STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 16th Floor
Sacramento, California 95814

FINAL STATEMENT OF REASONS

Anti-Steering in Auto Body Repairs

Date: November 9, 2016 **CDI Regulation File: REG-2015-00015**

UPDATED INFORMATIVE DIGEST

Except as set forth below, the information in the Informative Digest of the Notice of Proposed Rulemaking dated March 04, 2016, remains accurate and requires no updating.

Amended Text of Regulations

On September 26, 2016, a Notice of Availability of Revised Text and of Addition to Rulemaking File and Amended Text of Regulations were issued in this matter. The proposed regulations were amended as follows:

Subdivision (e)(2) was amended to further clarify the definition of "automotive repair shop" or "repair shop" as defined by the Business and Professions Code in section 9880.1. The term "to perform automotive repairs" was deleted, and was replaced with "as an auto body and/or paint shop."

Subdivision (e)(3)(B) was amended to clarify that making a statement to the claimant about a repair shop's poor service that is known to be untrue, or should, through the use of reasonable care, be known to be untrue, is a type of false, deceptive, or misleading information. The terms "advising the claimant", "similar allegations against the", and "without clear documentation in the claim file supporting these statements" were all deleted based on clarity issues.

Subdivision (e)(3)(C) was amended to remove the last part of the last sentence, "without clear documentation in the claim file supporting these statements" to avoid clarity issues.

Subdivision (e)(4)(C) was amended to change the definition of an unreasonable distance for populations of 100,000 or higher to fifteen (15) miles, rather than ten (10) miles.

Subdivision (e)(4)(D) was added to account for relationships between third-party insurers and third-party claimants. Should a third-party insurer exercise its right to inspect the damaged vehicle of a third-party, the six (6) business day commences when the insurer notifies the third-party claimant of its intention to inspect the damaged vehicle and when

it is made available for inspection. Further, the third-party insurer's decision to inspect the third-party vehicle was further defined to be made on the date the third-party insurer provides the third-party claimant with the information required by Section 2695.5(e)(2).

Subdivision (e)(5) was amended to add the words "at or" to fix a typo and for clarity purposes.

The public comment period closed on October 11, 2016.

Second Amended Text of Regulations

On October 24, 2016, a Second Notice of Availability of Revised Text and Second Amended Text of Regulations were issued in this matter. The proposed regulations were amended as follows:

Subdivision (e)(2) was amended to include underlining of the phrase "the claimant select a." This is a non-substantive change to reflect that the underlined phrase was added in the proposed 45 Day text, but was not properly identified as an addition in that text.

Subdivision (e)(3)(B) was amended to include underlining of the word "similar." This non-substantive change was done to indicate that the word "similar" was added in the proposed 45 Day text, but was not properly identified as a 45 Day addition when it was subsequently struck in the First Amended Text.

Subdivision (e)(4)(A) was amended to state the distance rule formerly contained in subdivision (e)(4)(C). This was done for clarity purposes, in order that the distance rule not be sandwiched between two provisions regarding availability of the vehicle for inspection.

Subdivision (e)(4)(B) was amended to include the content formerly in subdivision (e)(4)(A). The rule was further amended to clarify that is pertains only to first-party claims. The content of former Subdivision (e)(4)(B) was moved to Subdivision (e)(4)(B)3..

Subdivision (e)(4)(B)1. was added to include the content formerly contained in subdivision (e)(4)(A). The language of the subdivision was amended to clarify that the subdivision applies to initial inspections, to add cross references to related rules, and was rephrased for clarity.

Subdivision (e)(4)(B)1.a. was added to require that an insurer notify a claimant of the insurer's intention to inspect a vehicle. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the claimant making the vehicle reasonably available for inspection, because the claimant cannot be expected to do so without notice of the insurer's intent to inspect.

Subdivision (e)(4)(B)1.b. was added to include the rest of the rule statement formerly contained in subdivision (e)(4)(A), which clarifies that the insurer's responsibility to inspect or reinspect a vehicle is contingent upon the claimant making the vehicle reasonably available for inspection, and was rephrased for clarity.

Subdivision (e)(4)(B)2. was added to address the problem of inspections or reinspections subsequent to the insurer receiving a request for a supplemental estimate. According to Insurance Code section 790.03(h)(12), an insurer must settle claims, which at times necessarily involves inspecting the damaged vehicle, "promptly." The proposed regulations now specify that an insurer desiring to inspect or reinspect a vehicle must in any event do so within six business days after receiving a request for supplemental estimate, subject to provisions of underlying subdivisions.

Subdivision (e)(4)(B)2.a. was added to require that an insurer notify a claimant of the insurer's intention to inspect or reinspect a vehicle after a request for a supplemental estimate. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the claimant making the vehicle reasonably available for inspection or reinspection, because the claimant cannot be expected to do so without notice of the insurer's intent to inspect.

Subdivision (e)(4)(B)2.b. was added to make clear that the insurer's responsibility to inspect or reinspect a vehicle is contingent upon the claimant making the vehicle reasonably available for inspection.

Subdivision (e)(4)(B)3. was added to include the content formerly contained in Subdivision (e)(4)(B), pertaining to estimates in lieu of inspection and requests for inspection subsequent to receipt of estimates. In addition, in response to comments, the subdivision was amended to include reference to photographs and clarify that requests for photographs were treated the same as requests for estimates under the proposed regulation.

Subdivision (e)(4)(B)3.a. was added to require that an insurer notify a claimant of the insurer's intention to inspect or reinspect a vehicle. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the claimant making the vehicle reasonably available for inspection or reinspection, because the claimant cannot be expected to do so without notice of the insurer's intent to inspect or reinspect.

Subdivision (e)(4)(B)3.b. was added to include the rest of the rule statement formerly contained in subdivision (e)(4)(B), which clarifies that the insurer's responsibility to inspect or reinspect a vehicle is contingent upon the claimant making the vehicle reasonably available for inspection. The subdivision was further amended to clarify that it applies both to inspections and reinspections, and modified for clarity.

Subdivision (e)(4)(C) was amended to include the content in former Subdivision (e)(4)(D). The rule was further amended to clarify that it only applies to third-party

claims and to clarify that it is applicable to both inspections and reinspections. Based on comments stating that the six-day rule was unfair in context of third-party claims, the rule was amended to state that the six day period for inspection only begins once an insurer has decided to inspect a third-party vehicle. Former Subdivision (e)(4)(C) was deleted and moved to amended Subdivision (e)(4)(A).

Subdivision (e)(4)(C)1. was added to require that an insurer notify a claimant of the insurer's intention to inspect or reinspect a vehicle. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the claimant making the vehicle reasonably available for inspection or reinspection, because the claimant cannot be expected to do so without notice of the insurer's intent to inspect or reinspect.

Subdivision (e)(4)(C)2. was added to include the rest of the rule statement formerly contained in subdivision (e)(4)(C), clarifying that the insurer's responsibility to inspect a vehicle is contingent upon the claimant making the vehicle reasonably available for inspection. The rule was further amended to clarify that it applied only to third-party claimants and is applicable to both inspections and reinspections.

Subdivision (e)(4)(D) was amended to address circumstances wherein the claimant has not made the vehicle reasonably available during the applicable six day time for inspection. When the claimant fails to make the vehicle reasonably available during the applicable six day inspection period, the insurer shall inspect the vehicle as soon after the end of the six day period as is reasonable. Former Subdivision (e)(4)(D) was relocated to Subdivision (e)(4)(C).

Subdivision (e)(4)(E) was added to address the operation of the regulations under circumstances where the claimant has already chosen a body shop. The subdivision clarifies that, for purposes of the regulation, requests of the claimant may be directed to the auto repairer of the claimant's choice. The subdivision further clarifies that either a claimant, or an auto repairer of the claimant's choice, may be responsible for making a vehicle reasonably available for inspection or reinspection, or for failing to make a vehicle reasonably available for inspection or reinspection.

The public comment period closed on November 8, 2016.

UPDATE OF INFORMATION CONTAINED IN INITIAL STATEMENT OF REASONS

All the information set forth in the Initial Statement of Reasons dated March 04, 2016, remains accurate, and does not need to be revised. Additional material has been relied upon and added to the rulemaking file, which was outlined in the Notice of Availability of Revised Text and of Addition to Rulemaking File; the material added to the rulemaking file is also listed further below in this document. In addition to the additional material, public comments, the transcript of the public hearing, and this Final Statement

of Reasons has been added to the rulemaking file since the time the rulemaking record was opened.

Subdivision (e)(2)

This subdivision was amended to further clarify the definition of "automotive repair shop" or "repair shop" as defined by the Business and Professions Code in section 9880.1. The term "to perform automotive repairs" was deleted, and was replaced with "as an auto body and/or paint shop."

Businesses must apply with the Bureau of Automotive Repair ("BAR") Licensing Unit in order to register as an automotive repair shop in the State of California, using BAR's Application for Automotive Repair Dealer Registration. On that form, to apply and to be recognized as an automotive repair shop, the business must register their type of business on page 3 of 5 on the form; automotive repair shops at issue in the proposed regulation are classified as an "Auto Body and/or Paint Shop." Thus, the changes are reasonably necessary to clarify to insurers and the public what shops are considered an automotive repair shop affected by the regulation, and to be more consistent with the way that BAR and the State of California recognize the registration of automotive repair shops in California.

As discussed in the Initial Statement of Reasons, this subdivision is reasonably necessary in order to clarify when a consumer has "chosen" a repair shop; the underlying statute CIC §758.5(c) prohibits insurers from suggesting or recommending an auto repairer after the claimant has chosen a repairer.

This subdivision was further amended to include underlining of the phrase "the claimant select a." This is a non-substantive change to reflect that the underlined phrase was added in the proposed 45 Day text, but was not properly identified as an addition in that text.

Subdivision (e)(3)(B)

This subdivision was amended to clarify that making a statement to the claimant about a repair shop's poor service record, or similar statements, that are known to be untrue or should, through the exercise of reasonable care, be known to be untrue, are types of false, deceptive, or misleading information. The terms "advising the claimant", "similar allegations against the", and "without clear documentation in the claim file supporting these statements" were all deleted.

The changes are reasonably necessary for clarity purposes, based on Commenters' concerns that it is unclear what is meant by "clear documentation." The amendment to the subdivision is also reasonably necessary to further clarify Ins. Code section 758.5 by specifically defining and clarifying a type of false, deceptive, or misleading information to claimants.

The "reasonable care" standard incorporated into the amended regulations derives from CIC §790.03(b), the general statutory prohibition against insurers making false or misleading statements to claimants. Insurers are well familiarized with the "reasonable care" standard, as it has been in place since 1959. This subdivision is reasonably necessary to prohibit insurers from commenting on an auto repair shop selected by a claimant if the comment is known to the insurer to be false or misleading, or should be known through the use of reasonable care to be false or misleading. The Department has received numerous complaints that insurers have made untrue allegations to claimants regarding the claimant's chosen repair shop in an attempt to have the claimant take the job to an insurer-preferred facility; the proposed regulation is reasonably necessary to correct this behavior.

This subdivision was further amended to include underlining of the word "similar." This non-substantive change was done to indicate that the word "similar" was added in the proposed 45 Day text, but was not properly identified as a 45 Day addition when it was subsequently struck in the First Amended text.

Subdivision (e)(3)(C)

This subdivision was amended to remove the last part of the last sentence, "without clear documentation in the claim file supporting these statements." The changes are reasonably necessary for clarity based on Commenters' concerns that it is unclear what is meant by "clear documentation." As discussed in the Initial Statement of Reasons, this subdivision is reasonably necessary to prevent insurers from making negative statements about an auto repairer chosen by the claimant solely on the basis of the repairer's participation in a labor rate survey; whether or not an insurer participates in any labor rate survey has no bearing on the quality or work done by the repairer, or any other aspect of repairer operations.

Subdivision (e)(4)(A)

This subdivision was amended to state the distance rule formerly contained in subdivision (e)(4)(C) and the former content of this subdivision moved to subdivision (e)(4)(B). This change was reasonably necessary for clarity purposes, in order that the distance rule not be sandwiched between two provisions regarding availability of the vehicle for inspection.

This subdivision was amended to change the definition of an unreasonable distance for areas with populations of 100,000 or more to fifteen (15) miles, rather than ten (10) miles. The changes are reasonably necessary to address a Commenter's concern that ten (10) miles was not a large enough distance for larger urban areas. Based on a Comment from industry that 15 miles was an acceptable compromise distance, the Department has adopted the 15 mile proposal. Based on California's diverse geography, especially in large urban areas such as Los Angeles or San Francisco, requiring claimants to drive more than 15 miles, especially in traffic, would be an unreasonable time and distance for claimants to drive; this is particularly true given that a 15 mile radius in most large cities

encompasses dozens of auto repairers. This subdivision was modeled after Section 216.7 of New York regulations governing fair and equitable settlements of motor vehicle damage claims. The changes are reasonably necessary to address the Commenter's concern, while still accounting for the realities of California's traffic in large urban areas and the density of auto repairers in urban areas.

This subdivision is reasonably necessary to address complaints received by the Department that insurers would require a claimant to travel significant distances to have their vehicle inspected if the claimant had selected their own repair shop, but would facilitate inspections and other work at much closer locations preferred by the insurer. Given past confusion and complaints regarding what constituted an "unreasonable distance" under the prior regulations, it is necessary to create a bright line distance rule to promote certainty and transparency for all parties to an auto repair claim.

Subdivision (e)(4)(B)

The rules contained in this subdivision and subsections address the manner in which insurers may ascertain the extent of damage to a vehicle, which is typically done by inspecting the vehicle, or by requesting repair cost estimates and/or photographs of the damage. Insurers use these methodologies to determine their costs to settle the damage claim. Insurers are under no obligation to inspect a vehicle, or to obtain repair cost estimates, photographs or the damage, or conduct any other investigation into the condition of the damaged vehicle. However, many insurers employ one or more of the methods discussed as a means of controlling the cost of claims settlement. Insurers are free to inspect, reinspect, or request photographs or estimates in any sequence. For instance, an insurer may inspect a vehicle initially, request photographs in response to a request for supplemental estimate, then subsequently request a reinspection after receiving the photographs.

This subdivision was amended to include the content formerly in subdivision (e)(4)(A), pertaining to vehicle inspections. The rule was further amended to clarify that is pertains only to first-party claims; third-party claims are addressed in other subdivisions of the proposed regulation. The content of former Subdivision (e)(4)(B), relating to repair estimates in lieu of inspections, was moved to Subdivision (e)(4)(B)3..

The changes described above are reasonably necessary for clarity purposes, to aid in easier reading and understanding of the regulation text. Furthermore, the addition of language clarifying that this subdivision applies only to first party claims was reasonably necessary to address comments concerned with how the proposed regulation operated with respect to first and third party claims.

As discussed in the Initial Statement of Reasons, the six day time period contained in this subdivision is modeled after Section 216.7 of long-standing New York regulations governing fair settlement of vehicle damage claims. It is reasonably necessary to establish a "reasonable time" for vehicle inspection to address inconsistency in how insurers applied the currently existing rule, as well as to spare claimants from

unreasonable delay in the settlement of their claim. A bright line rule provides certainty for all parties to the claim. The Department has received numerous complaints that some insurers will delay inspections at facilities chosen by the consumer, but state to the claimant that an inspection can be done right away at the insurer's preferred facility, as a means to persuade the claimant to select a different repairer; this subdivision is reasonably necessary in order to prevent such steering behavior.

Subdivision (e)(4)(B)1.

This subdivision was added to include the content formerly contained in subdivision (e)(4)(A), relating to the insurer's outside time to inspect a vehicle. The language of the subdivision was amended to clarify that the subdivision applies to initial inspections, add cross references to related rules, and was rephrased for clarity.

These changes were reasonably necessary to clarify that the subdivision only applies to initial inspections, and to ensure that the regulation was internally consistent in its operation. This subdivision is necessary to establish the outside time period within which insurers must conduct initial inspections of a vehicle. The six day period is derived from Section 216.7 of long-standing New York regulations regarding fair settlement of vehicle damage claims.

Subdivision (e)(4)(B)1.a.

This subdivision was added to require that an insurer notify a claimant of the insurer's intention to inspect a vehicle. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the claimant making the vehicle reasonably available for inspection, as the claimant cannot be expected to do so without notice of the insurer's intent to inspect.

Subdivision (e)(4)(B)1.b.

This subdivision was added to include the rest of the rule statement formerly contained in subdivision (e)(4)(A), which clarifies that the insurer's responsibility to inspect or reinspect a vehicle is contingent upon the claimant making the vehicle reasonably available for inspection, and was rephrased for clarity. These changes were reasonably necessary for clarity and internal consistency. The requirement that a claimant make the vehicle reasonably necessary for inspection is reasonably necessary to avoid unfair impacts upon the insurer; an insurer cannot be expected to inspect a vehicle if the claimant cannot or will not cooperate with the inspection timeline mandated in the proposed regulation.

Subdivision (e)(4)(B)2.

This subdivision was added to address the issue of inspections or reinspections subsequent to the insurer receiving a request for supplemental estimate. An insurer

desiring to inspect or reinspect a vehicle must do so promptly, but in no event more than six business days after receiving a request for supplemental estimate, subject to provisions of underlying subdivisions. Cross-references were added to clarify that other provisions of the regulation are not applicable to reinspections.

A request for supplemental estimate is made by an auto repairer to the insurer when, in the process of tearing down the vehicle for repair, additional damage is uncovered which was not accounted for in the initial estimate, or alternative or additional repairs become necessary to properly repair the vehicle. The Department has received complaints stating that some insurers will delay reinspections at the claimant's chosen auto repairer as a means of convincing the claimant to have the vehicle repaired at a repairer preferred by the insurer, or in response to the claimant not choosing an insurer's contracted shop; this subdivision is reasonably necessary to curb this behavior. As discussed above, a bright line rule is necessary to promote clarity and transparency for all parties to a vehicle damage claim.

Subdivision (e)(4)(B)2.a.

This subdivision was added to require that an insurer notify a claimant of the insurer's intention to inspect or reinspect a vehicle after a request for supplemental estimate. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the claimant making the vehicle reasonably available for inspection or reinspection, as the claimant cannot be expected to do so without notice of the insurer's intent to inspect.

Subdivision (e)(4)(B)2.b.

This subdivision was added to make clear that the insurer's responsibility to inspect or reinspect a vehicle is contingent upon the claimant making the vehicle reasonably available for inspection. These changes were reasonably necessary for clarity and internal consistency. The requirement that a claimant make the vehicle reasonably necessary for inspection is reasonably necessary to avoid unfair impacts upon the insurer; an insurer cannot be expected to inspect a vehicle if the claimant cannot or will not cooperate with the inspection timeline mandated in the proposed regulation.

Subdivision (e)(4)(B)3.

Insurers may request repair cost estimates or photographs of damage to the vehicle as a means of determining their costs to settle the claim, but are not required to request this kind of documentation. Subsequent to receiving estimates or photographs, an insurer may decide to inspect or reinspect the vehicle.

This subdivision was added to include the content formerly contained in Subdivision (e)(4)(B), pertaining to estimates in lieu of inspection and requests for inspection subsequent to receipt of estimates. In addition, in response to comments, the subdivision was amended to include reference to photographs and clarify that requests for

photographs were treated the same as requests for estimates under the proposed regulation.

As discussed generally above, a bright line rule regarding time to request estimates and photographs is reasonably necessary to promote clarity and transparency for all parties to the claim. The time period in this subdivision is modeled after Section 216.7 of the long-standing New York fair auto damage claims settlement regulations. This subdivision is reasonably necessary to prevent insurers from delaying requests for documentation as a means of persuading the claimant to use an auto repairer preferred by the insurer. Similarly, it is reasonably necessary to impose an outside time limit on insurers wishing to inspect a vehicle subsequent to obtaining estimates or photographs, in order to prevent delays in the settlement of the claim; insurers may use such delays to persuade claimants to take their vehicle to an auto repairer preferred by the insurer.

Subdivision (e)(4)(B)3.a.

This subdivision was added to require that an insurer notify a claimant of the insurer's intention to inspect or reinspect a vehicle. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the claimant making the vehicle reasonably available for inspection or reinspection, as the claimant cannot be expected to do so without notice of the insurer's intent to inspect or reinspect.

Subdivision (e)(4)(B)3.b.

This subdivision was added to include the rest of the rule statement formerly contained in subdivision (e)(4)(B), which clarifies that the insurer's responsibility to inspect or reinspect a vehicle, subsequent to receiving estimates or photographs, is contingent upon the claimant making the vehicle reasonably available for inspection. The subdivision was further amended to clarify that it applies both to inspections and reinspections, and modified for clarity. These changes were reasonably necessary for clarity and internal consistency. The requirement that a claimant make the vehicle reasonably necessary for inspection is reasonably necessary to avoid unfair impacts upon the insurer; an insurer cannot be expected to inspect or reinspect a vehicle if the claimant cannot or will not cooperate with the inspection timeline mandated in the proposed regulation.

