain the inconsistency to the insurer.	Because the substance of the comments is addressed below, a response is provided below.	
			Progressive West presents two options for simplifying the process. The first takes the Department's current proposal and suggests certain relatively minor changes that will simplify the after-sale process. The premise of this first option is the reality that most insureds will not respond to the insurer's request to explain mileage inconsistencies. Rather than have the insurer adopt the insured's mileage estimate in cases of inconsistency only to change after 60 days when the insured has failed to respond to	Accepted in part and not accepted in part.	The Department neither accepts nor rejects the premise that "most insureds will not respond to the insurer's request to explain mileage inconsistencies." Former subsections (A)(v) and (B)(v) (which contained the procedure by which an insurer could require an insured to explain discrepancies between the customer's estimated annual mileage figure and reasonably objective information in the insurer's possession and the rates to be charged) have been deleted based upon concerns that the time required for this

			the insurer's request for explanation, our version would allow the insurer to use its own reasonable estimate unless and until the insured responds with an explanation of the inconsistency.		process would adversely impact carriers' ability to issue policies. Section (B)(ii) of the current version of the regulation sets forth the options available to an insurer who, during the renewal process, receives none or only some of the requested information. Under these circumstances, an insurer may renew using either the mileage figure from the expiring policy or using a reasonable objective mileage estimate based upon the information set forth in sections (C), (D) and (E), whichever it determines is the most reasonable. (cont'd)
					(cont'd) The Department disagrees, however, with an approach that would permit an insurer to use its own reasonable estimate unless or until the insured responds. As set forth in the regulation, an insurer shall use the applicant's estimated annual mileage except as set forth in the section. 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.

			We feel this option is not only more efficient, but results in a better customer experience overall. The Department's version appears to require the insurer to use the insured's estimate even when that estimate and the reasonable objective information, virtually all of which is provided by the insured, are "significantly inconsistent." To be able to use its own estimate that, in light of the inconsistency, is likely to be more accurate, the insurer must first follow a process that requires costly manual processing and, in cases where the insured does not provide a response, nevertheless results in the insurer using the insured's estimate for at least 60 days.	Accepted in part and not accepted in part.	See the immediately preceding response.
			Progressive's experience shows that response rates to insurer requests for information are very low. In the situations where the insured does not respond there is an eventual change to the policy premium. This makes for a poor customer experience. Allowing the insurer to use its own estimate upfront minimizes the disruption to the majority of policyholders and results in a better customer experience overall. The required process should not be structured to require yet another round of rate changes when the likely happens.	Accepted in part and not accepted in part.	See the preceding substantive response.
			Progressive's "first option" also addresses another process issue in the current proposed regulation. The proposed regulation does not provide, in paragraph (v), any limit beyond which the insurer's receipt of the insured's overdue "required information" does not trigger an obligation to re-rate the policy. We suggest that if the information is not received by the insurer within the first 30 days of the policy period, the insurer have no obligation to re-rate until the renewal policy.	Not accepted.	The regulation has been revised to delete sections that permitted re-rating. These sections were deleted based on comments that re-rating would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged.

			Progressive's "second option" involves a more robust change. The insurer would determine the annual mileage amount in a manner similar to that contemplated by the Department's current regulation (i.e., use insured's mileage estimate unless required information is missing or the insured's estimate is inconsistent with the reasonable objective information). However, in cases where the insurer uses a default or, because of an inconsistency, its own estimate, the insurer would have: o no duty to change the mileage amount after the policy term has begun, even if it subsequently receives required information, and o no duty to seek an explanation from the insured on any inconsistency, (cont'd)	Accepted in part and not accepted in part.	Section (B) has been changed. Section (B) does not specifically address inconsistencies or, in the event of inconsistent information, permit use of the insurer's estimate or a default annual mileage figure. Instead, Section (B) provides an insurer options where a policyholder receives none or some of the information requested. When this occurs, an insurer may renew the policy using the mileage figure from the expiring policy or use a reasonable objective mileage estimate based on the information set forth in sections (C), (D) and (E), whichever it determines is most reasonable. An insurer that lacks sufficient information to determine a reasonable estimate may renew the policy using a default annual mileage figure. As suggested by Progressive relative to a different factual scenario, before renewing a policy, an insurer is required to provide written notice that highlights the mileage figure for the expiring policy and the mileage figure for the renewal policy. (cont'd)
			(cont'd) if it conspicuously discloses to the consumer the annual mileage that it is using to rate the policy during the application or renewal process and the consumer proceeds with the purchase or renewal. In essence, the insured's decision to go forward with the initial purchase/renewal decision with full knowledge of the mileage that the insurer intended to use would act as the control point; insureds who felt the mileage estimate and/or cost of policy were reasonable could buy, while those who didn't could shop and look for a lower mileage estimate and/or price. Of course, any new information or explanations of inconsistencies would need to be taken into account by the insurer in the subsequent term. See new section (2)(C).		(cont'd) As to new policies, please see the response to similar comments above. As to renewals, the regulation has been amended and (B)(iii) allows an insurer to provide the applicant a notice highlighting the mileage it intends to use for the renewal policy.

