

# COMMENTS ON THE JULY 31ST REVISION OF THE “PAY AS YOU DRIVE” PROPOSAL

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## 1. COMMENTS

The July 31, 2009 revision of the Department of Insurance’s “Pay as you drive” insurance premium pricing regulations not only fails to address the privacy concerns raised in our previous comments but substantially weakens some protections in the June 24 version.

- (1) The change to 2632.5(c)(2)(F)(i) explicitly permits the insurer to require the use of a technological device for verified mileage. As discussed in our previous comment, we believe it is essential that the consumer be able to participate in the verified mileage program via odometer readings collected without the use of a technological device.
- (2) The revised text of 2632.5(c)(2)(F)(i)(5)(a) continues to allow the insurer to use the technological device to record arbitrary information about the driver other than the “location of the vehicle.” The new requirement that the insurer use the device to collect information only “for determining mileage driven” is sufficiently vague so as to permit anything. This clause must be revised to explicitly prohibit recording any information other than actual mileage.
- (3) The revised text of 2632.5(c)(2)(F)(i)(5)(a) drops the requirement that the insurer only use information collected for setting rates; this would appear to permit the insurer to sell this information, for instance. Nothing in the document requires the insurer to protect the privacy of consumers in its handling of the data collected under the verified mileage program.
- (4) The added text of 2632.5(c)(2)(F)(i)(5)(b) permits the insurer to use a technological device to collect location information for a variety of new purposes (emergency road service, map service, etc.). No discussion of privacy protections for this information is included in the document (nor is any other document referenced), and this clause appears to allow the insurer to record location information using the technological device for the verified mileage program provided that the device was “multi-function” and also had a safety application.

Summarizing, the revised regulations would allow an insurer to:

- (1) Require that consumers put an undefined technological device in their cars,
- (2) Collect unlimited information about the driver via this device, including real-time location, and
- (3) Use the collected information for arbitrary purposes, including sale to third parties.

We remain convinced that the odometer already present in every car is the only “technological device” needed to verify actual miles driven. As such, we strongly oppose these proposed amendments,

and urge that they be scrapped in favor of a new version that adheres to the recommendations set out in our previous comment.

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