Subdivision (e)(4)(C)

Third party claims arise in the context of an insurer paying claims for damage caused by their insured; third-party claimants are not insured by the insurer paying the claim. Consequently, no contractual relationship exists between the third-party claimant and the insurer paying the claim, other than the insurer's duty to indemnify the insured who has caused damage to the third-party. Responsibility of the insurer to pay a third-party claim is predicated upon determination of liability for the incident which caused the damage; in many cases, an insurer will inspect the damaged third-party vehicle as part of the determination of liability. However, an insurer is under no obligation to inspect a damaged third-party vehicle. In response to comments stating that the general six-day

rule of subdivision (e)(4)(B) would be unfair given the relationship between insurers and third-party claimants, the Department has added subdivisions of the regulation which clarify the responsibilities of the insurer in the context of third party claims. While the rules contained in this subdivision are similar to those contained in subdivision (e)(4)(B), there are differences which reflect the differences in the relationship between the insurer and the third-party claimant.

Subdivision (e)(4)(C) was amended to include the content in former Subdivision (e)(4)(D). This subdivision states that, in the event that an insurer elects to inspect a third-party vehicle, the insurer shall conduct such inspection promptly, but in no event more than six business days after deciding to conduct the inspection, subject to certain conditions. The rule was further amended to clarify that it only applies to third-party claims and to clarify that it is applicable to both inspections and reinspections. Former Subdivision (e)(4)(C) was deleted and moved to amended Subdivision (e)(4)(A).

As discussed above generally, the six day time period contained in this subdivision is modeled after Section 216.7 of long-standing New York regulations governing fair settlement of vehicle damage claims. It is reasonably necessary to establish a "reasonable time" for vehicle inspection to address inconsistency in how insurers applied the currently existing rule, as well as to spare claimants from unreasonable delay in the settlement of their claim. A bright line rule provides certainty for all parties to the claim. The Department has received numerous complaints that some insurers will delay inspections at facilities chosen by the consumer, but state to the claimant that an inspection can be done right away at the insurer's preferred facility, as a means to persuade the claimant to select a different repairer; this subdivision is reasonably necessary in order to prevent such steering behavior. In recognition of the complexities of the relationship between an insurer and a third-party claimant, the time to inspect or reinspect a vehicle begins once an insurer has decided to inspect a vehicle; this rule is reasonably necessary, given that an insurer may not decide to inspect a third-party claimant's vehicle in all circumstances.

Subdivision (e)(4)(C)1.

This subdivision was added to require that an insurer notify a third-party claimant of the insurer's intention to inspect or reinspect a vehicle. This added language is reasonably necessary to alleviate any clarity or consistency issues with respect to the third-party claimant making the vehicle reasonably available for inspection or reinspection, as the third-party claimant cannot be expected to do so without notice of the insurer's intent to inspect or reinspect.

Subdivision (e)(4)(C)2.

This subdivision was added to include the rest of the rule statement formerly contained in subdivision (e)(4)(C), which clarifies that the insurer's responsibility to inspect or reinspect a vehicle is contingent upon the claimant making the vehicle reasonably available for inspection. The subdivision was further amended to clarify that it applies

only to third-party claimants and is applicable both to inspections and reinspections, and modified for clarity. These changes were reasonably necessary for clarity and internal consistency. The requirement that a claimant make the vehicle reasonably necessary for inspection is reasonably necessary to avoid unfair impacts upon the insurer; an insurer cannot be expected to inspect or reinspect a vehicle if the claimant cannot or will not cooperate with the inspection timeline mandated in the proposed regulation.

Subdivision (e)(4)(D)

As discussed generally above, the Department has received, and is receptive to, comments stating that the insurer should not be held accountable for failure by claimants to make a vehicle reasonably available for inspection. Because there was uncertainty about the responsibilities of the parties in the event that the claimant did not make the vehicle reasonably available for inspection during the six day period contained in subdivisions (e)(4)(B)1., (e)(4)(B)2., (e)(4)(B)3., or (e)(4)(C), this subdivision was reasonably necessary to resolve the uncertainty. The Department anticipates that the vast majority of vehicles will be inspected during the six day period and that inspections occurring outside this time will be outliers. Given the wide range of circumstances which could lead to a vehicle not being reasonably available for inspection during the six day period (e.g.: vacations, injury caused by the accident, vehicle location unknown), the Department adopted a rule of reasonableness for inspections occurring outside the six day period. This rule of reasonableness is reasonably necessary to avoid undue delay to claimants who cannot make the vehicle reasonably available for inspection during the six day period, while at the same time being fair to insurers, who should not have to forego vehicle inspection due to circumstances beyond their control.

This subdivision was amended to address circumstances wherein the claimant has not made the vehicle reasonably available during the applicable six day time for inspection. When the claimant fails to make the vehicle reasonably available during the applicable six day inspection period, the insurer shall inspect the vehicle as soon after the end of the six day period as is reasonable. Former Subdivision (e)(4)(D) was relocated to Subdivision (e)(4)(C).

Subdivision (e)(4)(E)

This subdivision was added to address the operation of the regulations under circumstances where the claimant has chosen a body shop. The subdivision clarifies that, for purposes of the regulation, requests of the claimant may be directed to the auto repairer of the claimant's choice. The subdivision further clarifies that either a claimant, or an auto repairer of the claimant's choice, may be responsible for making a vehicle reasonably available for inspection or reinspection, or for failing to make a vehicle reasonably available for inspection or reinspection.

This subdivision is reasonably necessary to address comments concerned with how the involvement of auto repairers chosen by the claimant, and similar third-parties, affect the rights and responsibilities set forth in the proposed regulations. The Department received

comments concerned that, because an auto repairer selected by a claimant will generally have custody of the claimant's vehicle and be responsible for communicating with the insurer, failure by the auto repairer to cooperate with the insurer could result in the insurer violating the terms of the proposed regulations. While the Department contends that the prior regulations were receptive to concerns from insurers, because the acts of third-parties could not be seen as the fault of the insurer, the Department nonetheless added this section to the regulation to bring further clarity and address the concerns of commenters. It is reasonably necessary for requests made of the claimant to also be properly addressed to auto repairers selected by the claimant, in order to avoid prejudice to the insurer resulting from lack of cooperation by third parties; the same reasoning dictates that it is reasonably necessary for the vehicle being made reasonably available (or not) by the claimant's chosen repairer to be attributable to the claimant.

Subdivision (e)(5)

This subdivision addresses circumstances wherein claimants have previously chosen a specific automobile repair dealer, and the insurer subsequently requires that a claimant go to a different repair shop to have the vehicle inspected. This practice creates the potential for improper steering to that insurer-directed shop, even after the claimant has exercised his or her right to choose a different repair shop. As discussed in further detail in responses to specific comments, the Department has received numerous complaints regarding steering and unfair claims settlements practices which can only take place when the claimant is required to submit to vehicle inspection at a location chosen by the insurer. The proposed regulation does not ban inspections at an insurer-designated location after the claimant has selected an auto repairer, but prohibits insurers from requiring claimants to submit to these types of inspection. The proposed regulation is reasonably necessary to prevent insurer steering behaviors which result from the claimant being required to have their vehicle inspected at a location chosen by the insurer.

Subsequent to the initially noticed text, this subdivision was amended to add the words "at or" to the subdivision. The change is reasonably necessary for clarity purposes for clearer reading of the subdivision, and to address a typo issue.

UPDATE OF MATERIAL RELIED UPON

The following additional material was relied upon by the California Department of Insurance (Department):

1) Excerpts from CDI Complaint File Number: CSB-7059184
2) Excerpts from CDI Complaint File Number: CSB-7057044
3) Excerpts from CDI Complaint File Number: CSB-7058541
4) Excerpts from CDI Complaint File Number: CSB-7061835
5) Excerpts from CDI Complaint File Number: CSB-7065157
6) Excerpts from CDI Complaint File Number: CSB-7067026
7) Excerpts from CDI Complaint File Number: CSB-7067875
8) Excerpts from CDI Complaint File Number: CSB-7068195
9) Excerpts from CDI Complaint File Number: CSB-7064276

10) Excerpts from CDI Complaint File Number: CSB-7069411
11) Excerpts from CDI Complaint File Number: CSB-7069945
12) Excerpts from CDI Complaint File Number: CSB-7070897
13) Excerpts from CDI Complaint File Number: CSB-7071632
14) Excerpts from CDI Complaint File Number: CSB-7071984
15) Excerpts from CDI Complaint File Number: CSB-7078720
16) Excerpts from CDI Complaint File Number: CSB-7076100
17) Department of Consumer Affairs, Bureau of Automotive Repair Licensing Unit — Application for Automotive Repair Dealer Registration, revised 05/11

LOCAL MANDATE DETERMINATION

The Department has determined that the proposed regulations will not impose a mandate upon local agencies or school districts.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Department that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In support of this determination is the fact that the Department has not considered an alternative other than those alternatives proposed and responded to in the summary and response to comments, and at no point during the rulemaking proceeding has an alternative been proposed, which would result in the same benefits as the proposed regulations, or implement the statutory policy, in a more effective, less burdensome or more cost-effective manner than the proposed regulations.

SUMMARY OF AND RESPONSE TO COMMENTS

The Department received comments following the public hearing on April 22, 2016, and in response to a notice of revised text issued on September 26, 2016. The public comments and the Department's responses are set forth in the table below.

ADDITIONAL DISCUSSION WITH RESPECT TO PROPOSED AMENDMENTS TO SECTION 2695.8(e)(4)(C)

Part of the statutory language underlying the proposed regulatory action defines as a prohibited act "Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims *in which liability has become reasonably clear*." (Ins. Code section 790.03(h)(5).) Thus, in the context of a third-party claim, insurers have no duty to inspect, or perform certain other duties attendant upon settling a third-party claim, under this statutory provision until it becomes reasonably clear that the insurer is liable to cover the repairs to the third-party vehicle in question. This is in distinction from the typical first-party claim, where generally the insurer is under contract to indemnify its own insured for the loss, regardless of fault, and liability is, as a rule, reasonably clear simply by virtue of the fact that there is damage to the vehicle. Accordingly, it would be inappropriate and wasteful in the context of third-party claims to require insurers to inspect all third-party vehicles within a certain period after notice of claim, when in a significant number of instances the insurer will turn out not to be liable to cover the repairs in the first place. In these cases, the insurer is not in privity of contract with the (third-party) claimant, from any liability for the cost of the repairs to whose vehicle the insurer may or may not be contractually obliged to indemnify its own (first-party) insured. On the other hand, requiring insurers in the context of third-party claims to inspect the damaged vehicle within a certain number of days after the insurer determines that inspection is necessary — the approach taken in the final text of regulation — serves a useful public policy purpose (prohibiting unnecessary delays in claims handling), while hueing sufficiently close to the Department's rulemaking authority in this regard.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF MARCH 4, 2016 THROUGH APRIL 22, 2016		
Commenter	**Synopsis or Verbatim Text of Comment**	**Department's Response**
David McClune, California Autobody Association April 20, 2016 Written Comments 14A: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 1.1** The California Autobody Association (CAA) is pleased to support the Anti-Steering in Auto Body Repairs Regulation. The CAA is a non-profit trade association comprised of over 1100 individual and independent repair businesses within the collision repair industry. Current law provides consumers with choice. The law prohibits insurers from steering consumers to an insurer company direct repair shop after a consumer clearly states to the insurer that they wish to have their car repaired at the shop of their choice. Unfortunately, some insurers are circumventing the intent and the spirit of the law. Insurers are getting around the law by using misleading "word tracks" designed to disparage and discredit the consumer's choice. For example, after a consumer chooses a repair facility, the insurer uses phrases such as " your shop didn't make our preferred list", or "if you take to that shop we cannot guarantee repairs" or "if you take it there we won't be able to get an adjuster out for at least 3 weeks to inspect" or	**Response 1.1** The Department thanks the commenter for the comment in support of the proposed regulations, and for providing evidence of misleading claims settlement practices which the proposed regulation seeks to address.

	"if you go to that shop the repaj.rs will cost more and you will have to pay the difference." The proposed regulations are designed to prohibit insurers from making untruthful and deceptive statements that unreasonably influence a customer's right to select their auto body facility. The regulations also prohibit insurers from requiring claimants to travel unreasonable distances or wait an unreasonable time have their vehicle inspected. Finally, the regulations clarifythat after a consumer has chosen a shop, they are not required to have their vehicle inspected at aninsurer recommend repair facility. The CAA believes the proposed regulations will clarify and strengthen the consumers right to select an auto body shop of choice to have their car repaired.	
Isela Bowles, Formula 1 Collision Center April 22, 2016 Written Comments 14B: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 2.1** This is in support of the changes to the existing Government Code 11346.5 In support with factual knowledge that many Insurance companies allow and perhaps encourage the following statements to automobile policy holders. Since a policy holder has the immediate contact with	**Response 2.1** The Department thanks the commenter for the comment in support of the proposed regulations, and for providing evidence of misleading claims settlement practices which the

	their insurance company it give them the advantage and top opportunity to say the following: supportive documents upon request. Some of the following are statements and testimony provided to me by customers that have spoken with their insurance company after an accident or damage to their vehicles. 1) Our DRP's will give you (the customer) enhanced benefits. 2) Your shop of choice may not be able to warranty their work 3) Independent shops hire people like the ones that hang out in front of Home Depot and places like that. 4) It is best to go with our preferred shops because they are all licensed and certified and maybe your shop is not. 5) You may be out of pocket expenses, those shops like you gauge. 6) Some of those shops are thieves and charge you extra. 7) Your shop of choice is not in our system and I am not sure if we can pay them for the repairs. 8) If you go to your shop of choice it's going to delay the repairs and it may take from 3 to 7 days to have someone look at your vehicle. The list goes on and on, it is a true way of making the consumer doubt about the abilities and performance of an independent facility with false assertions and that if you are not in their list then you must not do good work. The testimony from many are evidence that insurers have the advantage and the biggest offense is that they bank on the innocence and ignorance of consumers.	proposed regulation seeks to address.

Jay Flores, Tony's Body Shop April 21, 2016 Written Comments 14C: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 3.1** I strongly support the legislation that is in the works for Anti-Steering in Auto Body Repairs. We are the largest collision shop between Santa Barbara and Thousand Oaks, in Ventura County. the insurance industry is moving towards using their 1-800 number to turn in claims – they have more control by doing this. in doing so, they are able to give customers shops names that are on their list. They have purposely taken away the ability of a local agent to recommend shops they know do a good job. the 1-800 number allows to "direct" work to certain shops. It must always be made clear that the "customer has the right to choose" I feel that the customer needs to know that the shops on "this list" are on this list because they are offering a reduced rate, they are being made to repair cars in certain ways to keep costs down. Don't get me wrong, we are on these lists ourselves, but these lists are categorized by things like "who repairs the car cheaper".	**Response 3.1** The Department thanks the commenter for the comment in support of the proposed regulations, and for providing evidence of misleading claims settlement practices which the proposed regulation seeks to address.

	I am being asked to do things like replace a quarter panel with a used part – because it is cost effective for the carrier. This is equal to "removing a piece of dry wall in a house to re-use it" makes no sense, yet it is done so that shops can remain on these lists. when using the 1-800 number, the customer is made to choose a shop on the list because the repair will be warrantied for life, this is not true, it is the shop that warranties the repair, it is the shop that will pay to re-do any work, or pay another shop to repair the car – if they wish to remain on their list. Customer are led to believe the insurance company is offering the warranty……. hence pushed into selecting a shop "on the list". The list itself is also controlled, larger shops like ours that get the bulk of the work due to reputation and good work, will be pushed down on the list to allow work to go to other shops, spreading out the work. I call this "steering then steering some more "…… (sometimes we are not even mentioned on the list – the customer has to ask for us by name to finally get the straight answer that we are on the list) thank you for your time….	
John Gustafson, Gustafson Brothers Inc.	**Comment 4.1**	**Response 4.1**

March 4, 2016 Written Comments 14D: Verbatim, but with inserted **Comment Numbers** keyed to responses.	After reading the Anti Steering in Auto Body Repairs draft I have only 2 comments. **Comment 4.2** Where the wording in the current draft reads ESTIMATE the modern term is DAMAGE INSPECTION & REPAIR COST APPRAISAL if that matters to the State. **Comment 4.3** Secondly, There **is** likely to be an impact on small business. Some to many qualified shops who have invested in training and equipment to handle larger volumes of repair work & specialty repair work such as aluminum may lose work to less qualified and under-tooled shops because of the anti-steering rule.	The Department thanks the commenter for his comment. **Response 4.2** The commenter suggests that "Damage Inspection and Repair Cost Appraisal" should be substituted for "estimate" as used in the proposed regulations. The Department believes that "estimate" is sufficiently broad to encompass "Damage Inspection and Repair Cost Appraisal," whereas using the more specific term "Damage Inspection and Repair Cost Appraisal" could make the regulations ineffective if different terms are subsequently adopted in trade practice. **Response 4.3** The commenter also makes the assertions that "qualified shops . . . may lose work to less qualified and under-tooled shops because of the anti-steering rule," and that "blanket anti-steering rules will hurt good operators, but . . . if reasonable guidelines are in place,

	I believe that blanket anti steering rules will hurt good operators but that if reasonable guidelines are in place, qualified shops will continue to prosper. Hope this helps. I'm available by phone for comment at the number below.	qualified shops will continue to prosper." The difference between "blanket anti-steering rules" and "reasonable guidelines" is not made clear in the comment. Commenter neither states any factual bases for his assertions, nor identifies the portions of the proposed regulation supposed to have this effect. As a general rule, investment in equipment, materials, and experienced personnel tends to increase the operating costs of an automotive repairer; shops which are "undertooled" would tend to have lower costs than "qualified shops." Given that insurers tend to prefer repairing a vehicle at the lowest possible cost, the proposed regulation would tend to have the effect of preventing consumers from being steered by insurers to "undertooled shops." "Qualified shops," which are likely to have higher operating costs than "undertooled" shops, would tend to benefit from a prohibition against insurers steering the consumer to a lower-cost

		competitor. The proposed regulation furthers the statutory right of the consumer to have their vehicle repaired at the shop of their choice and prevents insurers from making misleading statements, or requiring consumers to wait or travel excessively to get their vehicle repaired. Therefore, the Department disagrees that the proposed regulation has the inherent effect of shifting demand to less qualified shops; allowing consumers to make their own repair shop selection without unwanted or untruthful input from insurers does not inherently favor any kind of repair facility.
Kenneth Heming, Blue Mountain Collision Center April 22, 2016 Written Comments 14E:	**Comment 5.1** PER YOUR REQUEST ATTACHMENT	**Response 5.1** The Department thanks the commenter for the comment. As the comment is not specifically

Verbatim, but with inserted **Comment Numbers** keyed to responses.	Dear Shop Manager: Ameriprise Auto & Home Insurance is revising its Value In Partnership (VIP) Program. The intent of the revision is to better align with select repair facilities in order to provide the ultimate repair experience for our mutual customer. We have made the decision to remove your facility from our VIP Program. The decision to remove your shop is not a reflection of your performance in VIP. Rather, it is a business decision based on specific criteria including volume, loss count, policies in force and anticipated growth or reduction, in conjunction with the development of our Staff Appraiser Program. Thank you for your past participation in our Value in Partnerships direct repair program. This letter should be considered our 30-day written termination notice, as required by our agreement. Although you will not be receiving any new assignments through NuGen during this 30-day period, you will continue to have access to it for the next 30 days to complete any current assignments. We ask that you complete those assignments, and if you have questions about the VIP program or need technical assistance, you may use the following contact numbers: CONTACT INFORMATION	directed at the proposed regulations text, the Department interprets the comment as containing evidence of insurer practices regarding DRP program participation.
Michael Gunning, Insurance Industry Coalition	**Comment 6.1**	**Response 6.1**

April 22, 2016 Written Comments 14F: Verbatim, but with inserted **Comment Numbers** keyed to responses.	On behalf of all the property casualty insurance trade organizations listed above, and the California Chamber of Commerce, we are writing to express our comments and questions to the California Department of Insurance's ("Department") proposed regulations on "Steering." In these comments, we will, first, outline our view of the scope of the Department's legislatively-granted power to regulate in these areas. Thereafter, we will offer suggestions and questions which we hope will help the Department to improve the proposals. **Comment 6.2** **The proposed amendments to subdivision (e) of section 2695.8 fail to comply with the standards of authority, reference, consistency, and necessity**. **Comment 6.3** **Authority – The Department has no authority to adopt the amendments to subdivision (e) of section 2695.8.**	The Department thanks the Commenter for submitting its comments for the proposed regulations. **Response 6.2** The Department disagrees that the proposed regulations fail to comply with the standards of authority, reference, consistency, and necessity, as discussed below. **Response 6.3** The Department disagrees that the proposed regulations fail to comply with the standards of authority, for reasons discussed below.