			1. Flexibility. The regulation should be revised to permit flexibility for insurers in choosing how to verify mileage estimates provided by insureds. There are substantial implementation and maintenance issues associated with building a process for collecting and using information from insureds. Some insurers may incline towards a technological solution and others towards a manual solution. Flexibility is not only desirable but necessary.	Accepted in part and not accepted in part.	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. Technological solutions are, however, addressed in section (D) of the regulation. The regulation allows insurers considerable flexibility.
			The following are specific areas where the regulation should be changed to permit flexibility: a. The process described in sections (2)(A) and (B) of the regulation purports to be the exclusive process for determining estimated annual mileage. We propose that the regulation allow for other processes if they are filed with and approved by the Department. For example, solutions using GPS and similar technologies should be encouraged. b. The definition of “reasonable information” sets forth an exclusive list of information that may be collected. We propose that the regulation allow insurers to require other types of verification information not included in the definition, provided such information types are filed with and approved by the Department.	Accepted in part and not accepted in part.	The regulation has been amended to permit insurers to request but not require the use of technology that collects mileage information without the need for petition. As set forth in section (D), "[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." A file and approval method was considered; however, the Department believes that the options provide insurers sufficient technology and reasonable means by which mileage verification can be conducted without the expense and time required for filings.

			Use of "The Most Reasonable Estimate & Defaults": Role of “most reasonable estimate.” We are not sure we understand how a “most reasonable estimate” is determined. Use of the superlative makes it appear that there is a definitive best method for any given circumstance. For example, how would the most reasonable estimate be determined if the insured provided his estimate of mileage but did not provide any of the required information? It is unfair to subject insurers to such a standard in such a murky area as mileage estimate determination. We recommend that “most” be deleted so that the standard is one of simple reasonableness.	Accepted.	The reference to the "most reasonable estimate" contained in (A)(v) and (B)(v) of the June 7, 2006 version of the regulation has been revised to "a reasonable objective mileage estimate" based upon the information provided pursuant to sections (C), (D) and (E). See sections (A)(ii), (B)(i) and (ii).
			The roles contemplated by the regulation for the "most reasonable estimate" and the use of defaults do not make sense. Use of “most reasonable estimate” is contemplated when the insured does not provide the information “set forth in (i) and (ii).” That means that the insurer may not be getting any information about mileage from the insured. How then is the insurer to develop the “reasonable estimate?”	Accepted in part and not accepted in part.	See the immediately preceding response. Section A permits an insurer to issue a policy using a reasonable objective mileage estimate using a reasonable objective mileage estimate based on information provided pursuant to sections (C), (D) and (E). Where an applicant does not provide estimated annual miles or the information required pursuant to section (C), or the information provided does not support the applicant's estimated annual miles. If a reasonable estimate cannot be determined as set forth above, an insurer may issue a policy using a default annual mileage figure. See section (A)(ii). (cont'd)
					(cont'd) Section (B)(ii) provides that an insurer who receives none (or only some) of the information requested may: 1) renew the policy using the figure from the expiring policy; 2) use a reasonable objective mileage estimate based on section (C), (D) or (E) information it has, whichever it determines is most reasonable; or 3) use a default annual mileage figure where it lacks sufficient information to determine a reasonable estimate.

			The regulation allows for use of a default, but only if the insurer is unable to develop a most reasonable estimate. The better approach is to allow the insurer to use a default anytime the insured fails to provide the information "set forth in (i) and (ii)."	Accepted in part and not accepted in part.	The regulation permits an insurer to use a default annual mileage figure on where, pursuant to section (A)(ii), a reasonable objective mileage estimate cannot be determined for an applicant or where the insurer lacks sufficient information to determine a reasonable estimate for a policyholder. The Department disagrees that should be permitted to "use a default anytime the insured fails to provide the information set forth in (i) and (ii)." 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. (cont'd)
					(cont'd) 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 "during the renewal process" without placing an unnecessary burden on a policyholder.