	Government Code section 11349.1 requires all regulations to comply with the standard of authority. Government Code section 11349(b) provides, "'Authority' means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation." Insurance Code sections 790.10, 12921 and 12926; Civil Code section 3333; and Government Code sections 11152 and 11342.2 are cited as authority for the proposed amendments to subdivision (e) of section 2695.8. However, none of the cited statutes permit or obligate the adoption of the amendments. Insurance Code section 790.10 does not authorize the adoption of the proposed amendments. Insurance Code sections 790.03 and 790.10 are part of the Unfair Insurance Practices Act (UIPA). The 11 subdivisions of section 790.03 define unfair and deceptive acts or practices in the business of insurance. The Informative Digest for the proposed amendments notes that section 790.10 gives the Insurance Commissioner the power to "administer" section 790.03 and the other provisions of the UIPA. In citing section 790.10 as authority for the adoption of the proposed amendments, the Department of Insurance reasons that the Commissioner's power to administer the UIPA gives the Commissioner the authority adopt regulations which delineate conduct which constitutes unfair or deceptive acts within the meaning of the definitions set forth in section 790.03; the	The Department thanks the Commenter for summarizing the standards of authority. The Department disagrees that Insurance Code sections 790.10, 12921 and 12926; Civil Code section 3333; and Government Code sections 11152 and 11342.2 are all cited as authority for the proposed amendments to subdivision (e) of section 2695.8. Because the proposed regulation is an amendment to sections of a currently existing regulation, the authority and reference citations apply to the entire section, rather than just the proposed amendments. As a result, certain authority and reference citations are inapplicable to the present amendments. The Department disagrees that Ins. Code § 790.10 does not authorize the adoption of the proposed amendments. The anti-steering statute at Ins. Code §758.5(f) authorizes the Commissioner to enforce the terms of the statute via

	Informative Digest refers specifically to subdivisions (b) and (h) of section 790.03. This reasoning was rejected by the Court of Appeal in *Association of California Insurance Companies v. Jones* (2015) 235 Cal.App.4th 1009. The Commissioner argued in *Jones* that the Commissioner's power to promulgate regulations to administer the UIPA gives the Commissioner the authority to define conduct that is unfair or deceptive through the adoption of a regulation. The Court of Appeal reviewed the provisions of the UIPA and concluded, "Read together, these provisions demonstrate that the Legislature did not give the Commissioner power to define by regulation acts or conduct not otherwise deemed unfair or deceptive in the statute." (*Jones* at p. 1030.) The ruling in the *Jones* decision compels the conclusion that the power granted to the Commissioner in section 790.10 to adopt regulations to administer the UIPA does not authorize the adoption of the proposed amendments. None of the other cited statutes provides authority for the adoption of the proposed amendments.	the UIPA statutes at Ins. Code §790, *et seq.*, including the rulemaking provisions of Ins. Code §790.10. Documented insurer steering behaviors constitute misleading statements contrary to Ins. Code §790.03(b), failure to adopt reasonable standards for the prompt investigation and processing of claims as prohibited by Ins. Code §790.03(h)(3), as well as failure to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims once liability has become reasonably clear, as prohibited by Ins. Code §790.03(h)(5). The Department thanks the Commenter for the summary of UIPA. The Department agrees that the Commissioner's authority to administer UIPA does not include authority to define new unfair practices under Ins. Code §790.03. However, the proposed regulations merely implement existing prohibitions under the Act.

		The *Association of California Insurance Companies v. Jones* ("*Jones"*) case cited by the Commenter is not a final decision and, therefore, is not binding legal authority. The case is on appeal before the California Supreme Court, and does not apply in the interpretation of the proposed regulations. The Department believes that *Jones* will be overturned. Even if the *Jones* decision is upheld, it does not apply to the proposed regulations. The *Jones* court explicitly stated that "[Its] ruling today is limited to one conclusion – that the UIPA has not, as of yet, given the Commissioner authority to regulate the content and format of replacement cost estimates." (*ACIC v. Jones*, 235 Cal.App.4th 1009, 1036.) By its own terms, the *Jones* ruling excludes the possibility that the proposed regulations could fall under the *Jones* standard. The Department contends that 790.10 does authorize adoption of the proposed amendments.

		The Department disagrees that *Jones* compels the conclusion that Ins. Code §790.10 does not provide adequate authority for the proposed regulations; the Department cited to sufficient authority in the filing documents. The *Jones* decision is inapposite to the proposed regulations. Because the proposed regulation is an amendment to sections of a currently existing regulation, the authority and reference citations apply to the entire section 2695.8, rather than just the proposed amendments. As a result, certain authority and reference citations are not intended to be applicable to all subdivisions of this section. These authority and references are not new amendments and are not part of this current rulemaking. **Response 6.4** The Department thanks the Commenter for the summary of Ins. Code § 12921. The Department disagrees that the §
	Comment 6.4 **Insurance Code Sections 12921and 12926**	

	Subdivision (a) of section 12921 simply directs the Commissioner to perform the duties imposed upon him or her by the provisions of the Insurance Code and other laws relating to the business of insurance and to enforce those provisions and laws. As explained above, the provisions of the Insurance Code do not give the Commissioner the authority to adopt the proposed amendments, and therefore the Commissioner has no authority to enforce the amendments. The other two subdivisions of section 12921 have no relevance to the authority for the proposed regulations. Subdivision (b) relates to the Commissioner's authority to delegate the power to approve settlements. Subdivision (c) relates to the Commissioner's acceptance and maintenance of records. Insurance Code section 12926 does not provide authority for the adoption of the proposed amendments. Section 12926 states that the Commissioner must require every insurer to be in full compliance with the provisions of the Insurance Code. As explained above, the provisions of the Insurance Code do not authorize the adoption of the proposed amendments. It follows that the Commissioner may not require insurers to comply with the amendments.	12921 does not provide authority; the Department cited to sufficient authority in its filing documents. Given the number of steering complaints received by the Department, the Commissioner has inferred that the industry is not complying with the anti-steering mandates of the Insurance Code. This rulemaking is intended to enforce the execution of the provisions of the Insurance Code, meaning that Ins. Code §12921, requiring the Commissioner to enforce the provisions of the Insurance Code, is properly cited as authority for this rulemaking. The Department agrees that subdivisions (b) and (c) are not related to this rulemaking. Because the proposed regulation is an amendment to sections of a currently existing regulation, the authority and reference citations apply to the entire section 2695.8, rather than just the proposed amendments. As a result, certain authority and reference citations are not intended to be applicable

		to all subdivisions of this section. These authority and references are not new amendments and are not part of this current rulemaking. The Department thanks the Commenter for the summary of Ins. Code § 12926. The Department disagrees that the § 12926 does not provide authority; the Department cited to sufficient authority in its filing documents. As described above, the Commissioner continues to receive steering-related complaints from insurers, despite the existence of anti-steering statutes. Ins. Code §12926 mandates that the commissioner require from every insurer full compliance with all provisions of the Insurance Code. Because the proposed regulations are intended to promote insurer compliance with the anti-steering statutes at Ins. Code §758.5, Ins. Code §12926 is properly cited as authority for this rulemaking. **Response 6.5**

	Comment 6.5 **Civil Code section 3333** Civil Code section 3333 specifies the measurement of damages for the breach of an obligation not arising from contract. The section has no relationship to the Commissioner's authority to adopt the proposed amendments. **Comment 6.6** **Government Code sections 11152 and 11342.2** Section 11152 gives the head of each state department the authority to adopt regulations governing the activities of the department. The section has no direct relevance to the Commissioner's authority to adopt the proposed amendments.	The Department agrees and thanks the Commenter for the summary of Civil Code § 3333. As described above, Civil Code §3333 is cited as reference for an existing regulation, not the proposed regulations. Because the proposed regulation is an amendment to sections of a currently existing regulation, the authority and reference citations apply to the entire section 2695.8, rather than just the proposed amendments. As a result, certain authority and reference citations are not intended to be applicable to all subdivisions of this section. These authority and references are not new amendments and are not part of this current rulemaking. **Response 6.6** The Department thanks the Commenter for the summary of Ins. Code § § 11152 and 11342.2. Because the proposed regulation is an amendment to sections of a currently existing regulation, the authority and reference citations

	Section 11342.2 gives a state agency general authority to adopt regulations to implement a statute, as long as the regulations do not conflict with the statute. The proposed amendments seek to implement Insurance Code section 790.03; however, as explained above, the proposed amendments are in conflict with section 790.03. **Comment 6.7**	apply to the entire section 2695.8, rather than just the proposed amendments. As a result, certain authority and reference citations are not intended to be applicable to all subdivisions of this section. These authority and references are not new amendments and are not part of this current rulemaking. Commenters have not described the manner in which Ins. Code §790.03 is alleged to conflict with the proposed regulations. Furthermore, the Department disagrees that that the proposed regulations are in conflict with § 790.03. Ins. Code §758.5(f) explicitly provides that the anti-steering mandates of Ins. Code §758.5 may be enforced through Ins. Code §790.03 and other statutes of the UIPA; the proposed regulations are in furtherance of this statutory enforcement scheme. **Response 6.7** The Department thanks the Commenter for the summary of

	Reference - The proposed amendments to subdivision (e) of section 2695.8 fail to comply with the reference standard. Government Code section 11349.1 requires all regulations to comply with the standard of reference. Government Code section 11349(e) provides, "'Reference' means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation." Insurance Code sections 758.5 and 790.03 are cited as reference for the proposed amendments; however, neither statute provides reference for the amendments. **Comment 6.8** Insurance Code section 758.5 is an inappropriate reference for the proposed amendments to section 2695.8(e). The proposed amendments would be included in a regulatory section that is part of the Fair Claims Settlement Practices Regulations (Section 2695.1 *et seq.*). The Department of Insurance may have authority to adopt regulations that interpret or implement section 758.5; however, any such regulations may not be included in the Fair Claims Settlement Practices Regulations. The existing section 2695.8 and the proposed amendments seek to define conduct that violates Insurance Code section 790.03. The	the reference standard. The Department agrees that both Ins. Code § § 758.5 and 790.03 are cited as references, however they are both properly cited as reference, for reasons detailed below. **Response 6.8** The proposed regulations interpret Ins. Code § 758.5, which states that "no insurer shall suggest or recommend that an automobile be repaired at a specific automotive repair dealer…" Clearly, it is an appropriate reference for the proposed regulations, which are intended to curb steering behavior by insurers. Further, these proposed regulations did not add Ins. Code Section 758.5 as a Reference, as it was already part of the Note

	Court of Appeal's ruling in the *Jones* decision makes clear that the department does not have the authority to establish any such definition through the adoption of a regulation. Subdivision (f) of section 758.5 states, "(f) The powers of the commissioner to enforce this section shall include those granted in Article 6.5 (commencing with Section 790) of Chapter 1 of part 2 of division 1." Subdivision (f)'s reference to the Commissioner's enforcement powers does not grant the Commissioner new powers to adopt regulations. The enforcement powers mentioned in the subdivision are the enforcement powers the Commissioner has under the UIPA. Those powers do not include the authority to adopt regulations which define unfair or deceptive insurance practices. In the *Jones* decision, the Court of Appeal reviewed the provisions of the UIPA, including section 790.08 which describes the powers vested in the Commissioner. The court concluded, "Thus, section 790.08 emphasizes that the enforcement role of the Commissioner is tethered to acts and practices 'hereby declared to be unfair or deceptive,' to wit, defined or determined in the UIPA." (*Jones*, at p. 1032.)	/Reference for Section 2695.8 and has been since Ins Code 758.5 was enacted. Other than their conclusory statement, Commenters do not provide any explanation for why regulations interpreting Ins. Code §758.5 may not be included in the Fair Claims Settlement Practices regulations. The anti-steering statute at Ins. Code §758.5(f) explicitly provides that that anti-steering statute may be enforced through the Unfair Practices statutes at Ins. Code §790, *et seq.*, including the rulemaking provisions of Ins. Code §790.10. The Fair Claims Settlement Practices Regulations referenced by Commenter are promulgated under Ins. Code §790.10, meaning that these regulations are the appropriate location for the proposed anti-steering regulations. Current regulations governing automobile repair already exist in the Fair Claims Settlement Practices Regulations. There is no other appropriate place for the proposed regulations.

		The anti-steering statute at Ins. Code §758.5(f) authorizes the Commissioner to enforce the terms of the statute via the UIPA statutes at Ins. Code §790, *et seq.*, including the rulemaking provisions of Ins. Code §790.10. Documented insurer steering behaviors constitute misleading statements contrary to Ins. Code §790.03(b), failure to adopt reasonable standards for the prompt investigation and processing of claims as prohibited by Ins. Code §790.03(h)(3), as well as failure to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims once liability has become reasonably clear, as prohibited by Ins. Code §790.03(h)(5). The *Association of California Insurance Companies v. Jones* ("*Jones"*) case, as cited by the Commenter is not a final decision. The case is on appeal before the California Supreme Court, and therefore, does not apply in the interpretation of the proposed

		regulations. The Department believes that *Jones* case will be overturned by the Supreme Court. As described above, in the *Jones* case, the court explicitly stated that its holding was limited to the replacement cost regulations; *Jones*, even if upheld, has no bearing on the proposed regulations. In addition, the proposed regulations are distinguishable from the regulations in the *Jones* case. Commenters incorrectly assert that Ins. Code §758.5(f) does not grant the Commissioner authority to adopt regulations governing the statute; the subdivision reads "The powers of the Commissioner to enforce this section shall include those granted in Article 6.5 (commencing with section 790) of Chapter 1 of Part 2 of Division 1." The foregoing is a reference to the entirety of the Unfair Practices statutes, including the rulemaking power over those statutes. The Legislature is presumed to include all terms in a statute for good reason when legislating; in

		granting the Commissioner broad enforcement authority to enforce the anti-steering statutes via the Unfair Practices statutes, the Legislature is presumed to have intended the Unfair Practices rulemaking authority to be available to the Commissioner when enforcing Ins. Code §758.5. As discussed above and below, the *Jones* decision is not a final decision and has no bearing on the present rulemaking and, moreover, would not apply to the present regulations, even if affirmed by the California Supreme Court. **Response 6.9** The Department maintains that 790.03, which prohibits myriad unfair claims practices, is an appropriate reference for the proposed regulations. Further, these proposed regulations did not add Ins. Code Section 790.03 as a reference, as it was already part of the Note /Reference for Section 2695.8 from the original 1991 effective
	Comment 6.9 Insurance Code section 790.03 is an inappropriate reference for the proposed amendments to subdivision (e) of section 2695.8. The proposed amendments may not be adopted as an implementation or an interpretation of Insurance Code section 790.03. In the *Jones* case, the Insurance Commissioner pointed to two California Supreme Court decisions which held that statutes gave two state agencies the authority to adopt regulations in order to fill in the details of the statutes. The Commissioner contended that the	

	UIPA gave him similar authority to fill in the as to what is "misleading" under section 790.03. The Court of Appeal rejected the Commissioner's contention. The first case on which the Commissioner relied, *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, upheld a DMV regulation that defined prohibited practices that were identified in the Vehicle Code. The Court of Appeal distinguished the Commissioner's regulation from the DMV regulation. The court explained, "We do not doubt that the Legislature could have delegated to the Commissioner the kind of broad authority conferred on the DMV in *Ford Dealers*; it did not do so in the UIPA." (*Jones* at p. 1033.) The second case relied on by the Commissioner, *Credit Ins. Gen. Agents Assn. v. Payne* (1976) 16 Cal.3d 651, upheld the Insurance Commissioner's authority to adopt a regulation interpreting credit insurance statutes. The Court of Appeal concluded that the *Payne* decision was not applicable to the Commissioner's authority to adopt a regulation which sought to interpret or implement Insurance Code section 790.03. The court observed, "Once again, these statutes governing credit insurance do not contain the same language or fit the same statutory context as section 790.03 does in the UIPA." (*Jones* at p. 1036.) The department's reliance on section 790.03 as reference for the proposed amendments is not warranted. The amendments may not be adopted under the guise of implementing Insurance Code section 790.03. In	date of the originally adopted Fair Claims Settlement Practices regulations. The *Association of California Insurance Companies v. Jones* ("*Jones"*) case, as cited by the Commenter is not a final decision. The case is on appeal before the California Supreme Court, and therefore, does not apply in the interpretation of the proposed regulations. The Department believes that the *Jones* ruling will be overturned by the Supreme Court. As described above, the *Jones* court explicitly stated that its holding was limited to the replacement cost regulations; *Jones*, even if upheld, has no bearing on the proposed regulations. In addition, the proposed regulations are distinguishable from the regulations in the *Jones* case. The Department thanks the Commenter for the summary of the *Jones* case, but disagrees that the case will affect the proposed regulations since it is on appeal,

	ruling that the Legislature did not give the Commissioner the authority to adopt a regulation defining an unfair and deceptive practice set forth in section 790.03, the *Jones* decision concluded that "under that guise of 'filling in the details,' the Commissioner therefore could not do what the Legislature has chosen not to do." (*Jones* at. 1033.)	and not a final decision and its holding is limited to the replacement cost regulations. The Department thanks the Commenter for the summary of the *Jones* case, but disagrees that the case will affect the proposed regulations since it is on appeal, and not a final decision and its holding is limited to the replacement cost regulations.
	Comment 6.10 **Consistency - The proposed amendments to subdivision (e) of section 2695.8 fail to comply with the consistency standard.** Government Code section 11349.1 requires all regulations to comply with the standard of consistency. Government Code section 11349(d) provides, "'Consistency' means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." The proposed amendments are inconsistent with the *ACIC v. Jones* decision. The Court of Appeal stated its fundamental holding in the *Jones* decision as follows: "The language of the UIPA reveals the	**Response 6.10** The Department disagrees that the proposed regulation violates the consistency standard. The *Association of California Insurance Companies v. Jones* ("*Jones"*) case, as cited by the Commenter is not a final decision. The case is on appeal before the California Supreme Court, and therefore, does not apply in the interpretation of the proposed regulations. The Department believes that *Jones* case will be overturned by the Supreme Court. As described above, the *Jones* court explicitly stated that its

	Legislature's intent to set forth in statute what unfair or deceptive trade practices are prohibited, and not delegate that function to the Commissioner." (*Jones* at p. 1030.) The proposed amendments' attempt to define conduct that falls within the meaning of provisions in Insurance Code 790.03 is at odds with the holding in *Jones.* Furthermore, in our view, the proposed amendments to subdivision (e) of section 2695.8 is in conflict with the first amendment right to free speech under the United States Constitution and California Constitution (Cal. Const. art.1, Section 2 (a). Insurers have the right to freely communicate with their policyholders. We do not believe the Department's proposed regulation requiring an insurer to have a "clear documentation in the claim file" before we can say anything is consistent with our constitutional rights. We are not aware of any case law that would indicate that what the Department is proposing passes constitutional muster; and therefore, must be stricken. **Comment 6.11** **Necessity - The proposed amendments to subdivision (e) of section 2695.8 fail to comply with the necessity standard.** Government Code section 11349.1 requires all regulations to comply with the necessity standard. Government Code 11349(a), which	holding was limited to the replacement cost regulations; *Jones*, even if upheld, has no bearing on the proposed regulations. In addition, the proposed regulations are distinguishable from the regulations in the *Jones* case. The Department does not agree that there is a legitimate First Amendment concern regarding the requirement for "clear documentation" prior to making negative statements about a repairer. However, in an effort to address a potential clarity issue, the Department has elected to remove this requirement. The proposed regulation text has been amended accordingly. **Response 6.11** The Department thanks Commenters for their summary of the "necessity" standard under the California APA. Based on one sentence in the Informative Digest, Commenters

	defines the necessity standard, provides that the need for the regulation must be demonstrated in the rulemaking record "by substantial evidence." Title 10 CCR section 10(b) explains that in order to meet the necessity standard, the rulemaking file must include "facts, studies, or expert opinion." The Informative Digest fails to include substantial evidence for the need for the proposed amendments. The Digest states that "the Department has received information that insurers are making statements that are indirect violation of Ins. Code section 758.5." The Government Code requires more than this general statement in order to achieve compliance with the standard of necessity. The department needs to put forward numbers and facts that prove the amendments are needed.	incorrectly assert that the proposed regulations are unsupported by substantial evidence and, therefore, fail the necessity standard. Commenters fail to acknowledge that the proposed regulations are supported by a substantial volume of consumer complaints. The proposed regulation is necessary to preserve the consumer's statutory right to select an auto body repairer of their choice. The Department has received frequent complaints regarding steering-related violations which can only be effectuated if the consumer is required to take their vehicle to a DRP or other shop specified by the insurer: 1) Insurers will reject all estimates from non-DRP shops and inform the consumer that the insurer is only willing to pay up to the amount of the estimate by a DRP shop. A second variation of this scheme involves the consumer receiving an estimate at a DRP shop, then being told to accept a

		settlement check for the estimated amount on the spot, prior to having the vehicle repaired at the shop chosen by the consumer. Both of these schemes violate the consumer's right to have the insurer pay for the vehicle to be repaired to BAR standards at the shop of the consumer's choosing. 2) Consumers will receive a far lower repair cost estimate at a DRP shop, as compared to surrounding shops, and insurers will use the lower DRP estimate as the basis for cash settlement negotiations. 3) Consumers will drop their vehicle off for inspection at a DRP shop return to find that the DRP shop has begun repairs on the vehicle without permission from the consumer. 4) Consumers who have selected a different repair shop report harassment and intimidation by DRP shop personnel and insurer adjustors when taking their vehicle to a DRP shop for inspection. This can include multiple calls to the consumer "to schedule repairs" from DRP shop staff who have

		access to the insured's contact information subsequent to the vehicle being brought in for inspection, even though the DRP staff know the consumer wishes to use an alternate repairer. Complaints to the Department also show that insurers have used the consumer's election of a non-DRP repairer as the basis to delay claim settlement or deny portions of claims. These coercive practices often drive the consumer to consent to having a DRP shop conduct the repairs out of fear of losing benefits the insurer is required to provide, and are an additional basis for the proposed regulations: 1) Insurers have, upon learning that the consumer has selected a non-DRP repairer, informed the consumer that the vehicle cannot be inspected for a significant amount of time. 2) Insurers have, upon learning that the consumer has selected a non-DRP repairer, instructed the consumer that they must have their vehicle inspected at a shop

		far distant from the consumer's home or place of business. 3) Insurers have refused to send adjustors to non-DRP repairers, despite a request from the consumer, and consent of the repairer. 4) Insurers have told consumers that their vehicle would be repaired at a DRP shop, but totaled if they select a non-DRP repairer. 5) Insurers have told consumers that towing fees or car rental will not be covered by the insurer unless the vehicle is repaired at a DRP shop. 6) Insurers have required inspections or re-inspections subsequent to work being completed at a non-DRP shop, which consumers have viewed as retaliation for selecting a non-DRP shop. The practices described above constitute just a sample of the complaints the Department has received regarding insurers steering towards DRP repairers; this track record of steering

		strongly supports the necessity of the proposed regulation. Further, the public rulemaking file contains substantial documentation concerning the above in much greater detail. **Response 6.12**
	Comment 6.12 ***Industry Proposed Changes to the Anti-Steering in Auto Body Repairs*** The coalition offers the following changes to the proposed regulations: Subdivision (e)(3)(B) and (C)—Clear Documentation Insurance Code section 758.5 does not include any provision on documentation. The amendments' requirement for "clear" documentation is itself unclear. It is unclear to insurers what documentation would satisfy the amendments' requirement.	In response to comments, as noted above, the Department has amended the proposed text of 10 CCR 2695.8(e)(3)(B) and (C) to omit the "clear documentation" requirement. **Response 6.13**
	Comment 6.13 Subdivision (e)(4)(A)(B)(C) of Section 2695.8. The regulations would require insurers to inspect a claimant's car within 6 days from the time the claimant makes the car available. In regulatory terms, "claimant" means the person filing the claim, including policy holders and the third party claimants. We have no	In response to comments, the Department has added 10 CCR 2695.8(e)(4)(C) to the proposed regulations; this section addresses third-party claims and clarifies that inspection of third-party vehicles, should the insurer elect

	contractual relationship with third party claimants and think the regulations should only apply to our insureds. **Comment 6.14** The regulations should also allow for inspection times beyond 6 days in unusual circumstances, such as catastrophes.	to conduct an inspection, is only required within 6 days of the insurer deciding to inspect the vehicle. The Department disagrees that the time limit for inspection should only apply to consumers making a claim to their insurer; all consumers have a statutory right to select the automotive repairer of their choice. There is no basis for making a third party claimant wait a longer time for inspection of their vehicle. **Response 6.14** The Department acknowledges the need for an exception to the time rule in the aftermath of a major catastrophe. However, existing regulations already provide for this exception and the Department contends it is not necessary to create a new exception unique to the inspection time rule; 10 CCR 2695.2(e) sets forth a definition of "extraordinary circumstances," the existence of which are the first matter taken into account when determining violations of the fair

		claims regulations under 10 CCR 2695.12(a)(1). The "extraordinary circumstances" exception is sufficiently broad to encompass any catastrophe. **Response 6.15** The Department declines to replace the term "claimant" with the term "insured" in 10 CCR 2695.8(e)(4)(A)-(C) [Which is Section (e)(4)(A) – (E) of the revised regulations], as suggested by Commenters. "Claimant" provides sufficient clarity to accomplish the purposes of the proposed regulation. **Response 6.16** The Department declines to adopt Commenters' proposed revision to 10 CCR 2695.8(e)(4)(A) [Which is Section (e)(4)(B) of the revised regulations], as the proposed revision would gut the proposed regulation and result in an unenforceable rule. To prevent the steering behaviors documented in Department complaint files, it is
	Comment 6.15 □ In Subsection (e)(4)(A)(B)(C) of Section 2695.8: change the word "claimant" to "insured" **Comment 6.16** □ In Section (e)(4)(A): "…the insurer shall provide an option to inspect the damaged vehicle within six (6) business days after receiving the notice of claim, provided the claimant insured makes the vehicle available for inspection."	

	Comment 6.17 □ In Section (e)(4)(A): Include an exception for instances where the insured has requested a date later than 6 days and include an exception for catastrophic events.	necessary to promulgate a rule that affirmatively requires the insurer to inspect the vehicle, rather than nebulously "provid[ing] an option to inspect." **Response 6.17** The Department believes that the current drafting of 10 CCR 2695.8(e)(4)(A) [Which is Section (e)(4)(B)1. Of the revised regulations] encompasses circumstances wherein the claimant has requested a later inspection date; under the proposed rule, inspections are not required until the "claimant [has made] the vehicle reasonably available for inspection." Moreover, in the revised regulation text, the Department has added Section (e)(4)(E), which specifically addresses circumstances wherein inspection cannot take place within the six day period. As discussed above, existing regulations address catastrophes, so there is no need to

	Comment 6.18 The regulations propose that insurers not ask customers to travel more than 10 miles for urban areas with populations over 100,000 and 25 miles for everywhere else. We believe that the 25 mile limit, state wide is more reasonable approach given the geography of California. □ In Section (e)(4)(C): Change the reasonable distance requirement to 25 miles (regardless of city size)	include a specific exception in the proposed regulations. **Response 6.18** Commenters do not state any basis for why 25 miles is a more reasonable distance limit "given the geography of California"; the Department has no basis to believe that the nature and density of urban areas in California differs significantly from any other area of the United States. The Department based the 10 mile limit on long-standing New York regulations. However, in response to Commenters' subsequent letter dated 5/31/16, the Department has adopted the 15 mile distance limit suggested by Commenters in that letter. **Response 6.19**

	Comment 6.19 The regulations would not allow insurers to have inspection centers in claim offices or located at their direct repair shops. This restriction is costly and prohibitive. Requesting a vehicle inspection at a repair shop is a good claims practice. It helps to assure a claimant that the repair evaluation provided by the chosen shop will result in a safe and satisfactory repair. It also facilitates timely and cost-efficient inspections, which benefits consumers. There is nothing in section 758.5 that justifies or requires the elimination of this good claims practice. A parenthetical note, it is difficult to understand why this proposed amendment makes a specific reference to shops in an insurer's direct repair program. The prohibition against requiring an inspection is intended to apply to any shop designated by an insurer; there is no reason to single out shops in a direct repair program. □ In Section (e)(5): "…require that the claimant have the vehicle inspected at or by an automobile repair shop where the insurer has a Direct Repair Program…"	Commenters are incorrect in asserting that the anti-steering rules would not allow insurers to have inspection centers at claim offices of DRP shops; no such prohibition exists in the regulation. Commenters are also incorrect in asserting that the regulation imposes costs on the insurer. The proposed regulation does not impose any costs upon the insurer; any cost is determined by the insurer's decision regarding whether or not to inspect a vehicle, and which method of inspection to employ. There is no requirement in statute that an insurer conduct any inspection of any vehicle in any particular manner, or that an inspection be done at all. There are a number of low- and no-cost inspection alternatives that insurers may employ, including requesting that the consumer obtain competing estimates, or requesting photographs of the damaged vehicle. Commenters are correct in stating that Ins. Code §758.5 does not prohibit vehicle inspections at designated repair

		shops or other locations; however, Commenters have incorrectly inferred that the proposed regulation does somehow prohibit vehicle inspections at designated repair shops, which is untrue. In direct response to Commenters' parenthetical note, the Department observes that there are very good reasons for restrictions governing inspection at an insurer's DRP shop. As detailed above, the Department has received numerous complaints (included in the rulemaking file) about steering behaviors involving insurers' DRP shops; many of these steering schemes are only possible if the consumer is compelled to have their vehicle inspected at a DRP shop. The Department additionally notes that the proposed regulation does not prohibit inspection at a DRP shop, or any other shop; the proposed regulation only prevents the insurer from *requiring* inspection at a DRP shop. The Department declines to adopt

	Comment 6.20 **Conclusions** The coalition believes that the proposed amendments to subdivision (e) of section 2695.8 and section 2695.8 itself may not be adopted as part of the Fair Claims Settlement Practices Regulations. The department may have the authority to adopt regulations which implement section 758.5, but any such regulations must be adopted outside of the Regulations.	Commenters proposed revision to Section (e)(5), which would unnecessarily limit the scope of the rule. If Commenters' proposed change were adopted, insurers would simply cease to call their partnerships with repairers "Direct Repair Programs," and avoid the rule by using a different term for their programs. **Response 6.20** The Department disagrees with Commenters' contention that the proposed regulations may not be adopted as part of the Fair Claims regulations. The anti-steering statutes at Ins. Code §758.5(f) grant the Commissioner express authority to enforce the anti-steering mandates via Ins. Code §790, *et seq*., which includes the UIPA.
Nathan Simmons, C&C Collision March 31, 2016 Written Comments 14G:	**Comment 7.1** I had a question I wanted to submit for the anti-steering. Last year their was a limited time frame given to insurers to respond to claims	**Response 7.1** The Department thanks the commenter for the comment. The

Verbatim, but with inserted **Comment Numbers** keyed to responses.	requests that was part of the proposed regulation changes. I did not see that any longer. Care to comment on why that is no longer part of the proposed regs?	Department is uncertain as to which claims response period the commenter is referencing. The proposed regulations at Section 2695.8(e)(4) set forth required times by which insurers must complete certain aspects of the claims process. CDI review of regulation drafts dating back to 2013 show that the response times and deadlines contained in the proposed regulations are consistent with the response times in prior draft regulations.
Robert Peterson, Santa Clara University School of Law April 22, 2016 Written Comments 14H: Verbatim, but with inserted **Comment Numbers** keyed to responses.* **Note: This comment letter pertains to two distinct CDI rulemakings; the responses to comment in this document will only address the comments*	**Comment 8.1** ATTACHMENT 1 Thank you for the opportunity to comment on the proposed steering regulations. On April 24, 2015 I submitted extensive comments on both the proposed steering regulation, as it then was, and also on the on the proposed repair rate regulations. I have attached those comments to this email, as I would like them to be part of the administrative record. **Comment 8.2** I was pleased that this new version seems to leave "suggest or recommend" to section 758.5 and does not purport to add further restrictions.	**Response 8.1** Commenter's April 24, 2015 comments pertain to an entirely different rulemaking proceeding and are not relevant to the proposed regulations. **Response 8.2** The Department agrees with Commenter that the proposed regulation does not include

pertinent to this rulemaking.	**Comment 8.3** I am, however, concerned that the proposed regulation includes the gag rule against insurers found in earlier versions. The proposed regulation restricts truthful comments by the insurer about poor service, repair "or similar allegations" (whatever that vague reference proves to mean) unless there is "clear documentation in the claim file supporting these statements." Since, at least to my knowledge, there is no similar restraint on repair shops, this seems quite out of balance. Also, restraints on truthful speech, even in a commercial context, carry a heavy burden. This restraint, then, also likely violates the first amendment right to commercial free speech. (see my earlier memo on commercial free speech attached as an exhibit to my April 24, 2015 comments). This restraint does not seem necessary, since insurers may not make "false, deceptive, or misleading" statements. This regulation, then, only adds a restraint on truthful statements. In this tug-o-war between to commercial factions, the proposed regulation has, I fear, lost track of its only legitimate goal. That is to assure, to the extent possible, that there are no impediments to fully informing claimants of their rights and options. It is not to give one entity a commercial advantage over another.	sections of a prior proposed rule with which commenter found fault. **Response 8.3** The Department thanks the commenter for the comment. The Department understands the comment to state that the requirement to document negative statements about auto body shops might function as a restraint on truthful statements that lack documentation. The Department does not agree that there is a legitimate issue with regard to restraint on truthful statements. However, in view of this comment and others, the Department has revised the regulation text to remove the documentation requirement in order to resolve a potential clarity issue. The proposed regulation that commenter hyperbolically deems "the gag rule" is, in fact, a prohibition against false or misleading statements by insurers; the Unfair Practices statutes at

		CIC §790.03(b) expressly prohibit insurers from making false or misleading statements. The "similar allegations" term mentioned by Commenter was removed from one section of the proposed regulation during a redrafting; the meaning of "similar allegations" in the remaining section of the regulation is clear from its context: insurers may not make statements regarding the quality of a repairer based solely on their participation in a labor rate survey. The merit of this prohibition is clear, in that participation in a survey has no probative value with respect to the quality of the repairer. The Department only has jurisdiction over the conduct of insurers; it is not the responsibility of the Department to regulate the conduct of auto repairers. Commenter appears to suggest that all rules must apply evenly to all parties, which is not a requirement of the APA, or any other statute. Moreover, the

		proposed regulations did not arise in a vacuum; the prohibitions against misleading insurer speech are necessary to curtail misleading statements by insurers, of which many cases are documented in the complaint files attached to this rulemaking file. As discussed above, the proposed regulation only regulates misleading statements. All portions of the regulation which could potentially affect truthful speech have been removed from the proposed regulation text. Commenter misstates the purpose of the proposed regulation; the regulation is intended to effectuate the statutory goals of preventing false and misleading statements being made by insurers in an attempt to steer the consumer to the insurer's preferred repairer. This is the purpose of CIC §§758.5 and 790, *et seq.*; none of the authority or reference statutes at issue in this rulemaking speak to "[ensuring that] there are no impediments to fully informing

		claimants of their rights and options." The authority and reference statutes for this rulemaking are concerned with preventing steering behavior and preventing misleading statements by insurers; all truthful information in the marketplace of ideas is free to flow untouched by the proposed regulation. The proposed regulation does not give any entity a commercial advantage over another.
	Comment 8.4 It might be helpful to approach this issue with a few thought exercises. First, let's amend the proposed regulation so that it says what it actually means. Amendments are underlined. "No insurer shall communicate false, deceptive, or misleading information to the claimant, including, but not limited to truthfully advising the claimant that the automobile repair shop chosen by the claimant has a record of poor service or poor repair quality, or of other similar allegations against the repair shop, without clear documentation in the claim file supporting these statements. Nothing in this regulation is to be construed as prohibiting or restraining in any way what a licensed auto body repair shop may say about insurers or	**Response 8.4** Commenter's comment is counterfactual, in that he has redrafted the proposed regulation in a manner designed to suit his rhetorical purposes. The proposed regulation says what it says, no more and no less. Similarly, Commenter's dialogues are counterfactual, apparently crafted to suit Commenter's rhetorical purposes, and completely without relevance to the proposed regulation.

	licensed auto body repair shops with which insurers have direct repair programs." Now let's try the Cinderella test – force the regulation onto the foot of another (amendments not underlined). "No licensed auto body repair shop shall communicate false, deceptive or misleading information to the claimant, including, but not limited to truthfully advising the claimant that the automobile repair shop with which the insurer has a DRP has a record of poor service or poor repair quality, or of other similar allegations against the repair shop, without clear documentation supporting these statements." Or, let's approach the issue slightly differently. Imagine the following dialogue (numbers are for illustration. Repair rates, according to one witness, range from $35 to $100, so substitute your own numbers): Susan—Fred, welcome to Susan's Auto Body Repair. Glad you are going to join us at our new location. Fred—Glad to be here. Susan--Let's go over a few basics. When doing an estimate, our target hourly rate is $100. In fact, I think we will post that so you can point to it. Fred—Wow! Susan—That is just our official, door rate. Our bottom hourly rate is $50. We can make a profit at $50. When someone who is uninsured comes in, first quote the $100 rate. Since it is their money, though, there is the risk they will shop	

	around. Tell them that $100 is what the other shops around us charge. If they are about to leave, ask them for a moment to talk to me, then quote them a discounted rate. Tell them we just finished up a job early and have space in our schedule, then offer $75 or even $50. Don't let them leave, since they can go a mile or two from here and get a $50 dollar rate. Fred—Understood. That is exactly what we did at the shop I came from. But we didn't start at $100. Wow, again! Susan—If a person is insured with Milpitas Mutual, quote them the $50 rate. We have a direct repair program arrangement with them, and that is the agreed rate. Fred—Now to the nitty-gritty. What if they are insured with another company? Susan—Quote the $100 per hour rate. The 5 closest shops are boutiques with special certifications and charge that, so the insurer must accept that rate in order to benefit from a presumption that the rate is fair. That is what the new regs say. That is also why I am opening my shop here rather than a few miles away. Fred—That is a new one. Did they just go into effect? Susan—Yep. We buried the Department of Insurance with complaints, and they adopted the regulation. I will come to the complaints in a second. Fred—That's fantastic! But what if they come back and say the insurer will not accept $100? Susan—Quote a discounted rate. Go as low as $75, then to $50 if you must. Tell the car owner that that is typical of insurance companies, that they like to push you to their repair mills, that in your opinion they	

	do shoddy work, that they don't care about you. Tell them that we specialize in their kind of car, and we value their business. We couldn't stay in business if we didn't treat each customer as an individual. You know the drill, right? Fred—Yes. It is just Sales 101. Susan—And the cool thing is that they can't say similar things about us unless they have "clear documentation" in the claim file supporting it, whatever that means. But we need to keep the pressure on insurers to approve the higher rates and keep the customers from shopping around. So, tell the car owner that ordinarily we would have to charge them the difference, but we value their patronage and just happen to have an opening in our schedule (that one again). If they will sign a complaint about the insurer low-balling them, we will do the repairs for the discounted rate and file the complaint on their behalf with the Department of Insurance. Tell them that way, maybe the insurer will treat the next person with more dignity. Make them feel like a crusader. Nobody wants to buy insurance anyway, so they already come in ready to strike a blow for consumer. I mean - for us. **Comment 8.5** With respect to the second draft above, the DOI has argued that it cannot regulated representations made by repair shops. If it has the will, I think it can in this way. Enact a disparagement regulation similar to the proposed regulation, but make it effective only if the regulator of repair shops (BAR) adopts and enforces a reciprocal	**Response 8.5** Commenter fails to identify any basis in regulation or statute for his proposed regulatory "fix" allowing the Department to regulate auto repairers. Moreover, one imagines that Commenter

	regulation. If it is fair to limit insurers' right to truthful speech, it is likewise fair that body shops have similar restraints on disparagement. Otherwise we no longer have a free speech equation – one side does not equal the other. I expect the repair shops would argue that if a similar gag rule applied to them it would violate their right to commercial free speech. I also expect that they are correct. Rather than attempting to restrict the flow of information, an approach facilitating full disclosure is the better policy. It supports the consumer's autonomy and allows consumers to make fully-informed decisions in their own best interest. In addition, it avoids trenching on important constitutional values. I also note that, despite adopting a P.P.O. program for auto repair, subsection (5) prohibits the insurer from getting a second opinion. I doubt the wisdom of that restraint.	would cry "regulatory overreach most foul" if the Department attempted to "creatively" regulate insurers in the manner that Commenter suggests the Department regulate auto repairers. Commenter incorrectly asserts that the proposed regulation limits truthful speech; as discussed above, the proposed regulation only applies to false or misleading statements. It is well established in First Amendment doctrine that false or misleading statements are not entitled to Commercial Speech protections. Commenter's fixation on "fairness" is without basis in statute; there is no requirement that legislation, or the regulations enacted thereunder, treat all parties the same. Moreover, Commenter is either unaware of, or intentionally avoids consideration of, the information dynamic among consumers, insurers, and auto repairers. It is

		this dynamic that motivates the statutes giving rise to the proposed regulation: consumers bringing an auto repair claim to their insurer are typically reliant on their insurer to provide truthful information regarding the best means to get their vehicle repaired, including information about repair options. Conversely, common sense dictates that most wise consumers would not seek the opinion of an auto repairer when selecting an insurer. Moreover, insurers are large financial entities wielding significant market power; an individual auto repairer could never influence consumer behavior in the manner an insurer can. Commenter's conception of "fairness" is unsupported by either statute or common sense. The Department is fully in favor of truthful disclosure of all aspects of the auto claims process, which is one of the aims of the proposed regulation. As discussed above, sections of the proposed regulation have been modified to avoid any

		inference of an effect on constitutional rights. Commenter does not state who or what entity is alleged to have adopted a P.P.O. program for auto repair. The proposed regulations do not address or affect the structure of insurance benefits, or their administration. Commenter incorrectly asserts that subsection (5) prevents insurers from "getting a second opinion"; in making this assertion, Commenter appears to conflate the prohibition against required inspection at a DRP shop with a blanket ban on all inspections by the insurer. The proposed regulation only bans compelled inspection at DRP or other insurer-designated locations if the consumer has already selected a repair shop; insurers are free to pursue other avenues of vehicle inspection as they wish. **Response 8.6** This comment pertains to an obsolete rulemaking and is not relevant to the proposed regulation
	Comment 8.6 ATTACHMENT 2	

	Date: April 24, 2015 I attended the Sacramento informational hearing on these proposals and listened carefully. Let me suggest that the Department of Insurance has grabbed the wrong end of the stick in a number of important respects. **Comment 8.7** The proposed amendments to the anti-steering regulation (sec. 2695.8(c)) are poor public policy. They also violate the purpose and letter of the controlling statute (Ins. Code sec. 758.5), and are probably an unconstitutional violation of commercial free speech. In fact, they are steering, not anti-steering regulations. They will steer insureds to independent body shops because claimants are deprived of some of the information they need in order to make fully informed choices. If the Department of Insurance wants to protect consumers' choice, it should require that insurers with direct repair programs (DRP) give insureds full information about them – including disclosing the fact that the shop is tied to the insurer in the insurer's DRP. With respect to the steering regulations, I will discuss public policy, section 758.5, commercial free speech, and then end with four dialogues on which the DOI may eavesdrop. Then I will comment on the proposed labor rate survey regulations	currently under consideration. **Response 8.7** Commenter's comment relates to obsolete proposed regulations and has no probative value with respect to the proposed regulations. Commenter neither identifies which aspects of the obsolete proposed regulation were alleged to be poor public policy, nor states the manner in which those obsolete proposed regulations were alleged to create poor public policy. Commenter fails to state the manner in which the obsolete regulations were alleged to violate the purpose and letter of the CIC 758.5. Commenter fails to state the manner in which the obsolete regulations were alleged to violate commercial speech doctrines.