			Express authorization for use of different defaults. We recommend that the regulation be changed to expressly allow insurers to file a schedule of defaults (the current wording of the regulation refers to a "default annual mileage figure," which might be interpreted to allow for a single value that would be applicable in all circumstances). Moreover, the regulation should expressly set forth certain permissible default classifications that should include: o commuters/non-commuters; o multi-vehicle/single vehicle households; o vehicles garaged in certain geographic regions (e.g. suburbs) vs. those in other regions; and o any other classification that can be actuarially supported by the insurer. Having different defaults is likely to make the defaults used by insurers more accurate while also making it easier for insurers to achieve the weight that is required for estimated annual mileage.	Accepted in part, and not accepted in part.	Section (F) provides that "[a]ll mileage rating rules that direct the selection of a mileage rating relativity shall be filed with and approved by the Commissioner in a class plan filing. This includes use of multiple mileage rating bands and use of default and/or average mileage rating relativities."
			How are odometer readings to be used? The regulation allows an insurer to collect a current odometer reading at both new business and renewal time. The definition of "reasonable information" does not include odometer readings. The regulation allows an insurer to use its own estimate when the insured's estimate is significantly inconsistent with "reasonable objective information." While we assume that the Department intends odometer readings to constitute "reasonable objective information," we suggest that the regulation be clarified to remove any doubt.	Accepted.	The current odometer reading of the vehicle to be insured has been included as information an insurer may require from an applicant or policyholder in section (C) of the regulation.
			Brokers. The references to agents should be amended to include references to brokers.	Not accepted.	Sections (A)(iii) and (B)(iii) of the April 14 and June 7 versions has been deleted. This section previously addressed an insurer's ability to require an agent to verify mileage when the agent met with a policyholder in connection with the

					application or policy renewal.
			Multiple Vehicles. The regulation seems to address the situation where there is only one vehicle insured under the policy. We think the regulation should be written to address situations where there are multiple vehicles scheduled under the policy.	Accepted.	
			Use of Prior Policy Term's Estimated Mileage. We note that the revised regulation requires insurers to collect mileage information at least every three years. Though we believe that it is the Department's intent to allow insurers to use the prior term's estimated annual mileage at renewal when the insured has not provided any new mileage information and the policy is not in one of the three year mileage collection terms, we respectfully urge the Department to make that clear.	Accepted.	
			Suggested change to (c)(2): "Estimated annual mileage shall be determined as provided below, or in accordance with any other method that the insurer has filed with the commissioner and that the Commissioner has approved:"	Not accepted.	A file and approval method was considered; however, the Department believes that the options provide insurers reasonable means by which mileage verification can be conducted without the expense and time required for filings.
			Suggested change to (c)(2)(A)(i): "During the application process, an insurer shall require an applicant to provide the miles that vehicle drivers expect to drive the insured vehicles during the 12 month period following policy inception, and reasonable information necessary to support the estimate."	Not accepted.	Percent use is an existing rating factor and not the subject of this rulemaking proceeding.
			Suggested change to (c)(2)(A)(i): "Reasonable information" consists of the location of the applicant's workplace if the vehicle is used for commute purposes, the number of days per week the vehicle is used for commuting, an estimate of the number of miles to be driven for pleasure or other purposes, the approximately total number of miles driven the previous two years, the reason for any differences in the estimate for the upcoming year and the miles driven the previous	Not accepted.	The reference to "Reasonable information" has been omitted from the regulation. Moreover, the information an insurer may require has been expanded. See section (C). However, the Department disagrees that "any other information relevant to expected mileage that would reasonably be expected to be known by the applicant . . . " should be added as this would place an unnecessary burden on consumers. The Department believes the regulation strikes a

			year, the approximate date of purchase of the vehicle, <u>and any other information relevant to expected mileage that would reasonably be expected to be known by the applicant or insured vehicle drivers excluding, however, information described in (iv) below.</u>"		reasonable and realistic balance, providing an insurer several methods to verify mileage without placing an unnecessary burden on an applicant or policyholder. Finally, the commenter has failed to provide specifics concerning the "other information" that should be permissible. Accordingly, a more specific response is not possible.
			Suggested change to (c)(2)(A)(ii): "An insurer may require all applicants to provide the current odometer reading of the vehicle to be insured or the insurer may obtain the odometer reading from the California Department of Motor Vehicles smog certification program. <u>Odometer information shall constitute "reasonable objective information" as that phrase is used below.</u>"	Accepted in part and not accepted in part.	The current odometer reading the vehicle to be insured has been included amongst the information an insurer may require from an applicant or policyholder. See section (C).
			Suggested change to (c)(2)(A)(iii): "If an insurer markets using an independent or captive agency system <u>or through brokers</u>, and an applicant meets with an agent <u>or broker</u> in connection with the insurance application, the insurer may require the agent or broker to verify the odometer reading of the vehicle to be insured under the policy, and the applicant shall allow the agent <u>or broker</u> to do so in order to obtain the coverage."	Not accepted.	Sections (A)(iii) and (B)(iii) of the April 14 and June 7 versions has been deleted. This section previously addressed an insurer's ability to require an agent to verify mileage when the agent met with a policyholder in connection with the application or policy renewal.
			Suggested change to (c)(2)(A)(iv): "An insurer may request but shall not require service records which document the odometer reading at a particular date within the last three months. <u>An insurer may also request but shall not require that the insured use technological devices that are provided by the insurer or otherwise available to the insured and that are designed to assist in the collection and/or transmittal of vehicle mileage information to the insurer. All vehicle mileage information provided by the insured through service records or in connection with use of technological devices shall constitute "reasonable objective information" as that phrase is used below. The insurer may file a discount for</u>	Accepted in part and not accepted in part.	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." However, the Commissioner has determined not to include the discount language at this time.