	Comment 8.8 The proposal is poor public policy Let me begin by asking and answering a few rhetorical questions. Which claimants would not want to be fully informed about the choices they might consider to get their vehicle repaired? None.	Commenter fails to state the mechanism by which the obsolete regulations were alleged to steer consumers to independent auto repairers. Commenter additionally fails to state what information is necessary for consumers to make an informed choice in selecting an auto repairer and fails to state the mechanism by which the obsolete regulations were alleged to have this effect. Commenter's suggestion that insurers be required to disclose their DRP relationships is beyond the scope of the proposed regulations and is not responsive to the proposed regulations text. **Response 8.8** Commenter's rhetorical questions are irrelevant and not responsive to the proposed regulations text. Commenter fails to state the mechanism by which the obsolete regulations were alleged to prevent consumers from making

	Which repair shops would like to impede access to information other than what they supply to vehicle owners? All of them. Which repair shop owners would like the freedom to disparage insurers and their DRP, yet impair the same privilege for insurers? All of them. While insureds are entitled to choose the automotive repair shop of their choice, they should be permitted to make that choice with full knowledge of <u>all of their options</u> under the policy. Unless they are fully aware of their choices, they cannot make an informed choice. They may come to an insurer having made an uninformed "choice" (perhaps based on nothing more than the place to which their car was towed) with no notion that their insurer has a DRP that could also do the repairs and offer convenience and warranties better than the shop they "chose." Many may prefer, once fully informed, to have the repairs done with one of the shops with whom their insurer has a relationship. This is in part because they may believe that if the repairs are not done well, the fact that they have a continuing relationship with their insurer will make it easier to "make it right." This is a choice they should be permitted to make without the DOI putting its thumb on the scales. Indeed, let's call it what it is – a gag order designed as a trade restraint to pass business to independent repair shops. This would make a Wisconsin dairy farmer proud. Since when is keeping consumers uninformed in their best interest? This proposal was buried in 2008 and 2009. I understand that it may have be disinterred because of some complaints that the DOI has received. I hope, if this is so, that the DOI will carefully vet the provenance of the complaints and also gathered the number of complaints against independent body shops for some kind of	an informed choice when selecting an auto repairer. Commenter's statements regarding consumer choice, preference, and belief are purely speculative. Commenter provides no support for his sweeping statement that the obsolete regulations constituted a "gag order" and "trade restraint" designed to pass business to independent shops. Commenter neither identifies the sections of the obsolete regulations purported to have this effect, nor the mechanism by which the obsolete regulations would have the alleged effect. The Department notes that the current proposed regulations do not in any way affect the ability of consumers to obtain information relating to the repair of their vehicle. Under the current proposed regulations, the consumer is always free to solicit as much information as the consumer desires from as many entities as the consumer desires; similarly, the consumer is free

	comparison. If not, then the administrative record will be a feeble basis on which to deprive claimants of valuable information. **Comment 8.9**	under the currently proposed regulations to change their selection of an auto repairer at any time. Moreover, the current proposed regulations do not favor any variety of auto repair business, but rather allow the consumer to exercise their statutory right to choose the repairer of their choice. In seeking to compare consumer complaints regarding steering behavior by insurers and their DRP shops to complaints against independent body shops, Commenter fails to comprehend the purpose for the proposed regulations. The proposed regulations are intended to allow the consumer to freely exercise their right to select the repairer of their choice, without interference by the insurer. Regulation of complaints regarding body shops is beyond the scope of the proposed regulation. **Response 8.9** Commenter's comment is not responsive to the proposed

	The proposal violates the spirit and letter of Ins. Code sec. 758.5 The proposed amendment also violates both the purpose and letter of the 2009 amendments (AB 1200) to Ins. Code sec. 758.5. Those amendments were added by the legislature so that claimants can be fully informed when considering their options about auto repairs. The amendments assured that their insurance companies can give them specific information that is not false, deceptive, or misleading about the repair benefits under their policy. It was grafted on to a preexisting statute, so it is perhaps not an icon for clear statutory drafting. The "except" word in subsection (c) makes it clear that even when a person has "chosen" a repair shop, the insurer may nevertheless discuss all of the things listed in (b)(2), and "is not limited to" those things. Indeed, the most natural reading of subsection (c) is that an insurer may "suggest or recommend" even after a shop has been "chosen" by giving the insured information, including, but not limited to, the information in (b)(2). Let's reorder subsection (c) into plainer English. "After a claimant has chosen an automotive repair dealer, the insurer shall not suggest or recommend that the claimant select a different automotive repair dealer, except as provided in subparagraph (A) of paragraph (1) of subdivision (b), or as to information of the kind authorized by paragraph (2) of subdivision (b)." Thus, the insurer may "suggest or recommend" by giving the claimant information of the kind authorized by paragraph (2). What kind of information is that? Paragraph (2) allows the insurer to provide any ("is not limited to") specific (information about the direct repair program and participants is "specific" information) truthful and nondeceptive information (information about the direct	regulations, as it relates to obsolete draft regulations. Commenter fails to identify sections of the obsolete regulations text which violate either the spirit or the letter of CIC 758.5 and further fails to identify the mechanism by which the obsolete regulations text was purported to have that effect. Commenter's statements regarding CIC 758.5 and AB 1200 are not responsive to the proposed regulations text; the statute is not at issue during this rulemaking proceeding. Commenter's assertions regarding the intent behind AB 1200 are speculative. His redrafting of the statute is counterfactual and intended to address his rhetorical purposes. Commenter's comment regarding information which may be provided and which may be prohibited is irrelevant as it pertains to obsolete proposed regulations. Commenter fails to identify the section of the obsolete regulation purported to have the

	repair program is neither deceptive nor false nor misleading) about services, benefits, repair warranties, etc. Thus, when a claimant has "chosen" a repair facility, the insurer may give all of the above specific information to the claimant for their consideration when making their final choice. Obviously, the main purpose for allowing the claimant to be fully informed of this specific information is so that the claimant may consider the information in making his or her choice. Thus, 758.5 authorizes the communication of exactly the information the proposed regulation prohibits ("the name or names of one or more automotive repair dealers or has requested that the claimant consider . . . "). This reading is also consistent with the purpose of the 2009 amendments, which was to assure that claimants could be fully informed. It is also consistent with the disclosures required by paragraph (3) which go so far as to encourage the claimant to seek a second opinion ("WE RECOMMEND YOU CONTACT ANY OTHER AUTOMOTIVE REPAIR DEALER YOU ARE CONSIDERING TO CLARIFY ANY QUESTIONS YOU MAY HAVE REGARDING SERVICES AND BENEFITS.") This disclosure invites claimants to contact other repair shops to consider their services and benefits, yet the proposed regulation attempts to gag insurers' freedom to candidly discuss their own direct repair benefits. Again, this is completely out of balance. Perhaps there is a word game with "consider." Since the insurer can discuss their services, their repair warranties, the time to repair and the quality of their workmanship, this is obviously with reference to the services they offer through shops with whom they have a	deleterious effect asserted by Commenter. The Department observes that the proposed regulations at Section (e)(2) expressly reference CIC 758.5 and thereby permit all communications which are permitted under the statute. The only difference between Section (e)(2) of the proposed regulations and CIC 758.5(c) is that the proposed regulation makes the terms of CIC 758.5(c) more specific, by stating a rule establishing when a consumer has "selected" an auto repairer for purposes of the statute and regulations.

	relationship. The legislature clearly had in mind that claimants were entitled to "consider" this information while making a fully informed choice. The word "consider" only appears in the statute in the disclosure recommending the second opinion mentioned above. The DOI's proposed amendment is adding the word "consider" to the statute in contravention of the purpose of the statute. **Comment 8.10** The regulation includes a second gag rule - subsection (e)(3)(c). Note that this gag rule applies to only one side of the scales of disparagement. Independent repair shops may say what they please (based on rumor, prejudice, or nothing at all) about repair shops with whom insurers have a relationship, but insurers, regardless of what they know about a shop, are gagged unless they have "clear documentation in the claim file supporting their statements." At the hearing Mr. Cignarale said that this simply tracks the present requirement that communications be recorded in the claim file. I would suggest that it goes well beyond that. The claim file must contain "clear documentation" . . . . "supporting their statements." Just what that means is a mystery. May an insurer say, for example, "I would hesitate to go with repair shop A unless you first checked them out on Yelp or Angie's List?" It is extraordinary, to say the least, for a regulator to gag those under its jurisdiction in order to enable their competitors to disparage them *ad libitum* and with little opportunity to respond. Indeed, unjustified disparagement of the	**Response 8.10** Commenter's comment is irrelevant as it pertains to obsolete proposed regulations and is not responsive to the current proposed text. The as discussed above, the "clear documentation" requirement has been removed from the proposed regulations text to avoid clarity issues. The language of the proposed regulation has been modified so that Section (e)(3)(b) tracks the statutory language of CIC 790.03(b), relating to false or misleading statements. The proposed regulation does not prohibit any speech which is not already prohibited by CIC 790.03(b).

	insurer's DRP may be the very reason the claimant has "chosen" the automobile repair dealer. At the hearing a number of auto shop representatives said that the insurers should "play by the rules." When there is no reciprocity in the rules, one can understand their enthusiasm for the "rules." In light of this specific legislation, and the recent Court of Appeal decision in *ACIC v. Jones*, 2015 Cal. App. LEXIS 298 (April 8, 2015), this proposed regulation is likely illegal.	Commenter's fixation on fairness is without basis in statute; there is no requirement that legislation, or the regulations enacted thereunder, treat all parties the same. Regulation of auto shop behavior is generally outside the Department's mandate. Moreover, Commenter is either unaware of, or intentionally avoids consideration of, the information dynamic among consumers, insurers, and auto repairers. It is this dynamic that motivates the statutes giving rise to the proposed regulation: consumers bringing an auto repair claim to their insurer are typically reliant on their insurer to provide truthful information regarding the best means to get their vehicle repaired, including information about repair options. Conversely, common sense dictates that most wise consumers would not seek the opinion of an auto repairer when selecting an insurer. Moreover, insurers are large financial entities wielding significant market power; an

	Response 8.11 <u>The proposal is likely unconstitutional</u> The amendment likely violates both state and federal guarantees of commercial free speech. I did a White Paper on this issue in 2008 (included at end). I do not think anything has changed, but I will leave briefing this issue to those paid more than I if they chose to do so. This issue was fully briefed in *ACIC v. Jones*, although the Court, much like the New York Court of Appeal [See *Allstate Insurance Co. v. Serio*, 98 N.Y.2d 198, 774 N.E.2d 180, 746 N.Y.S.2d 416 (2002)] invalidated the regulation without resolving this constitutional question. I think, for the reasons stated above, there should be no need to resolve the constitutional issues.	individual auto repairer could never influence consumer behavior in the manner an insurer can. Commenter's conception of "fairness" is unsupported by either statute or common sense. Commenter's reference to *ACIC v. Jones* is inapposite; as discussed above, the ruling in *Jones* explicitly states that it is limited to replacement cost regulations; the *Jones* holding cannot affect the proposed regulations. **Response 8.11** Commenter's comment is irrelevant, as it pertains to obsolete draft regulations. Commenter fails to identify the sections of the obsolete regulation which were alleged to be unconstitutional, nor states the manner in which the unidentified sections were purported to be unconstitutional. Commenter's reference to *Jones* is inapposite, as briefing in *Jones* pertained to compelled speech; the proposed regulations do not compel any speech. Commenter's

	Rate Repair Survey Auto repair policies are by default P.P.O. policies. By contrast, when it comes to repairing one's body, health care policies vary from bronze to platinum (or, "Cadillac"). This may seem an odd public policy choice, but the legislature made this choice and we must live with. Allowing claimants to pick the out-of-network shop of their choice is a clear benefit to out-of-network body shops. While the DOI strives to bring policies to market at the lowest premium at which an insurer is willing to do so, the P.P.O. approach to auto repair is bound to drive up repair costs which are ultimately born by insureds. Keep in mind, too, that the collision coverage is one of the most expensive coverages in the standard policy. For example, the 6 month premium for $300/500/100 coverage on my 2013 Honda Fit (with a 21 year old driver with a clean record) totals $294. Collision and comprehensive for the same car totals $399. Thus, consistent with the DOI's commitment to reducing the cost of insurance, the DOI should do nothing that would inflate rates in the related, but (in this regard) unregulated area of auto repair.	reference to New York cases is inapposite, as New York decisional law is not precedent in California. **[Comments regarding Labor Rate Survey are not relevant to the proposed Anti-Steering regulations. The Department fully responded to Commenter's Labor Rate Survey comments in the Labor Rate Survey rulemaking, which has already been filed with Office of Administrative Law.]**

	At first blush, the proposed auto rate survey regulation is an attempt to keep within reasonable bounds the cost of auto repairs in the context of the P.P.O. system. If surveys are to be used, then some of the shops' complaints that they were outdated or not followed has some resonance. Sadly, the proposed labor rate survey methodology is flawed in many respects that will artificially inflate rates. Let me suggest a well-known analogy. Ask any hospital to tell you what they "charge" for a gauze pad or an aspirin. Admonish them to exclude any discounts, whether by prior agreement or otherwise. The hospital will quote the notoriously inflated "chargemaster" rate. This is what they officially "charge" or bill if you walk in off the street and have no insurance. Yet, this rate is actually paid by practically no one – even those who walk in off the street with no insurance. The Court of Appeal recognized this reality in *Children's Hospital Central California v. Blue Cross of California*, 226 Cal. App. 4th 1260, 1275, 172 Cal. Rptr. 3d 861, 864, 2014 Cal. App. (Cal. App. 5th Dist. 2014). The reasonable value of medical services is not the amount billed, but rather the price that a willing buyer will pay and a willing seller will accept in an arm's length transaction. As the court pointed out, the full billed charges reflect what the provider unilaterally says its services are worth. This may or may not be accurate. Merely averaging the billing rates among hospitals would be a no more accurate estimation of economic reality than the billing rate itself. The auto repair survey suffers from a similar defect. Imagine the anti-trust implications if repair shops implemented a survey of their "chargemaster" rates in order to bind insurers to pay these high rates.	

	Imagine if hospitals could average their "chargemaster" rate and force health insurers to pay those rates. The proposed regulation does this anti-competitive work for the auto shops. The survey rules not only invite, but counsel, adverse selection. There is no good reason for a shop charging middling or lower rates to respond to the survey. This would simply lower the average rate and make it harder to deal with insurers. In fact, the proposed regulation counsels as much. "FAILURE TO COMPLETE THIS QUESTIONNAIRE IN FULL MAY RESULT IN ITS EXCLUSION FROM THE AUTO BODY LABOR RATE SURVEY FILED WITH THE CALIFORNIA DEPARTMENT OF INSURANCE." This "warning" also counsels higher priced shops to return the survey. Also, since nothing is under oath, and there is no requirement (if I heard correctly at the hearing) for shops to post their rates, and (unlike insurance companies) certainly no requirement that they charge their posted rates, the survey invites inflated rates. Indeed, Fred's Discount Auto Body Repair's survey would be rejected because Fred's discounts <u>all</u> of its rates. Or, at least, that is what they represent. Imagine the following dialogue: Nigel: Hey, Manny. We just got another survey form. That's thirty this month. Should I toss it in the dustbin? Manny: We are one of the lower priced shops in the tri-county area. There is no good reason to fill this out. In fact, there are good reasons not to. It will just lower the rates insurers will be willing to pay. In addition, anything we submit puts a cap on what we can charge because insurers	

	can lower our estimate to our response to the survey. Of course, if we failed to respond and they entered our rates in the survey as "$0", that would be different. Toss it in the trash. Nigel: Just a second. All it says is that we declare that the information provided is true and correct. What happens if we just put down $100 per hour for all of the different rates? Manny: Nothing that I am aware of. Nothing says we must actually make people pay whatever rate we say we charge. Remember when I had that accident and had no health insurance? The hospital sent me a charge for $5,000. I was only there for one hour. I objected and went through the bill with them. I pointed out that they were charging $25 for a gauze pad. I offered to get them a whole box of gauze pads instead of paying $25 for one pad. You know what? They settled the whole bill for $1,000. If hospitals can charge one rate and actually charge a lower rate, so can we. So, maybe we should fill out that survey after all, if you know what I mean. Heh, heh, heh (conspiratorial laughter). At the hearing Mr. Cignarale defended the 110% enhancement for more expensive shops on the basis that, despite the mean or median results of the survey, there is a range surrounding the result that is reasonable. Oddly, the DOI has less concern when picking the "most actuarially" sound rate (rather than a range) that its insurers may charge for coverage. Thus, a repair shop that charges more than the survey results support over the last 90 calendar days may bump its rates by 10% above the "prevailing auto body rate." But, given that there is a range around the mean or median, clearly a shop that charges less over the prior	

	90 days should be content to have its rates reduced 10% below the indications of the survey. This, however, will never happen for at least two reasons. First, the DOI's regulation ignores the lower range surrounding the mean and median. Second, the adjustment only occurs if the repair shop "voluntarily" presents the last 90 day's invoices to the insurer. No repair shop will "voluntarily" shoot itself in the foot. Once again, the survey regulation biases the results towards higher rates. I expect, too, that the lower repair shop's rates would be considered "discounted" rates, thus not qualifying. As with the survey itself, only inflated rates would aid repair shops under this regulation. The proposed methodology also inflates costs in another way. Put the range of repair rates on a graph – it will be a curve, with lower rates on the left and higher rates on the right. The "prevailing auto body rate" will be near the peak of the curve. Once this rate is known, repair shops charging less than the prevailing rate will raise their rates for next year's survey to match the prevailing rate. There is simply every reason to do so, since that is the rate insurers must pay, and with respect to owners of insured vehicles, there is no price competition when choosing shops charging that prevailing rate. As far as uninsured owners are concerned, the shop may charge lower rates if they choose and likely could even excluded these "discounted" rates from any future surveys. Consequently, the next year's survey will include few or no auto repair shops that "charge" less than the prevailing rate. With few or no shops on the low side of the curve, the peak of the curve will move to the right (up). This pattern will, then, be repeated with the next survey, and so on. Because of this adverse selection, the mean or median will be artificially pushed up every year.	

	Let's apply this to the examples in subsections (g). In example (1), the prevailing rate is $67.50. Holding inflation constant, in the following year the four shops with rates of $64, $65, $66, and $66 will all move their rates to $67.50. The new prevailing rate will be $69. The next year the four will raise their rates to $69. Assuming the other two more expensive shops do not raise their rates (although the methodology invites them to do so), the prevailing rate will move to 70. The next year the prevailing rate will be $70.67. This process will stop only when the new prevailing rate equals the highest rate charged by the most expensive shop ($73 in this case). In example (2), the three shops charging less than $67 would move their rates to $67. The new rate would be $67.67 (the greater of the mean or the median). Again, this upward climb would repeat itself each year until the prevailing rate equals the highest rate ($70 in this case) Let me put the point another way. Assume for a moment that regulations allowed insurers to charge rates base on the average rate charged by other insurers in the relevant territory. If they submitted a survey conducted under the above parameters, the DOI would reject it as false and misleading. The mischief of this kind of labor rate survey may fade with the adoption of self-driving cars. It is hard to imagine that OEMs, who will likely be responsible for injuries caused by cars in self-driving mode, will allow them to be repaired at shops other than the ones the OEMs authorize. If repaired at other than an authorized shop, the OEM may void the warranty or cause the OEM to disable the self-driving feature. Repair shops may oppose this. But no matter how	

	loudly they cracked their whips, buggy whip manufacturers are only curiosities today. **<u>Some Suggested Improvements</u>** The current protocols for the labor rate surveys are so flawed that they should not go forward. Arriving at truly accurate estimates for what shops charge may be an intractable problem, but there are some changes that may bring the results closer to reality. Part of the difficulty lies in the current two-headed regulatory scheme. The DOI cannot regulate body shops, nor can the BAR regulate insurance, yet the two regimes act as one economic unit with respect to auto repair. The DOI can, however, regulate to some extent the obligation of its insurers. Some of the changes to improve the repair labor rate survey might include the following. --Provide that insurers need not accept estimates from shops that do not complete the survey. At present there are disincentives for lower charging body shops to respond, and there are incentives for more expensive shops to respond. This provision would incentivize all surveyed shops to respond. --Provide that insurers need not accept estimates from shops that do not declare under penalty of perjury that their answers are true and correct. At present there are no real consequences for inflating rates on the survey. Indeed, there is every reason to do so since insurers may reduce the hourly rate to that included in the shops answers to the survey. See (m)(2). An under perjury declaration gives a nudge towards accuracy.	

	--I am not certain whether all licensed repair shops must post their rates. I thought I heard at the hearing that they did not, but I may have misheard. If not, provide that insurers need not accept an estimate from a shop that does not have prominently posted rates. This, at least, gives some meaning to sec. (m)(3) which allows insurers to lower the rate to the posted rate. --Include a question in the survey requiring the shop to declare how long its warrant for materials and workmanship lasts. Provide that insurers may disclose this information when discussing the information they may provide under sec. 758.5 (b)(2). While these regulations are designed to fix the minimum price insurers must approve, they are not (I should hope) designed to stifle competition on quality of work. The warranty is a major protection for consumers. It is part of what they are purchasing. A question like this on the survey may also encourage both shops and insurers to improve their warranties – again, a benefit for consumers. --Provide that an insurer need not accept an estimate from a shop if the insurer has reasonable cause to believe that any of the answers to the survey are false or misleading. Although the perjury declaration may help dampen the numerous invitations in the current regulations to inflate rates, this provision adds a valuable check on overly enthusiastic rate estimates. As with housing discrimination, there is always the background risk that insurers may send a checker with a wrecked car to see if the survey declarations actually match what the shop does in practice. --OK, the most controversial. Include DRP or other "discounted" rates in the survey. If these are not included, than the results are as skewed as they would be if you asked hospitals what	**Response 8.12**

	they "charge" without including what they really charge to HMOs, PPOs, etc. **Comment 8.12** **EXHIBITS** **Steering Dialogues** **Dialogue #1** Agent: Hello. Boulder Creek Mutual. Insured: Hi. A little over 6 months ago you paid for the repairs to my car, a Fonda J-type. I went to Bob's Pretty Good Repair Shop on River Street in Boulder Creek. Agent: Yes. How may I help you? Insured: Well, the parts they repaired are falling apart like the One Hoss Shay. I went by the shop, but they said their warranty was only good for 6 months, and besides, the Fonda J-type usually starts to fall apart about my mileage. Agent: I feel your pain, but there is nothing we can do. We have a direct repair program and guarantee our work for as long as you own the car, but Bob's Pretty Good Repair Shop is not one of our direct repair shops. In fact, they have a pretty bad reputation, so we would not have recommended them. We do have a shop right across the street from Bob's. Insured: Why didn't you tell me that when I contacted you? Agent: When you contacted us, you said the car was at Bob's Repair shop, and you wanted them to repair the car. I am afraid the Department of Insurance does not allow us to suggest you should consider, or even name, our shop if you have chosen a repair shop.	Commenter's dialogues are counterfactual, crafted to suit Commenter's rhetorical purposes, and without relevance to the proposed regulation. Commenter does not identify any portion of the proposed regulation text to which the counterfactual dialogues are intended to apply.

	Insured: But I only picked Bob's because the car was towed there, and they had a framed letter on the wall from some nuns thanking them for doing some work on their car. They seemed really nice. Agent: The Department of Insurance has decided that it is for your own good that we could not discuss our shop across the street. We could be fined if we named or mentioned the shop across the street or discussed the reputation of Bob's. Insured: That is the dumbest thing I have ever heard. Agent: I am sure that is not true. Have you heard that global warming is a myth? That is dumber. Anyway, I am sorry, but there is nothing we can do. Insured: Well, thanks for nothing. [Moral: When the truth comes too late, only the insured feels the pain] **Dialogue #2** Agent: Hello. Boulder Creek Mutual. How may I help you? Insured: A few weeks ago you paid for the repair of my 2014 Aardvark. I had it done at Aacme Repair Shop because they also had two "As" in their name. The problem is that now when I step on the brakes, the horn honks. Agent: You should take it back to them and ask them to fix it. It should be under their warranty. Insured: I did, but they are gone. Now it is a laundromat. Agent: Aacme Repair is, or, I guess, was an independent repair shop and is not in our direct repair program. If the work had been done by a shop in our program, like the one across the street from Aardvark, they would guarantee it for as long as you own the car. Insured: What! Why didn't you tell me about that? [The reader knows how this dialogue ends] [Moral: Cowboy repair shops may ride out of town]	

	<u>Dialogue #3</u> Agent: Hello. Boulder Creek Mutual. How may I help you? Insured: Hi. After a collision, you had my 2013 Tucker repaired at that shop across the street from Bob's Pretty Good Repair Shop a little over a year ago. You know, the Tucker is one of those cars where the headlights move with your steering. Because I am getting old, I just thought driving at night was becoming more difficult. Then I found out that it is because after the repairs one of the headlights is as crooked as a wall-eyed cat. Agent: I am very sorry to hear that. I see you had it repaired at one of our direct repair shops. They guarantee their work for as long as you own the car. For your convenience, the shop you went to is open late on Thursday, and also Saturday until 5:00. May I make an appointment for you? If they need to keep your car, they will give you a loaner. Insured: Oh, thank you, thank you, and thank you. You are among the blessed. May the heavens rain odors on you unto the seventh generation. Agent: Always a pleasure [Moral: Who doesn't prefer a happy ending] **<u>Dialogue 4</u>** Agent: Hello. Boulder Creek Mutual. Insured: Hi. When I backed out of my garage this morning, I creased my left rear fender on a redwood tree. It must have grown a bit over night. Anyway, I took my car to Bob's Pretty Good Repair Shop. They gave me an estimate of $4,500 for the repairs and (I thought this was odd) told me to tell you that I have "chosen" Bob's for the repair work.	

	Agent: There is some bad news and some less bad news. The bad news is that you now have a $4,500 deductible because you cancelled your collision coverage last year. We do not insure you for this damage. Insured: Dang! You are right. I forgot about that. Perhaps you can you cheer me up with the less bad news? Agent: Because you are neither an insured nor claimant for this damage, I am now free to give you some information that you might want to consider before getting your car repaired. The No Longer Insured (TNLI): What's that? Agent: We have a Direct Repair Program and do a lot of business with Jacobsen and Daughters Auto Repair and Excavation. They did a good job installing my septic system, but that is another matter. They are across the street from Bob's. You might want to consider getting an estimate from them. Tell them that Mary Lou from Boulder Creek Mutual sent you, but that you are not covered by insurance. If they give you a lower estimate, you might consider going back to Bob's, telling Bob's you are not insured, and seeing if Bob's might lower their estimate to match, or beat, Jacobsen's. Or go to any other shop, for that matter. It's your money, so get the best deal you can. TNLI: Great advice. Thanks so much. Agent: Another bit of advice. WE RECOMMEND YOU CONTACT ANY OTHER AUTOMOTIVE REPAIR DEALER YOU ARE CONSIDERING TO CLARIFY ANY QUESTIONS YOU MAY HAVE REGARDING SERVICES AND BENEFITS. In case you couldn't tell by my voice, that was in 10-point type and all capitals. Also, before going to any repair shop, you should consider first checking them out on Angie's list, Yelp, or any other source. There are some real cowboys out there.	

	TNLI: THANK YOU SO MUCH! That, too, was in 10-point capitals. No wonder they sing the praises of Boulder Creek Mutual in every church, synagogue and ashram in Boulder Creek. Agent: A pleasure. Have a nice day. <u>Two Days Later</u> TNLI: Bob's and Jacobsen's both agreed to do the repairs for $3,000. Guess I'll flip a coin. Agent: Whether heads or tails, I guess you win. [Moral: Now I finally understand the Free Market Chapter in "Economics for Dummies."] **Comment 8.13** **<u>2008 White Paper on Commercial Speech (This has not been update since then)</u>** **California Insurance Code § 758.5 and First Amendment Protections on Truthful and Non-Misleading Commercial Speech** Contact information Insurance Code § 758.5 provides that an insurance company may not require that an automobile be repaired at a specific automotive repair dealer. Many insurance companies have entered into relationships with repair facilities. Insurers assert that referrals to these auto repair facilities save on the cost of repairs for a number of reasons, including ease of doing business, less need for independent appraisers, ease of handling follow-up claims, and direct control over quality of repairs and warranties.	**Response No. 8.13** Commenter's comment is irrelevant, as it does not relate to the proposed regulations text. By Commenter's own admission, this document has not been updated since 2008, meaning it could not have contemplated the proposed regulations and is not relevant to their consideration. Furthermore, the document concerns First Amendment issues, which, to the degree they may have existed, no longer exist in the proposed regulation, subsequent to revisions arising from public comments. Moreover, the document discusses cases and statutes which are not precedential in California and which have no relevance to consideration of the proposed regulations.

	Before an insurance company may suggest or recommend one of these repair facilities, § 758.5 requires that either the insured expressly request a referral or the claimant be informed in writing that the insured has the right to select the automotive repair dealer. Section 758.5 also provides that "after the claimant has chosen an automotive repair dealer, the insurer shall not suggest or recommend" a different repair shop. SB 1167 (Wiggins and Migden) proposed amendments to § 758.5 that would make it even more difficult for insurers to convey to their insureds truthful and non-deceptive information about their repair programs. The bill was amended to require only that the Department of Insurance appoint a task force to study this issue and report back to the Department. The legislature adopted the amended version of SB 1167 in August. The purpose of this memorandum is to outline limitations imposed by the First Amendment of the United States Constitution on the ability of a state, through statute or regulation, to impose limits on a commercial entity's ability to give a customer truthful and non-misleading information. The First Amendment, as applied to the states through the Fourteenth Amendment, generally protects commercial speech from unwarranted governmental regulation where the speech is not false, deceptive, or misleading. In *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557, 566, 65 L. Ed. 2d 341, 100 S. Ct. 2343 (1980)* the Supreme Court stated the rule:	

	"Commercial speech that is neither unlawful nor misleading may be regulated by a government only if: (1) the government asserts a substantial interest in support of its regulation; (2) the government demonstrates that the restriction on commercial speech directly and materially advances that interest; and (3) the regulation is 'narrowly drawn' and not more extensive than necessary to serve the substantial government interest." Under this test, a court asks as a threshold matter whether the commercial speech concerns unlawful activity or is misleading. If so, then the speech is not protected by the First Amendment. If the speech concerns lawful activity and is not untruthful or misleading, then the speech may be regulated only if the regulation serves a substantial governmental interest. Even if the governmental interest is substantial, the speech may be regulated only if the regulation directly advances the governmental interest asserted. Even if the governmental interest is substantial and the regulation directly advances the interest, the regulation may not be more extensive than is necessary to serve that interest. Thus, each of the latter three inquiries (substantial interest, directly advances the interest, and no more extensive than necessary) must be answered in the affirmative for the regulation to be constitutional. Several courts have turned their attention to legislative and administrative attempts to restrict truthful and non-deceptive communications between insureds and insurers in the context of auto repairs. **State Laws**	

	A number of state statutes touch on this issue. Most statutes simply preserve the right of the insured to choose a repair facility or forbid an insurance company from requiring that repairs be done at a certain facility. See, *e.g.*, Arizona Insurance Code (A.R.S. § 20-468(B), A.R.S. § 20-469); Colorado Insurance Code (C.R.S.A. § 10-4-613(1)); Connecticut Insurance Code (C.G.S.A. § 38a-354(a)); Georgia Insurance Code (Ga. Code Ann., § 33-34-6(a)); Illinois Insurance Code (215 ILCS 5/143.30(a),(b),(c),(d) (may not use "intimidation, coercion, or threat against any insured person to use a particular facility to provide such services")); Michigan Insurance Code (MCLS § 500.2110b (1) (may not "unreasonably restrict an insured from using a particular person, place, shop, or entity"), MCLS § 500.2110b (2) ("shall disclose" the existence of an agreement and "shall inform an insured that he or she is under no obligation to use a particular repair or replacement facility")); Mississippi Insurance Code (Miss. Code Ann. § 83-11-501); Nevada Insurance Code (N.R.S. § 690B.016(1), N.R.S. § 690B.016(2)(b)(may not require insured to patronize any body shop, insured may choose body shop of insured's choice, and insurer must inform insured of this right)) ; New Jersey Insurance Code (N.J.S.A. §17:33B-36.1(insured may choose any shop "provided that such auto body repair shop . . .accepts the same terms and conditions from the insurer, including, but not limited to, price, as the shop, facility, or network with which the insurer has the most generous arrangement." Insured must sign document acknowledging that use of the repair facility may "jeopardize any manufacturer or dealer warranty or lease agreement."); New York Insurance Code (NY INS § 2610(a)); South Dakota Insurance Code (SDCL § 58-33-72); Texas Insurance Code (TX INS § 1952.301 (a) ("Except as provided by rules adopted by the commissioner . . .an insurer may not directly or indirectly limit the insurer's coverage under a policy covering	

	damage to a motor vehicle by . . .(2) limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle"); Virginia Insurance Code (Va. Code Ann. § 38.2-517(A)(may not "require" use of repair facilities or "engage in any act of coercion or intimidation causing or intended to cause an insured or claimant to utilize designated replacement or repair facilities or services . . . "); West Virginia Insurance Code (W. Va. Code, § 33-6D-1); Wisconsin Insurance Code (Wis. Stat.§632.37). A few codes went further and prohibited the insured from recommending or suggesting a body shop. See, *e.g.*, New York Insurance Code (NY INS § 2610(b) (" In processing any such claim (other than a claim solely involving window glass), the insurer shall not, unless expressly requested by the insured, recommend or suggest repairs be made to such vehicle in a particular place or shop or by a particular concern"); South Dakota Insurance Code (SDCL§ 58-33-72) ("No insurance company . . .may require or recommend that any person insured under that policy use a particular company. . . . No such insurance company . . .may engage in any act or practice of intimidation, coercion, threat, incentive, or inducement for or against any such insured person to use a particular company or location to provide such services or products"); Tex. Occ. Code § 2307.002 (limited the ability to recommend a shop by requiring an insurer to offer the same referral arrangement it has with its tied body shop to at least one unaffiliated body shop). All three of these attempts to inhibit an insurer's ability to recommend a shop (in New York by administrative regulation ostensibly authorized by the statute) have been declared either unconstitutional, invalid, or both. The South Dakota statute was declared unconstitutional on First Amendment and interstate commerce grounds in *Allstate Ins. Co. v. State*, 871 F. Supp. 355, 358 (USDC SD 1994)(See discussion	

	below). The New York statute was declared unconstitutional on First Amendment grounds by the Federal District Court in the Southern District of New York. *Allstate Ins. Co. v. Serio*, No. 97 CIV. 0670(RCC) S.D.N.Y. (2000). Ultimately, the case was resolved in Allstate's favor on other grounds (See the discussion of the subsequent history of this case below.). The Texas statute was declared unconstitutional on First Amendment grounds by the 5th Circuit in *Allstate Insurance Co. v. Abbott*, 495 F.3d 151 (5th Cir. 2007)(See discussion below). The constitutionality of Calif. Ins. Code § 758.5 has not been ruled upon by a court. Its constitutionality was challenged in *G & C Auto Body Inc. v. Geico*, 552 F. Supp. 2d 1015 (N.D. Cal. 2008) 2008 U.S. Dist. LEXIS (see Memorandum of Points and Authorities of Geico available at 2006 *U.S. Dist. Ct. Motions 980243, *; 2007 U.S. Dist. Ct. Motions LEXIS 56376). The court, however, did not reach the issue.* **The Texas Case** In *Allstate Insurance Co. v. Abbott*, 495 F.3d 151 (5th Cir. 2007) the court was faced with a Texas law which forbad referrals to "tied" body shops (*i.e.*, body shops in this case that were actually owned by Allstate) unless there was also included a referral to another body shop. The court held the statute violated the First Amendment. Since it was not illegal for Allstate to own a body shop, the statute could not be defended on the basis that it was incidental to regulation of an unlawful activity. The court then rejected the argument that referral to a tied shop was misleading. The court noted that the connection between the body	

	shop and Allstate was disclosed, thus customers could discount the recommendation as "puffing." The evidence showed that many customers chose not to have their vehicles repaired by Allstate's shops—persuasive evidence, in the Court's view, that an exclusive recommendation does not necessarily mislead consumers. Since the activity was not unlawful and the referrals were not misleading, the court turned to the next step in the analysis. The court agreed that the state had a legitimate interest in consumer protection and the promotion of fair competition, thus satisfying the "substantial state interest" prong of the test. Turning to the next step, the court rejected the state's argument that the restriction directly and materially advanced these legitimate state interests. The court noted that consumers benefit from more, rather than less, information. "Attempting to control the outcome of the consumer decisions following such communications by restricting lawful commercial speech is not an appropriate way to advance a state's interest in protecting consumers." The court agreed that requiring customers to be informed of the relationship between Allstate and the body shops or requiring that they be informed of the existence of the law protecting their choice of body shops would arguably reduce potential for consumer confusion. Since Allstate disclosed both, this issue was not before the court. The court noted the policy underlying the protection of commercial expression articulated in *Central Hudson*. "Commercial expression not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible	

	dissemination of information. . . . People will perceive their own best interests if only they are well enough informed, and the best means to that end is to open the channels of communication rather than to close them." (internal alterations and citation omitted). *Central Hudson*, supra, 447 U.S. at 562. Turning to the last issue, whether the restriction is narrowly tailored to the state interest advanced, the court noted that the State of Texas had the burden of showing that a more limited speech regulation would be ineffective to accomplish its legitimate aim. The state had not shown why disclosure of the relationship between Allstate and the tied shops or informing customers of the state's anti-steering law would not adequately serve the state's interest in consumer protection or fair competition. The court concluded that the statute was unconstitutional on its face because the state could suggest no circumstance in which the ban on non-misleading and truthful advertising could be constitutionally applied. The court noted a number of U.S. Supreme Court cases to the same effect-- *Thompson v. Western States Med. Ctr*., 535 U.S. 357 at 371-77, 122 S. Ct. 1497, 152 L. Ed. 2d 563 (2002) (declaring invalid a provision of the Food and Drug Administration Modernization Act of 1997 which prohibited pharmacists from advertising certain types of patient customized drugs where Government failed to demonstrate that the speech restrictions were not more extensive than necessary to serve its asserted interest in public health; "if the Government [can] achieve its interest in a manner that does not restrict speech, or that restricts less speech, the Government must do so."); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S. Ct. 1495, 134 L. Ed. 2d 711 (1996) (striking	

	down state ban on all advertisements containing information about the price of alcohol; state failed to satisfy "heavy burden" under *Central Hudson* of justifying a complete ban on all ads that contain accurate and non-misleading information); *see also* *Secretary of State of Md. v. Joseph H. Munson Co.*, Inc., 467 U.S. 947, 104 S. Ct. 2839, 81 L. Ed. 2d 786 (1984) ("Where . . . a statute imposes a direct restriction on protected First Amendment activity, and where the defect in the statute is that the means chosen to accomplish the State's objectives are too imprecise, so that in all its applications the statute creates an unnecessary risk of chilling free speech, the statute is properly subject to facial attack."). **The New York Cases** New York law, like California law, prohibits requiring repairs at a particular body shop. Subsection (b) of the New York statute also forbids recommendation or suggestion of a body shop unless expressly requested by the insured. NY CLS Ins § 2610 (2008). Collision or comprehensive coverage on motor vehicles; claims; repairs (a) Whenever a motor vehicle collision or comprehensive loss shall have been suffered by an insured, no insurer providing collision or comprehensive coverage therefor shall require that repairs be made to such vehicle in a particular place or shop or by a particular concern. (b) In processing any such claim (other than a claim solely involving window glass), the insurer shall not, unless expressly requested by the insured, recommend or suggest repairs be made to such vehicle in a particular place or shop or by a particular concern.	