			insureds who choose to use such technologies;		
			Suggested change to (c)(2)(A)(v): If an applicant does not provide all of the information set forth in (i) and (ii) above that the insurer has required, and the insurer has clearly indicated the consequences of not providing that information, the insurer may issue the policy using a default annual mileage amount from a schedule of one or more amounts and classifications that has been filed with and approved by the Commissioner. Upon receipt of the information required by the insurer within the first 30 days of the policy term, the insurer shall rate the policy using the insured's estimated annual mileage unless there is an inconsistency as described in (vi) below and the insurer follows the process described in that paragraph. (cont'd)	Not accepted.	The regulation has been revised. Section (A)(ii) of the regulation addresses inconsistencies between the information provided and the applicant's estimated annual mileage. This section permits an insurer to use a reasonable objective mileage based upon the information provided pursuant to sections (C), (D), and (E) or if a reasonable estimate cannot be determined, using a default annual mileage figure. The re-rating procedure has been deleted based on comments that it would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged.
			(cont'd) If the information is received after the first 30 days of the policy term, the insurer shall wait until the first policy renewal to use the information, at which time it shall use the insured's estimated annual mileage unless there is such an inconsistency and the insurer follows the process described in paragraph (vi). The insurer need not wait, however, if proceeding as described in the preceding sentence would result in the insurer using a mileage amount that is higher than the default amount.		

			Suggested change to (c)(2)(A)(vi): "(vi) If the insurer receives, either during the application process, subsequently as contemplated by (v) above, or at any other time during the policy period, reasonable objective information that is inconsistent with the estimate of annual mileage provided by the insured, the insurer may determine a reasonable estimate of annual mileage and base the insured's rate on such estimate. If the inconsistency is based on information received during the application process, the policy may be issued based on such rate. If the inconsistency is based on information received after the policy is issued, the insurer may re-rate the policy using its own reasonable estimate. In either case the insurer shall provide the insured with notice in writing indicating the reasonable estimate of annual mileage that the insurer is using. (cont'd)	Not accepted.	See the immediately preceding response. Pursuant to section (A)(ii) and (B)(iii), an insurer is required to inform the applicant of the mileage figure it will use to rate the policy before issuing the policy.
			(cont'd) If, within 30 days from the date such notice is sent the insurer receives a written explanation that reasonably reconciles the estimate of annual mileage previously provided by the insured and the reasonable objective information, the insure shall immediately re-rate the policy using the insured's estimate of annual mileage. In all other cases the insurer may continue to use its own reasonable estimate. The written notice provided by the insurer shall explain to the insured that he or she may send in a written explanation, the time within which it is due, and consequences of not responding."		

			Amend and delete from (c)(2)(A)(vi) the following: "(vi) If the insurer receives, either during the application process, subsequently as contemplated by (v) above, or at any other time during the policy period, reasonable objective information that is inconsistent with the estimate of annual mileage provided by the insured, the insurer ~~at information. If there is a significant inconsistency between the estimated miles and other reasonable objective information in the insurer's possession~~ may determine a reasonable estimate of annual mileage and base the insured's rate on such estimate. If the inconsistency is based on information received during the application process, the policy may be issued based on such rate. If the inconsistency is based on information received after the policy is issued, the insurer may re-rate the policy using its own reasonable estimate. In either case the insurer shall provide the insured with notice in writing indicating the reasonable estimate of annual mileage that the insurer is using. (cont'd)	Not accepted.	See the preceding substantive comment.
			(cont'd) If, within 30 days from the date such notice is sent the insurer receives a written explanation that reasonably reconciles the estimate of annual mileage previously provided by the insured and the reasonable objective information, the insurer shall immediately re-rate the policy using the insured's estimate of annual mileage. In all other cases the insurer may continue to use its own reasonable estimate. The written notice provided by the insurer shall explain to the insured that he or she may send in a written explanation, the time within which it is due, and consequences of not responding."		
			Suggested change to (B)(i): "(i) At renewal, an insurer may use the estimate of annual mileage used on the expiring term policy . However, at least every three years, but more often as the insurer may determine, an insurer shall, prior to a policy renewal, follow the information collection process described in (A)(i) above. Except as	Accepted in part and not accepted in part.	The regulation, in section (B)(i), has been changed to permit an insurer that is not conducting a verification to use the mileage figure from the expiring policy. Further, section (B)(i) has been changed to require an insurer to, at least every three years, request estimated annual mileages from a policyholder.

			otherwise set forth in this section, an insurer shall use the policyholder's estimated annual mileage;"		
			Suggested change to (B)(ii): "An insurer may require all policyholders to provide, at any policy renewal, the current odometer reading of the vehicle to be insured or the insurer may obtain the odometer reading from the California Department of Motor Vehicles smog certification program. Odometer information shall constitute "reasonable objective information" as that phrase is used below;"	Accepted in part and not accepted in part.	The current odometer reading the vehicle to be insured has been included as information an insurer may require from an applicant or policyholder in section (C) of the regulation.
			Suggested change to (B)(iii): " If an insurer markets using an independent or captive agency system or through brokers, and a policyholder meets with an agent or broker in connection with policy renewal, the insurer may require the agent or broker to verify the odometer reading of the vehicle to be insured under the policy, and the policyholder shall allow the agent or broker to do so in order to renew the policy;"	Not accepted.	Sections (A)(iii) and (B)(iii) of the April 14 and June 7 versions has been deleted. This section previously addressed an insurer's ability to require an agent to verify mileage when the agent met with a policyholder in connection with the application or policy renewal.
			Suggested change to (B)(iv): "An insurer may request but shall not require service records which document the odometer reading at a particular date within the last three months. An insurer may also request but shall not require that the insured use technological devices that are provided by the insurer or otherwise available to the insured and that are designed to assist in the collection and/or transmittal of vehicle mileage information to the insurer. All vehicle mileage information provided by the insured through service records or in connection with use of technological devices shall constitute "reasonable objective information" as that phrase is used below. The insurer may file a discount for insureds who choose to use such technologies;"	Accepted in part and not accepted in part.	The current version of 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 . . . [t]he use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle mileage information."

			Suggested change to (B)(v): "If a policyholder does not provide all of the information set forth in (i) and (ii) above that the insurer has required in connection with renewal and the insurer has clearly indicated the consequences of not providing that information, the insurer may renew the policy using, at its option, either a default annual mileage amount from the schedule filed as described in (A)(v) above or the estimated annual mileage amount used by the insurer for the preceding policy term. Upon receipt of the information required by the insurer within the first 30 days of the policy renewal term, the insurer shall re-rate the policy using the insured's estimated annual mileage unless there is an inconsistency as described in (vi) below and the insurer follows the process described in that paragraph. (cont'd)	Accepted in part and not accepted in part.	See the response to similar comment above.
			(cont'd) If the information is received after the first 30 days of the renewal policy term, including in any subsequent renewal policy term, the insurer shall wait until the first policy renewal after receipt to use the information, at which time it shall use the insured's estimated annual mileage unless there is such an inconsistency and the insurer follows the process described in paragraph (vi). The insurer need not wait, however, if proceeding as described in the preceding sentence would result in the insurer using a mileage amount that is higher than the default amount."		

			Suggested addition to and deletion from (B)(vi): "If the insurer receives, either in connection with the renewal process, subsequently as contemplated by (v) above, at any other time during the renewal policy period, or during any subsequent renewal policy period, reasonable objective information that is inconsistent with the most current estimate of annual mileage provided by the insured, the insurer may determine a reasonable estimate of annual mileage and base the insured's rate on such estimate. If the inconsistency is based on information received during the renewal process, the policy may be issued based on such rate. If the inconsistency is based on information received after the policy is issued, the insurer shall re-rate the policy using its own reasonable estimate. In either case the insurer shall provide the insured with notice in writing indicating the reasonable estimate of annual mileage that the insurer is using. (cont'd)	Not accepted.	The re-rating procedure has been deleted based on comments that it would be costly, inefficient, not feasible for 6-month policies and could result in incorrect premiums being charged. Moreover, while not directly addressing discrepancies, Section (B) sets forth options available where an insurer receives none or only some of the information requested. Section (B)(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 mileage figure. Notice of the mileage estimate is required for renewals, as suggested.
			(cont'd) If. within 30 days from the date such notice is sent the insurer receives a written explanation that reasonably reconciles the estimate of annual mileage most recently provided by the insured and the reasonable objective information, the insurer shall immediately re-rate the policy using the insured's estimate of annual mileage. In all other cases, the insurer may continue to use its own reasonable estimate, The written notice provided by the insurer shall explain to the insurer that he/she may send in a written explanation, the time within which it is due, and the consequences of not responding.		