	When a claim was presented, Allstate employees worked from a script in which they asked their insureds if they had a preferred repair shop. If not, then they asked if they wanted a recommendation. Allstate also displayed signs and brochures in its offices advertising their program. The N.Y. Dept of Insurance threatened Allstate with a fine, and in settlement Allstate agreed not to: (1) discuss, with certain exceptions, the selection of repair shops unless it was actually requested by the claimant. (2) inform claimants that *section 2610 (b)* forbade them to recommend a shop unless prompted. (3) knowingly distribute literature referring to any repair facility programs to policyholders once a claim had been reported, unless actually requested to do so by the claimant. (4) display signs or brochures referring to its Priority Repair Option Program or otherwise advertise any repair facility programs at its offices where claimants might be exposed. Allstate could still promote the program through general mailings, so long as such mailings were not intentionally sent to policyholders who had reported claims. In addition, the Department issued a Circular Letter stating that: "No insurer should suggest to their policyholders who present claims that the policyholder should request a recommendation or referral, including by distributing copies of *§ 2610* itself ... Signs mentioning or describing an insurer's repair program should not be displayed at any drive-in claim facility, sales office or other insurer locations."	

	Another insurer, GEICO, also submitted a proposal to the Department providing in its Automobile Casualty Manual that: "In consideration of the premium charged for coverage . . . you agree with us that, in the event of a covered loss resulting in damage to your auto, you request that we recommend repair facilities. . . . You agree with us that covered repairs will be completed at a repair shop recommended by us." The Department rejected this proposal. Allstate, GEICO and others sued in federal court. The Federal District Court ruled that § 2610(b) was an unconstitutional restriction of commercial speech for much the same reasons as in the *Allstate* case from Texas noted above. *Allstate Ins. Co. v. Serio*, No. 97 CIV. 0670(RCC) S.D.N.Y. (2000). Although not necessary to the decision, the court also noted that prohibiting disclosure by an insurer of the content of state law, in this case §2610(b), to consumers violated ordinary free speech principles and was, therefore, subject to the traditional "strict scrutiny" standard of review. On appeal, the Second Circuit noted that § 2610(b) had not been authoritatively interpreted by the N.Y. State courts and certified its applicability and constitutionality to the N.Y. Court of Appeals (New York's highest court). *Allstate Insurance Co. v. Serio*, 261 F.3d 143 (2d Cir. 2001). The N.Y. Court of Appeal accepted the certification and struck down the Department's action. They did this by giving § 2610(b) a strict interpretation, thus avoiding reaching the First Amendment question. "The literal language of *section 2610 (b)* restricts when an insurance company can make recommendations or	

		suggestions that repairs be performed at a particular shop. The statute does not regulate speech on subjects other than recommendations or suggestions about particular shops, nor does the statute regulate the content or placement of material promoting an insurance company's repair program, nor does the statute regulate discussion or distribution of its text. "Here, both Circular Letter 4 and the Settlement Letter exceed the statute's requirements and are therefore invalid. The legislative intent in enacting *section 2610* was to protect the consumer's right to choose and to combat the practice of coercing or enticing consumers into using repair shops selected by insurers rather than the ones they preferred to use. Notably, before the Department issued Circular Letter 4 in 1994, for nearly 20 years the only related regulatory activity consisted of two circular letters reminding insurers about the terms of the law (*see* New York State Department of Insurance Circular Letters Nos. 5 [1990], 9 [1992]). Moreover, the Department did not show how Circular Letter 4 advanced the legislative intent of *section 2610 (b)*, nor did the Department evince a factual basis supporting its expansive construction of the regulation as prohibiting (1) the distribution to insureds of brochures or other literature that mention or describe a repair program or a guarantee of repair programs, (2) the posting of signs at insurer locations that mention or describe a repair program, (3) the initiating of communication that might prompt an insured to request a repair shop recommendation or information from the insurer, (4) the discussion of an insured's repair shop choice, or (5) the mentioning of the mere existence of *section 2610 (b)* to an insured. Accordingly, Circular Letter 4 is not a valid interpretation of *New York Insurance Law §*	

	2610(b), and because the Settlement Letter mirrors provisions contained in Circular Letter 4, it was improper for the Department to require such an agreement. "With respect to the third certified question addressing GEICO's proposed preferred repairer promotion in which in exchange for reduced premium payments, insureds agreed that repairs would be completed at a repair shop recommended by GEICO, the Department contends that it was justified in rejecting the proposal under *section 2610 (a).* The Department further contends that, albeit a closer question, GEICO's proposal also violates *section 2610 (b)* because the proposal, in effect, requires an insured to receive a repair shop recommendation when making a claim. "The Department's rejection of GEICO's proposed preferred repairer promotion was based on restrictions not supported by *section 2610 (b).* The promotion does not require that an insurance company request, recommend or suggest a particular repair shop while an insurer has an active claim, but rather requires a prospective claimant to agree to use a preferred repairer for a reduced contract fee. Thus, the Department's rejection of the proposal on *section 2610 (b)* grounds is not sustainable." *Allstate Insurance Co. v. Serio*, 98 N.Y.2d 198, 774 N.E.2d 180, 746 N.Y.S.2d 416 (2002). In light of its ruling, it did not reach the certified question of whether or not it agreed with the federal district court's conclusion that subsection (b) was also unconstitutional. **The South Dakota Case**	

	The South Dakota statute prohibited an insurance company from recommending a repair shop for glass repair or replacement. As summarized by the Court, "SDCL § 58-33-72 prohibits an insurance company from requiring or recommending that an automobile insurance policyholder "use a particular company or location for the providing of automobile glass replacement or repair services or products insured in whole or in part by that policy." "SDCL § 58-33-73 prohibits an insurer from advising its insureds of the existence of networks such as USA-GLAS and contains other restrictions effectively barring any insurance company from using such networks in South Dakota." *Allstate Ins. Co. v. State*, 871 F. Supp. 355, 357 (USDC SD 1994). Perhaps anticipating the approach later taken by the Fifth Circuit above, the district court held both statutes unconstitutional. The communication was not false, deceptive or misleading; South Dakota's code already prevented an insurer from requiring the use of a particular auto glass repair business; there was no evidence that the glass used was dangerous or defective; and protecting local business, to the extent that it is a legitimate state interest, was better accomplished by anti-trust laws or other means short of restricting speech. *Id.* at 357-358. Although not necessary to the opinion, the court also held the statutes unconstitutional on the basis of the commerce clause. The glass networks with whom Allstate had contracts were interstate businesses. The court held the statutes violated the commerce clause. Legitimate	

	local purposes, such as safety or promoting competition, could be accomplished by means having a lesser impact on interstate activities. **State Constitutional Provisions** Most, and perhaps all, states have provisions in their constitutions protecting free speech. See, *e.g.*, Calif. Const., Art. I § 2(a) (2008): "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." In some of the cases above the plaintiffs raised the possible application of state constitutional provisions protecting free speech, but no case reached this issue. **Conclusion** In the context of auto repair, attempts to restrict truthful, non-misleading information passing between the insurer and the insured are likely unconstitutional. Two federal district courts and one federal circuit court have so held. The state has the burden – perhaps a "heavy burden" (See 44 *Liquormart, Inc., supra at 516*) -- to justify the restriction. Courts accept that consumer protection is a "substantial state interest" but, unless the basis for the restriction is well vetted and documented in the legislative or administrative record, courts seem unwilling to accept legislative judgments based on surmise. This approach is consistent with *44 Liquormart, Inc., supra* at 508-509. Although the courts did not specifically pass on the issue, the tenor of the opinions seems to suggest that courts would uphold	

	requirements that insurers (1) disclose the insured's right to choose a body repair facility or (2) disclose the relationship with a tied body shop. Both requirements are consistent with assisting consumers in making informed choices. "When a State regulates commercial messages to protect consumers from misleading, deceptive, or aggressive sales practices, or requires the disclosure of beneficial consumer information, the purpose of its regulation is consistent with the reasons for according constitutional protection to commercial speech and therefore justifies less than strict review." *44 Liquormart, Inc.*, *supra* at 501 Since regulations restricting information trench on First Amendment values, the New York case seems to illustrate that regulations restricting speech are, unless clearly mandated or authorized by statute, likely to be read narrowly or invalidated on the independent ground that they do not fall within the ambit of the authorizing legislation. It is hoped that this background may be of assistance to either the legislature or any future task force when weighing various proposals that would restrict truthful, non-misleading communications between insurance companies and their insureds in this area.	
Terry Lambert, Blue Mountain Collision Center April 22, 2016	**Comment 9.1** -------- Original message -------- From: Bob E Cornelius <bob.e.cornelius@ampf.com>	**Response 9.1** The Department thanks the commenter for the comment. As

Written Comments 14I: Verbatim, but with inserted **Comment Numbers** keyed to responses.	Date: 08/26/2014 12:22 PM (GMT-08:00) To: 'Blue Mountain Collision Center' <bmcc1@sbcglobal.net> Subject: RE: how my company is listed None. You are the only VIP within a 4 mile radius of your zip code. After that we have additional shops. **Bob Cornelius** Divisional Manager | Claims Dept ..... O: 920.370.8914 **Ameriprise Auto & Home Insurance** Ameriprise Insurance Company IDS Property Casualty Insurance Company 3500 Packerland Drive DePere, WI 54302 **From:** Blue Mountain Collision Center [mailto:bmcc1@sbcglobal.net] **Sent:** Tuesday, August 26, 2014 2:20 PM **To:** Cornelius, Bob E **Subject:** Re: how my company is listed thank you by the way, i am the only body shop in this zip code.	the comment is not specifically directed at the proposed regulations text, the Department interprets the comment as containing evidence of insurer practices regarding DRP program participation.

	But if you walk next door it is Colton, 92324 there are many body shops in Colton. I don't know how many are on your VIP list. Terry L. Lambert Blue Mountain Collision Center 12190 La Crosse Ave. Grand Terrace, Ca. 92313 909-783-1394 bmcc1.com On Tuesday, August 26, 2014 12:02 PM, Bob E Cornelius <bob.e.cornelius@ampf.com> wrote: Terry, you are still listed and presented as Blue Mountain Collision Center. The Claim Reps do not know what your rates are and they have no effect on assignments. Below is what the claim rep sees in our Dispatch Program in NuGen.	
Tim Chang, AAA of Southern California April 22, 2016 Written Comments 14J: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 10.1** On behalf of our insurance affiliate, the lnterinsurance Exchange of the Automobile Club (the Exchange), please accept the following comments and suggested changes to the proposed anti-steering regulations dated March 4, 2016. Our changes are designed to ensure that the new rules allow	**Response 10.1** The Department thanks Commenter for the comments.

Attachment 1 verbatim.	sufficient flexibility to manage the estimating and inspection processes in a fair and reasonable manner. The Exchange's comments are restricted to subsection 2695.8(e)(4). In addition, we have attached a mark-up of the changes to subsection (e)(4) for your reference. **Comment 10.2** Subsection 2695.8(e)(4) We suggest creating a rebuttable presumption, rather than a strict rule, for determining what constitutes a reasonable distance and a reasonable time period under these regulations. As currently drafted, the subsection is rigid and does not take into account situations that insurers routinely face. For example, completing an inspection within the prescribed time period will be challenging in rural areas or with customized or exotic vehicles, recreational vehicles and boats, where there may be a scarcity of reputable and competent inspectors to perform the needed service. Our suggestion accommodates these situations while preserving the general rule that an insurer cannot require a claimant to wait an unreasonable period of time or travel an unreasonable distance with respect to estimates and inspections.	**Response 10.2** The Department declines Commenter's suggestion to include a rebuttable presumption as to time and travel distance for inspections. The Department's proposed regulations are intended to promote certainty for the insurer and the consumer. Creating a presumption would muddy the waters and make enforcement of the proposed regulations far more difficult. Existing regulations at 10 CCR 2695.2(e) sets forth a definition of "extraordinary circumstances," the existence of which are the first matter taken into account when determining violations of the fair claims regulations under 10 CCR 2695.12(a)(1). Unusual circumstances can include those

	Comment 10.3 Subsection 2695.8(e)(4)(A) These changes provide claimants flexibility to manage the repair process. We believe that the six business day time period should commence when the claimant makes the vehicle available for inspection and not when the insurer receives first notice of loss. While not an everyday occurrence, claimants often do not want to repair their cars right away. They may be travelling or extremely busy and want to defer dealing with their car for several days or weeks, especially when it is still drivable. By making these changes, claimants can manage the repair process on their preferred timetable, something the Exchange would like to accommodate.	affecting the availability of inspection personnel or premises. **Response 10.3** In response to Commenter's concern and similar comments, the revised regulation text has added an additional section, (e)(4)(D), which sets forth inspection procedures operative in the event that a claimant does not make a vehicle reasonably available for inspection within the six day period described in sections (e)(4)(B) and (e)(4)(C). In response to Commenter's concern and similar comments, the Department has added Section (e)(4)(E), which clarifies that any auto repairer selected by a claimant is treated the same as the claimant for purposes of the proposed regulations. Moreover, the existence of intermediaries does not relieve the consumer of their obligation to make the vehicle available for inspection. Auto repairers and

	Comment 10.4 Subsection 2695.8(e)(4)(8) The initial changes to this subsection are designed to recognize that an insurer can request an estimate of repairs from either the claimant, or the claimant's chosen body shop for the claimant. When the vehicle is already at a body shop, claimants often prefer that the insurer contact the body shop directly for them to request the estimate. In either case, the request for an estimate should be made to the claimant within three business days after the time the vehicle is first available for inspection by the claimant, for the same reasons discussed above. The proposed changes also provide insurers the needed flexibility to manage the repair process by authorizing either oral or written notification that the insurer may elect to inspect the vehicle, and by providing insurers the opportunity to ask for an inspection prior to receipt of the estimate, for example, when there is an extended delay by the claimant in procuring the estimate. The remaining changes to this subsection are consistent with the changes we proposed above in subsection 2695.8(e)(4)(A). We hope that you find these suggestions constructive and encourage you to contact us if you need clarification or have any questions.	other intermediaries serve at the direction of the consumer; if the intermediary does not make the vehicle available for inspection, the six day period does not run until the consumer instructs the intermediary to allow inspection. **Response 10.4** In response to Commenter's concern and similar comments, the Department has added Section (e)(4)(E), which clarifies that any auto repairer selected by a claimant is treated the same as the claimant for purposes of the proposed regulations. As discussed above, repair shops and other intermediaries serve at the direction of the consumer; it is reasonable for the insurer to request an estimate from the repairer. The insurer cannot be faulted for any failure by the repairer to deliver the estimate.

	Thank you for your time and consideration. **Attachment 1 (next page)**	**Response to Attachment 1** The Department rejects a rebuttable presumption as noted in Response to Comment 10.2. The Department rejects adding repair shop or other facility as noted in Response to Comment 10.3. The Department rejects adding "automotive repair shop" as noted in Response to Comment 10.3.

108	(3) (4) require a claimant to travel an unreasonable distance or wait an unreasonable period of time either to inspect a replacement automobile, to conduct an inspection of the claimant's vehicle, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop. An insurer that complies with the provisions of subdivisions (A) to (C) of this subdivision (e)(4) with respect to an inspection or estimate shall be rebuttably presumed by the commissioner to have complied with the requirements of this paragraph with respect to such inspection or estimate. (A) For purposes of this section, if an insurer chooses to exercise its right to inspect the damaged vehicle after receiving the notice of claim, the insurer shall inspect the damaged vehicle within six (6) business days after ~~receiving the notice of claim, provided~~ the claimant and any repair shop or other facility where the vehicle is located makes the vehicle available for inspection. (B) If after receiving the notice of claim, the insurer requests an estimate of repairs from the claimant, or for the claimant from an automotive repair shop selected by the claimant, in lieu of a physical inspection, such a request must be made to the claimant within three (3) business days ~~of notice of claim~~ after the claimant makes the vehicle available for inspection. ~~and~~ tThe insurer must provide oral or written notification to the claimant that, upon or prior to receipt of the estimate, the insurer may elect to inspect the vehicle. If, ~~after receiving the estimate of repairs from the claimant,~~ the insurer subsequently elects to inspect the vehicle, the inspection must be made within six (6) business days following the receipt of the estimate by the insurer or earlier notification by the insurer to the claimant that it elects to inspect the vehicle, provided the claimant and any repair shop or other facility where the vehicle is located makes the vehicle reasonably available for inspection. (C) For purposes of this section, an unreasonable distance shall be, for cities with 100,000 or more population, more than ten (10) miles, and for all other areas of the state, more than twenty-five (25) miles, from the location where the vehicle is located and made available for inspection by the claimant. (5) after the claimant has chosen an automobile repair shop, require that the claimant have the vehicle inspected at or by an automobile repair shop where the insurer has a Direct Repair Program or by any other automobile repair shop identified by the insurer.	The Department feels it is unnecessary to state oral or written, since it is already implied that any notification is accepted.

Michael Gunning, PIFC; Armand Feliciano, ACIC; Shari McHugh PADIC; Christian Rataj, NAMIC; Katherine Pettibone, AIA; Marti Fisher, California Chamber of Commerce May 31, 2016 Written Comments 14K: Verbatim, but with inserted **Comment Numbers** keyed to responses.* **Note: This comment letter pertains to two distinct CDI rulemakings; the responses to comment in this document will only address the comments pertinent to this rulemaking.*	May 31, 2016 Geoffrey Margolis Deputy Commissioner & Special Counsel California Department of Insurance 300 Capitol Mall, 17th Floor Sacramento CA 95814 Geoff.Margolis@insurance.ca.gov RE: Labor Rate Survey & Anti-Steering Proposed Regulations Dear Mr. Margolis: Since our April 21 and 22, 2016 comment submissions to the California Department of Insurance (CDI) regarding the "Labor Rate Survey" regulations (Reg-2012-00002) and the "Anti-Steering" regulations (Reg-2015-00015) (together, the "Proposed Regulations"), the above-listed associations have worked diligently to formulate a suggested approach for the Proposed Regulations which would simultaneously ensure the CDI accomplishes its policy goals while regulating the insurance industry in a lawful, prudent manner. We offer the following additional comments on the Proposed Regulations. We hope to resolve these issues in a collaborative fashion with the CDI without need for further action following the CDI's closure of the rulemaking file. Labor Rate Survey Regulations Our additional consideration of the Labor Rate Survey regulations has only strengthened the concerns we outlined in our April 21, 2016 comment submission. With its proposal, the CDI is offering a model	**[Comment responses begin after anti-steering discussion in letter]**

	methodology for conducting labor rate surveys which would produce claims costs that are unreasonably and unnecessarily expensive. The proposal would artificially inflate the cost of insured auto repairs with no corresponding benefit for insurance customers. Because the Labor Rate Survey regulations would be voluntary, insurers would face two choices: 1) adopt new business practices which produce unwarranted claims payment inflation which they cannot readily pass along due to the difficult rating environment in California, or 2) use alternative methods that are currently allowed (like Cost of Living Adjustments) but not recognized in the Proposed Regulations, leading to uncertainty as to whether the CDI would attempt to force insurer use of the Proposed Regulations when reviewing consumer complaints or conducting field examinations. Our guess is that most carriers would take the second option, which would defeat the whole point of doing regulations in the first place. Our thought is that this is counterproductive for the CDI and insurers. A better option would be to fix the Labor Rate Survey regulations so they ensure fair results and provide flexibility and options for the industry that can be widely adopted. To accomplish this, we urge the CDI to revise the Labor Rate Survey regulations, in addition to the comments we submitted, as follows: 2 *Arithmetic Mean or Simple Majority* Proposed Section 2695.81(d)(5) requires insurers to calculate a local "prevailing auto body rate" that is based on "posted rates" and, therefore, results in inflated payments. This would create a system in which body shops are paid one rate with a cash customer and another, higher rate for insured jobs. Insurers look forward to meeting their contractual and legal obligations to make fair offers to	

	pay for car repairs, but will not accept a state regulation which requires obvious overpayment. We urge the CDI to fix its proposal for calculating a "prevailing auto body rate." We request eliminating the regulation's reference to the "arithmetic mean" and, instead, just rely upon a median survey result that would eliminate the bias of outliers -- which could be particularly acute when used with the regulation's requirement to only use survey results from six body shops. *Use of DRP Rates in a Labor Rate Survey* Proposed Section 2695.81(d)(6) prohibits labor rate surveys from including any discounted labor rate obtained as part of a direct repair program. We understand that the CDI strongly believes that labor rate surveys should only include labor rate survey results that an auto repair customer could get without the benefit of a contracted discount. However, CDI must address our legitimate concerns about the mischief that body shop survey respondents can play with their "posted" rates. There has to be a check and balance to address the possibility of inflated labor rates. The labor rate survey regulations should include a provision that allows survey results to be adjusted when an insurer documents that body shops accept payment at rates less than their reported, posted labor rates. There is no justification for a state regulation which creates two, different "market" rates: the lower rate that cash-pay customers pay and then a higher rate which shops are able to extract from insurance companies. If the CDI ensures that insurers have a mechanism for challenging body shop collusion or falsification of labor rates, then insurers will accept the exclusion of DRP rates from labor rate surveys without further disagreement. *Geocoding & Permissible Methodologies* CDI method would require the survey to use a "geocoding" method selecting the surveyed shops based upon their latitude and longitude.	