			Suggested new (C): "Disclosure Before Purchase or Renewal. Notwithstanding anything contained in (A) or (B) above, if during the application or renewal process the insurer either determines that it will use a default mileage value because it has not received the information required by it and described in (i) and (ii) of (A) or (B), as the case may be, or determines that there is an inconsistency between the reasonable objective information and the insured's estimate of annual mileage based on the information received by it and decides to use its own estimate of annual mileage, then the insurer need not follow the process of notification and rate change described in (A)(vi) or (B)(vi), as the case may be, if the insurer has, prior to the purchase or renewal, disclosed to the applicant/insured the estimated annual mileage amount that it intends to use to rate the new or renewal policy and the insured has proceeded to purchase or renew the policy. (cont'd)	Not accepted.	Sections (A) and (B) have been changed. Section (A) permits an insurer to use a default annual mileage figure (based on the information provided pursuant to sections (C), (D) and (E)) where that insurer cannot determine reasonable objective mileage *and* either the applicant has not provided estimated annual miles/the information requested pursuant to section (C) or the information provided pursuant to section (C) does not support the estimated annual miles. Section (B) does not specifically address inconsistencies or, in the event of inconsistent information, permit use of the insurer's estimate or a default annual mileage figure. Instead, Section (B) provides options where a policyholder provides none or some of the information requested. When this occurs, an insurer may renew the policy using the mileage figure from the expiring policy or use a reasonable objective mileage estimate based on the information set forth in sections (C), (D) and (E), whichever it determines is most reasonable. An insurer that lacks sufficient information to determine a reasonable estimate may renew the policy using a default annual mileage figure. (cont'd)
			(cont'd) If the insurer receives the information required by it and described in (i) and (ii) of (A) or (B), as the case may be, after the purchase or renewal, the insurer shall use such information to rate the next renewal policy. If their was an inconsistency between the reasonable objective information and the insured's estimate of annual mileage and the insurer decided to use its own estimate of annual mileage, prior to next renewal the insurer shall send the insured the 30 day notice described in (A)(vi) or (B)(vi), as the case may be, and either use the insured's estimate of annual mileage if the insured reasonably explains the discrepancy or use its own estimate."		(cont'd) As recommended by Progressive, before renewing a policy an insurer is required to provide 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 options where an insurer receives only some of the information requested without placing an unnecessary burden on the policyholder.

PADIC/NAMIC	06/13/06	06/07/06	Background on PADIC and NAMIC are provided on pp.1-2.	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 Proposed Regulations are incompatible with the Proposed Auto Rating Factors Regulations a/k/a "Territorial Rating Regulations." The Territorial Rating Regulations would have the practical effect of making the "estimated annual mileage" rating factor more significant to the underwriting process and the calculation of insurance rates. Thus, any regulation that would hinder an insurance carrier's ability to procure reliable information and/or documentation necessary to properly evaluate the "estimated annual mileage" variable is imprudent, incompatible with the Proposed Auto Rating Factors regulation, and detrimental to the insurance rating process. Because the Auto Rating Factors will place greater emphasis on "estimated annual mileage" as a rating factor, one would think the Department of Insurance would strongly encourage the industry to verify "estimated annual mileage" in a manner in which they are most comfortable rather than discourage the industry from using a variety of options as these proposed regulations seem to accomplish.	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 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. Although the comment refers to a variety of options insurers might use to verify mileage, none were specified.

			The Proposed Regulations will adversely impact an insurance carrier's ability to provide consumers with insurance rates that accurately reflect the consumer's actual risk of loss exposure. Insurance consumers benefit from a regulatory system that allows insurance carriers the discretion to engage in an underwriting process that allows for differentiated risk of loss rating that is based upon a consumer's personal risk of loss exposure. Individualized risk of loss based underwriting is fair and equitable, and encourages consumers to engage in socially responsible risk management practices. The Proposed Regulation would prevent insurance carriers from being able to procure information and documentation necessary to accurately and reliably determine the "estimated annual mileage" of the insurance applicant. By limiting an insurance carrier's ability to engage in this important underwriting process, the CDI will be interfering with the insurer's ability to provide consumers with rates that are commensurate with the consumer's personal needs.	Not accepted.	The Department believes that the current version of the mileage verification regulation permits carriers to accurately reflect its customers risk of loss exposure. The Department takes the position that as amended based upon comments from the industry, the mileage verification regulation provides carriers more than adequate discretion to engage in the underwriting process. Because this comment is vague, a more specific response cannot be provided.
			Consumers benefit from thorough and complete insurance rating far more than they would benefit from a proposed regulation that prevents an insurance carrier from requiring a consumer to tender some form of documentation necessary for the insurer to accurately calculate the applicant's "estimated annual mileage".	Not accepted.	The Department believes that the mileage verification regulation provides for thorough and complete insurance rating while providing protection to the insurer's customers. It does not prevent receipt of documentation.

			The CDI has asserted in the proposed regulations that “applicants may not have access to this [mileage] documentation” and that requiring said documentation creates an unreasonable burden on consumers. This contention is inconsistent with the very fact that consumers have their odometer reading recorded during a multitude of different routine automobile service procedures performed on their vehicles (e.g. during state smog emission tests; tire repair and replacement services; periodic oil changes, tune ups and regularly scheduled maintenance service; and auto body and mechanical repairs). Thus, consumers have a wealth of sources to rely upon to secure third-party substantiated documentation of their annual mileage. Requiring consumers to invest a nominal amount of their time and effort into assisting insurers in their attempt to provide consumers with accurate insurance rates is reasonable and appropriate.	Not accepted.	While applicants may, at some time, have access to documentation upon which mileage is recorded, they should not be penalized for failing to retain this documentation. As set forth in the regulation, insurers are permitted to require an estimate of miles and may also require several methods to verify mileage. See section (C). Insurers are also permitted to request, but not require, information such as service records and the use of technological devices that collect vehicle mileage information. Finally, insurers may obtain and use smog check odometer readings from the California Bureau of Automotive Repair. 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.
			When insurance carriers are prevented from being able to allocate rates based upon credible and accurate risk of loss data, they are forced to engage in rating practices that ultimately disperse the costs associated with imprecise risk of loss assessments across a broad spectrum of consumers. Consequently, if the proposed regulation is adopted, consumers who are willing to assist insurance carriers in ascertaining “estimated annual mileage” could end up seeing their rates adversely impacted by those who refuse to participate in this legitimate underwriting procedure. In essence, this approach would punish those who are willing to disclose their annual mileage and will reward those who either are unwilling to participate in the underwriting process or who are tying to conceal their actual annual mileage in an effort to secure a lower insurance rate. This is not a fair, equitable or rational public policy.	Not accepted.	The Department fails to see how consumers who are willing to assist carriers in ascertaining their "estimated annual mileage" could see their rates adversely impacted by those who refuse to participate. As set forth in the mileage verification regulation and pursuant to California Insurance Code Section 1861.02, *et seq.*, rates for each applicant and policyholder will depend on risk factors particular to that applicant or policyholder. Reasonable objective mileage estimates will be determined by an insurer based upon information in sections (C), (D) and/or (E), and defaults will be determined by an insurer, subject to approval of the Commissioner. As both options are required to be reasonable based upon the circumstances, there should no inequities involved. An insurer is not required to provide a policy when it lacks sufficient information to do so.

			The proposed regulation could lead to more insurance fraud in the state. Intentionally providing inaccurate information to or concealing material data from an insurance carrier in an attempt to secure a better insurance rate is also a form of fraud. Since the proposed regulation will interfere with how an insurance carrier verifies a consumer's representation of a material underwriting variable, i.e. "estimated annual mileage", the proposed mileage regulation could hamper insurance carriers in their efforts to prevent insurance fraud. As the data has repeatedly demonstrated, insurance consumers and society in general pay a very high price for insurance fraud. Therefore, any regulation that will make the perpetration of insurance fraud easier, less detectable and/or less preventable should be avoided.	Not accepted.	The Department believes that the mileage verification should have the opposite effect, permitting carriers to discover discrepancies in mileage reporting. Beyond that, the comment is completely speculative, at best, and the Commissioner disagrees that most consumers engage in mileage reporting fraud.
			The Proposed Regulations will interfere with market competition in the state. Under the current rating system, insurance companies differ in their internal approaches to verifying a consumer's representation about their "estimated annual mileage." Some want independent verification of mileage and others don't. This is because insurers have different underwriting and marketing practices, ideologies and objectives. Consequently, a consumer has the freedom and flexibility to select an insurance carrier that has an underwriting or marketing practice that suits the consumer's needs and desires. Thus, any consumer who does not want to do business with an insurer who requests documentation to substantiate annual mileage can select a carrier that has adjusted its rating system to reflect the fact that they do not request or rely upon documented annual mileage data as part of their underwriting practice. The current system affords consumers options and promotes market competition, which is beneficial to the consumer. (cont'd)	Not accepted.	The Department believes that the mileage verification regulation provides for thorough and complete insurance rating while providing protection to the insurer's customers. The Department believes that the mileage verification regulation assists, rather than hinders, an insurer in its task to verify mileage. The Department strongly encourages the industry to verify "estimated annual mileage" and has incorporated many comments into the current version of the regulation. As most carriers acknowledge, the mileage verification practice vary widely; therefore, what one carrier considers comfortable may make another uncomfortable. The Department believes that the current version strikes a realistic balance, providing insurers guidelines while maintaining protections for applicants and policyholders. The only requirement asks the applicant to provide his/her estimated annual miles.

			(cont'd) By changing the system and requiring all carriers to engage in the same approach to verify consumer representations regarding annual mileage, the CDI will be interfering with market competition to the detriment of consumers.		
			Sections (2)(A)(i) and (2)(B)(i) do not allow an insurer to: a) inquire as to the number of miles driven "as part of the applicant's job" (an insurer can only ask questions about the miles driven for commuting to/from work, but not about the miles driven as part of the consumer's workday); and b) inquire into what route(s) the applicant drives to get to/from work and/or as part of the applicant's daily work-time driving (it may be important to a carrier to know if the applicant is driving on the freeway or side roads, rural or inner city driving, what specific locations in the city the driver navigates, where he parks his car, etc).	Accepted in part and not accepted in part.	Section (C) of the regulation has been amended to permit an insurer to require an estimate of the number of miles that will be driven during the course of employment. Section C also states that an insurer may require the location of the workplace, school or destination where the vehicle will be driven and the number of days per week the vehicle is used for commuting. The Department disagrees that an insurer should be able to require the routes taken to get to work since that can be calculated based upon the workplace, school or destination. 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. Whether a consumer drives on rural or city roads is irrelevant to how many miles he/she drives.
			Sections (2) (A) (iii) and (2) (B) (iii) exclude brokers - why? If agents can check the odometer to verify the mileage, why can't a broker or a call center insurance representative be allowed to have a mechanism to verify mileage? This isn't fair to direct writers that do not use agents or brokers. This regulation could have an adverse impact on market competition between the varying mediums for selling insurance products.	Not accepted.	Sections (A)(iii) and (B)(iii) of the April 14 and June 7 versions has been deleted. This section previously addressed an insurer's ability to require an agent to verify mileage when the agent met with a policyholder in connection with the application or policy renewal.

			Sections (2) (A) (iv) and (2) (B) (iv) state that an insurer "shall not require service records which document the odometer reading at a particular date within the last three months." There is no logical reason why an insurance carrier should not be allowed to request a copy of a current service record to document the mileage of the insured vehicle. This information and documentation is readily available to the consumer and does not create any meaningful inconvenience or result in any additional expense for the consumer. In fact, a substantial number of people keep their service records or tire repair/replacement documentation in their insured vehicle for convenient access.	Not accepted.	While applicants may, at some time, have access to documentation upon which mileage is recorded, they should not be penalized for failing to retain this documentation. As set forth in the regulation, insurers are permitted to require an estimate of miles and may also require several methods to verify mileage. See section (C). Insurers are also permitted to request, but not require, information such as service records and the use of technological devices that collect vehicle mileage information. Finally, insurers may obtain and use smog check odometer readings from the California Bureau of Automotive Repair. 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.
			Sections (2) (A) (vi) and (2) (B) (vi) refer to "approval by the Commissioner". What would this procedurally entail and what would be the time-table for approval? The cost and logistics of this proposed administrative procedure could be quite prohibitive for carriers. Clarification of this provision is needed.	Not accepted.	As set forth in subsection (F) of the regulation, "[a]ll mileage rating rules that direct the selection of a mileage rating relativity shall be filed with and approved by the Commissioner in a class plan filing." The procedure and time-table for approval are the same as those that apply to a class plan filing. The costs will be similar to those for a class plan filing. This could be included in any class plan an insurer routinely files.
			Sections (2) (A) (viii) and (2) (B) (viii) state that "[i]n no event shall an insurer require an applicant to provide information from a prior insurer to confirm mileage estimated or driven." The CDI has justified the proposed imposition of these regulations by arguing that the regulations are need to protect consumers from being asked to tender documents that they may not have access to or could not easily secure. This alleged rationale clearly does not apply to this stated restriction, because a consumer, who currently has insurance on his /her vehicle, is required by law to carry proof of insurance in his/her possession. Therefore, requesting a copy of the applicant's insurance card and permission from	Not accepted.	This restriction is consistent with Proposition 103, specifically, California Insurance Code 1861.02(c) which states that absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums or insurability. It is also consistent generally with California Insurance Code Section 1861.02 which states that rates and premiums shall be determined by application of the following factors in decreasing order of importance: (1) the insured's driving safety record; (2) the number of miles he or she drives annually; and (3) the number of years of driving experience the insured has had; (4) those other

			the consumer to access the consumer's prior insurance application to evaluate the applicant's representations about annual mileage driven does not create any inconvenience for the consumer. (cont'd)		factors that the commissioner may adopt that have a substantial relationship to risk of loss. Allowing an insurer to require or request prior insurance information violates California Insurance Code Section 1861.02(c).
			(cont'd) The only one burdened with additional work in regard to securing annual mileage information from the former insurance carrier is the requesting carrier. Thus, this provision is illogical and inconsistent with the CDI's alleged rationale for restricting how an insurer may verify an applicant's representations about annual mileage driven.		
Cabrillo General Insurance Agency	June 14, 2006 (but received June 19, 2006, beyond the comment deadline.)			Not accepted.	