	Such a geocoding method is, to our knowledge, not a commonly-used method in the insurance industry. While staff at the CDI may have concluded that this method is the only one capable of producing consistent and fair survey results, this is certainly not the consensus viewpoint in the insurance industry. Insurers would be open to participating in a presentation where CDI staff could explain its proposed methodology and attempt to educate insurers on why this methodology is feasible. Absent such dialogue, it seems unlikely that the CDI's geocoding proposal would be broadly adopted. Insurers urge the CDI to add additional, permissible methodologies that would increase the likelihood that insurers adopt a model survey approach. For instance, the CDI distributed a working draft of an alternate methodology, dated October 1, 2015, which relies upon commonly-understood city, and, when necessary, county, boundaries for the selection of a survey area. Insurers would be willing to seek a negotiated resolution of this particular issue with the addition of a methodology substantially similar to the approach in that working draft. Providing multiple defensible methodologies for selecting a geographic survey area, including methods with appropriate sampling techniques, will increase the likelihood of broad adoption, as opposed to only one, new, untested methodology. 3 Also, the proposed Labor Rate Survey regulations should allow the option to pursue greater accuracy in determining a market rate by weighting survey responses according to shop capacity. In most markets, larger shops with greater repair volume capacity (number of vehicle bays, for example) will repair proportionally more vehicles. For instance, if a city had 5 shops with 1 bay each and 1 shop with 5 bays, as many as half of all vehicle repairs might be completed by the latter. On a per vehicle basis, then, the larger shop will mathematically play a larger role in the prevailing labor rate in	

	that market than the other shops. But the Proposed Regulations preclude a standardized survey from accounting for a shop's relative volume of repairs, and instead requires a "one shop, one vote" approach, making no allowance for the practical effect of shop capacity on the prevailing labor rate in a given market. Further, we are willing to explore the feasibility of insurers being able to voluntarily subscribe to a statewide labor rate survey conducted by a neutral, credible organization. Some have mentioned the possibility of the Bureau of Automotive Repair being involved with such an endeavor, which seems appropriate for consideration. *Duration of Surveys* Proposed Section 2695.81(d)(1) restricts use of a particular labor rate survey to one year. This time period is too short. While the CDI attempts to provide a mechanism for use of a survey for a second year of time, the method is based upon broad consumer data unrelated to the price of auto repairs. Interestingly, and unacceptably, the Proposed Regulations actually prohibit insurers from adjusting survey results downward if the consumer price index (CPI) has gone down – abandoning the CDI's own argument that CPI should be used to adjust labor rate surveys in the second year of use. Insurers believe that a two year period of use for labor rate surveys is reasonable. We request abandonment of the CDI's upward-bias CPI method for the second year of a survey and, instead, simplify the process by allowing a labor rate survey to be used for two years. ***Anti-Steering Regulations*** **Comment 11.1**	**Response 11.1**

	Our additional consideration of the Anti-Steering regulations has similarly strengthened the concerns we outlined in our April 22, 2016 comment submission. **Comment 11.2** The proposed Anti-Steering regulations would impose unnecessary, new expenses on insurers for no perceptible consumer benefit.	The Department thanks Commenters for their thorough consideration of the proposed regulations. **Response 11.2** The proposed regulations do not impose any new expenses on insurers, as the regulations only prohibit certain insurer conduct; the proposed regulations do not impose any affirmative requirements on industry, other than subsequent to an insurer's election to inspect a vehicle. There is no requirement in any statute or regulation that an insurer conduct any vehicle inspection; the decision to inspect is solely at the discretion of the insurer. While most insurers do now inspect most first party claimant vehicles, there is no evidence to suggest insurers will conduct more inspections as a result of this rulemaking. Moreover, the consumer benefit from the proposed regulation is clear: by prohibiting insurers from requiring consumers to travel excessive distances for repairs,

	Comment 11.3 The regulations would prohibit insurers from conducting inspections at many locations that currently serve customers without problem, which would then require insurers to lease new physical locations for inspection and hire new employees/contractors who must travel to conduct inspections when a permissible inspection location is not within the CDI's new requirements.	wait excessive amounts of time for an inspection, or require an inspection at an insurer-designated location after the consumer has already chosen a repairer, the proposed regulation strengthens the statutory right of consumers to select the repairer of their choice, and to have their claim settled in a prompt, fair, and equitable manner. **Response 11.3** The proposed regulations do not prohibit insurers from conducting an inspection at any particular location; they only prohibit the insurer from "requiring" the consumer to take their vehicle to an insurer-designated repair shop if the consumer has already selected a different repairer. If the consumer agrees to the insurer's request for inspection at a particular location, the insurer is still free to conduct the inspection at that location. The numerous complaints received by the Department

		regarding illegal steering behaviors at insurer-designated inspection locations undermines Commenters' contention that these locations have been serving consumers "without problem." The proposed regulation does not require that insurers lease physical inspection premises, or hire additional employees or contractors. Also, insurers have not provided the Department (after several requests) with any data or other evidence to suggest that any significant percentage of insurer inspections are (1) completed at an insurer-designated repair shop, (2) where the claimant was "required" to take the vehicle to that location, and (3) where the claimant has already chosen a repair shop. Since the proposed regulations are narrowly written to only apply to prohibit an insurer from "requiring" the claimant to go to an insurer-designated repair shop where the claimant has already chosen a repair shop, this proposed regulation would have

		negligible impact on insurer operations and insurer costs. Insurers already employ mobile claims adjusting staff for inspection purposes; these staff can be utilized to inspect a vehicle at the consumer's home, business, or repairer of choice. Insurers also currently lease any number of branch office locations which could be utilized for an inspection, or work with their partner agents to conduct inspections at the agent's place of business. It is important to note that the proposed regulation only applies in a narrow class of circumstances where the consumer has already chosen a repairer prior to inspection of the vehicle and the insurer disagrees with the estimate completed by the consumer's repairer of choice; the proposed regulation would not affect the majority of inspections performed by insurers. Moreover, there is no general requirement that insurers conduct any inspection at all; insurers have a right to conduct an inspection and do so solely at their

		election. The insurer is also free to request competing estimates from multiple shops chosen by the consumer; the shops providing estimates would have an incentive to provide competitive pricing in order to get the repair work. The insurer may also request photographs of the damage in order to verify a repairer's estimate. Lastly, these regulations do not prohibit the insurer from suggesting or recommending that the claimant take the vehicle to an insurer-designated repair shop for inspection, so long as there is no requirement to conduct the inspection at the insurer-designated repairer if the claimant has already chosen a repair shop.
	Comment 11.4 The CDI public notice fails to acknowledge any of these costs when, in fact, the industry-wide costs will be in the tens of millions of dollars.	**Response 11.4** The Department does not acknowledge the illusory costs conjured up by Commenters, which are unsupported by evidence, fact, or logic. Commenters assert tens of

		millions in costs from the proposed regulation without providing any basis for their sensational estimate. As discussed in Response 11.3 above, the proposed regulation does not require insurers to incur any costs at all.
	Comment 11.5 In trying to understand why the CDI would add costs to the insurance system with no consumer benefit, we have concluded that the proposed Anti-Steering regulations have, at their core, too many unfounded, negative assumptions about insurer claims behavior.	**Response 11.5** The Department disagrees with Commenters' assertion that the proposed regulation imposes new costs on the claims system and does not provide consumer benefit. As discussed in Responses 11.3 and 11.4 above, the proposed regulation does not impose any costs on insurers. As additionally discussed above, the proposed regulation provides significant consumer benefits by curtailing unlawful steering behaviors which are documented in numerous complaints received by the Department. The Department disagrees with Commenters' unsupported conclusion that the proposed

		regulations are based on negative assumptions about insurer claims behavior. In fact, the proposed regulations are based on, and directly address, years of consumer complaints regarding illegal steering behaviors by insurers and insurer-preferred repairers.
	Comment 11.6 These assumptions have lead the CDI to seek to ban many forms of honest insurer conduct in hopes of stopping some bad conduct along the way.	**Response 11.6** Again, the Department disagrees that "assumptions" for the basis for the proposed regulations; the basis for the proposed regulations is found in the myriad consumer complaints received by the Department regarding unlawful insurer steering behavior. The proposed regulations do not ban any "honest" insurer conduct; the proposed prohibitions against excessive delay in vehicle inspection, excessive travel for vehicle inspection, and requiring a consumer to have a vehicle inspected at an insurer-designated repairer contrary to the consumer's selection of a repairer,

		all address documented illegal insurer steering behaviors which violate statutory prohibitions against steering, or claims behavior which does not result in prompt, fair, and equitable settlements. The proposed regulations are tailored to address documented illegal insurer steering behavior and will not ban any "honest" insurer conduct; the Department is confident that the proposed regulations will be successful in curtailing the illegal insurer steering behaviors documented in numerous consumer complaints to the Department.
	Comment 11.7 A better approach would be to work collaboratively to target bad insurer behavior with these regulations, instead of erecting barriers and punishments to insurers who are trying to act morally, efficiently, and consistent with California law.	**Response 11.7** The Department appreciates Commenters' acknowledgement that it is a good approach to target bad insurer behavior with the proposed regulations, which is exactly what they are tailored to do. For the entirety of the current administration, the Department has been working collaboratively

		with industry in an attempt to promulgate regulations to address the bad insurer behavior acknowledged by Commenters. This collaborative effort has included multiple Department rulemaking projects, numerous Department meetings with stakeholders, and countless hours of Department staff time preparing dozens of draft regulations texts in an attempt to find solutions palatable to industry. Throughout this multi-year process, the Department has continually sought and received input from the stakeholders who authored this comment letter. Contrary to Commenters' assertions, the proposed regulations do not erect any barriers or create any punishments for insurers acting morally, efficiently, and in line with California law. As discussed above, these regulations specifically prohibit illegal insurer steering behaviors documented in complaints received by the Department; the illegal steering

		behavior violates California laws regarding steering and prompt, fair, and equitable claims settlements.
	Comment 11.8 In order to fix the proposed Anti-Steering regulations and eliminate the need for further action following the CDI's closure of the rulemaking file, we suggest the following changes to the proposed Anti-Steering regulations:	**Response 11.8** The Department thanks Commenters' for their proposed revisions to the proposed regulations; each section will be considered in turn below.
	Comment 11.9 *Travel Distance to Inspect Vehicles* Current law prohibits an insurer from requiring a claimant to drive an "unreasonable" distance to enable an insurer to conduct a damaged vehicle inspection. Proposed Section 2695.8(e)(4)(C) would define an "unreasonable" distance, which it defines as more than a ten (10) mile drive in urban areas (defined as population of 100,000 or more) and a twenty-five (25) mile drive in areas with a smaller population. **Comment 11.10**	**Response 11.9** The Department thanks Commenters for the summary of current law, and of the proposed regulations. **Response 11.10**

	Ten miles is an inadequate distance to allow insurers to conduct their business. Sticking to this ten mile rule will force insurers to open many more inspection facilities and, when opening a new facility is impracticable, to hire personnel to drive to the vehicle location. It is difficult to see how injecting these substantial costs into the system is pro-customer, particularly when we are unaware of any consumer complaint trend highlighting this issue. There is, simply, no point of requiring a ten mile limit other than to raise claims adjustment costs. While a "hard" distance limit will undoubtedly lead to many bad outcomes, we propose a compromise of a fifteen (15) mile "urban inspection" limit. While such a limit will still increase insurer costs, we believe the costs will be significantly mitigated while still allowing the CDI the certainty of a specific distance limitation.	Commenters provide no factual support for their assertion that "ten miles is an inadequate distance to allow insurers to conduct their business." Ten miles is a significant distance in a metropolitan area, encompassing thousands of businesses. A similar anti-steering regulation in New York state imposed a 10-mile limit, but did not cause significant disruption to insurer operations. However, in response to Commenters' suggestion and others, the Department has increased the 10-mile limit to a 15-mile limit in urban areas. The proposed regulation does not require insurers to lease any physical premises, or hire any additional personnel. Insurers already lease inspection premises and employ mobile claims adjusters whose services may be used to comply with the proposed regulation; Commenters do not provide any factual support for the disruption they claim the proposed regulation will cause. In addition, in response to comments from

		industry, the Department has increased the 10 mile limit to a 15 mile limit. Contrary to Commenters' assertions, the proposed regulation is pro-consumer, as it prevents retaliatory insurer behavior by capping the consumer's travel to have their automobile inspected. Commenters provide no factual support for their allegation that the proposed regulation "injects substantial costs into the system." Although Commenters may not be aware of consumer complaints regarding excessive travel to inspection locations, the Department has received numerous complaints on the subject, which are included in the rulemaking file. In these complaints, the consumer was compelled to take their vehicle to a far distant inspection location subsequent to declining to have the vehicle repaired at one of the insurer's Designated Repair Program partner shops. Many consumers filing complaints with the Department believe that

		insurers send consumers to distant inspection stations as a form of retaliation for not selecting a Direct Repair Program shop to repair the vehicle. As discussed above, the point of the proposed regulation is to protect the consumer from retaliatory insurer behavior and save the consumer the time and expense of travelling a long distance to have their vehicle inspected.
	Comment 11.11 Further, we request an exception allowing an insurer to specify an inspection location farther than fifteen miles when circumstances warrant following a catastrophe situation where nearby inspection locations would be overwhelmed.	**Response 11.11** The Department acknowledges the need for an exception to the distance rule in the aftermath of a major catastrophe. However, existing regulations already provide for this exception and the Department contends it is not necessary to create a new exception unique to the distance rule; 10 CCR 2695.2(e) sets forth a definition of "extraordinary circumstances," the existence of which are the first matter taken into account when determining

		violations of the fair claims regulations under 10 CCR 2695.12(a)(1). The "extraordinary circumstances" exception is sufficiently broad to encompass any catastrophe.
	Comment 11.12 While current law makes no reference to requiring an inspection on a specific time frame, proposed Section 2695.8(e)(4)(A) would create a new time limit requiring insurers to inspect a damaged vehicle within six (6) business days after receiving the notice of claim, provided the claimant makes the vehicle reasonably available for inspection. While insurers regularly compete against each other to market customers on their efficient claims service, the CDI feels obligated to add this new law regarding inspection deadlines.	**Response 11.12** The Department thanks Commenters for summarizing the effect of the proposed regulation. Although Commenters contend that competition among insurers promotes fast inspection times, complaints to the Department have shown otherwise. Consumers have frequently complained that insurers have made them wait a significant amount of time to have their vehicle inspected. The Department has received consumer complaints stating that, after the consumer has chosen a

		repair shop outside the insurer's Designated Repair Program network, the insurer has informed the consumer that inspection cannot be scheduled for a number of days at the consumer's shop of choice, but can be done immediately at one of the insurer's DRP shops. The proposed regulation addresses this pattern of delay. As noted in the Initial Statement of Reasons, the Department has received complaints from consumers that some insurers have advised them that it will take several extra days or even weeks for the insurer to inspect the damaged vehicle, unless the claimant goes to the insurer's chosen Direct Repair Program ("DRP") shop. Insurers must have processes in place to inspect damaged vehicles in a timely and reasonable manner, no matter whether the claimant chooses his or her own repair shop or whether a DRP shop is chosen by the claimant. It is inherently unreasonable and unfair to delay

		inspection (and thus delay the repair) of vehicles because the claimant chooses a repair shop other than one suggested by the insurer. The proposed regulation sets a standard for a reasonable time for insurers to inspect damaged vehicles, which is six (6) business days, given that the claimant has made the vehicle available. The reasonableness standards for inspections as defined in this proposed subdivision are modeled after New York's Regulations, section 216.7 - Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims, which have been in effect for decades. The language is reasonably necessary to clarify to insurers and the public what is considered an unreasonable amount of time to wait to have a claimant's car inspected.
	Comment 11.13 In order to make this six business day requirement work, two changes are necessary. First, in the aftermath of a catastrophe	**Response 11.13** Commenters contend that a catastrophe exception is necessary

	situation, it is not always possible to inspect vehicles in six days and the Proposed Regulations should be amended to provide such an exception. Second, the six business day requirement should only apply when the insurance company's liability to pay for the vehicle is clear, the vehicle owner is identifiable and known to the insurer, and the car is available for inspection.	for the proposed regulation to be workable. However, existing regulations already provide for this exception and the Department contends it is not necessary to create a new exception unique to the inspection time rule; 10 CCR 2695.2(e) sets forth a definition of "extraordinary circumstances," the existence of which are the first matter taken into account when determining violations of the fair claims regulations under 10 CCR 2695.12(a)(1). The "extraordinary circumstances" exception is sufficiently broad to encompass any catastrophe. Commenters request that the time limit for inspection only run when the insurer's liability to pay the claim is clear, the vehicle owner is known to the insurer, and the vehicle is made available for inspection. The proposed regulation satisfies most of Commenters' concerns. Notice of a claim is required to trigger the inspection time limit; having notice of the claim means that the insurer has been informed of the

		identity of the vehicle owner. In response to Commenter's concern and similar comments, the Department has added Section (e)(4)(D), which addresses inspection protocol for circumstances wherein the claimant has not made the vehicle available within the six day period. In reference to the Commenters' suggestion that the inspection time limit only run after the insurer's liability to pay has become clear, the assumption is that this concern is only raised in third party insurance claims and not in first party insurance claims. In first party insurance claims, the insurer is already contractually liable for the damage when the insured has physical damage coverage, so there would be no impact on this rulemaking. However, under a third party claim, the Department acknowledges this type of relationship is unique from the insurer's relationship with their

		own policyholders, and has outlined this in subdivision (e)(4)(C), which is reasonably necessary to clarify how insurers should address these types of third-party claimants. Subdivision (e)(4)(C) was added to account for third-party insurers and third-party claimants relationships. Should a third-party insurer exercise its right to inspect the damaged vehicle of a third-party, the six (6) business day commences when the insurer notifies the third-party claimant of its intention to inspect the damaged vehicle and when it is made available for inspection. The changes are reasonably necessary to address Commenters' concerns that there is no contractual relationship between third party claimants and third party claimants, and the requirement to inspect a vehicle within six (6) days was unreasonable given the reality of this type of relationship.

	Comment 11.14 Proposed Section 2695.8(e)(5) provides that, after the claimant has chosen an automobile repair shop, an insurer may not require that the claimant have the vehicle inspected at or by an automobile repair shop where the insurer has a Direct Repair Program or by any other automobile repair shop identified by the insurer. This provision is unlawful and bad public policy.	**Response 11.14** Contrary to Commenters' sweeping and unsubstantiated assertions, the proposed regulation is neither unlawful, nor contrary to public policy. Authority and reference for the proposed regulation is found in CIC § 758.5, 790.03(h)(3), 790.03(h)(5), and 790.10. The official policy of the State of California, embodied in CIC §758.5, is that the consumer has the right to the auto repairer of their choice; per CIC §758.5(c), once the consumer has chosen a repairer, an insurer may not suggest or recommend that repairs be completed elsewhere. Per CIC §758.5(f), the Commissioner may enforce the anti-steering mandates of CIC §758.5 via the Unfair Practices Laws at CIC §790, *et*

		seq., including the rulemaking provisions of CIC §790.10. Requiring an insured who has already selected an auto repairer to take their vehicle for inspection at an insurer-designated auto repairer violates the following sections of the Insurance Code: CIC 758.5(c), prohibiting an insurer from suggesting or recommending of an auto repairer after the consumer has selected a repairer; CIC §790.03(h)(3), requiring adoption of reasonable standards for the prompt investigation and processing of claims; and CIC 790.03(h)(5), requiring insurers to attempt in good faith to effectuate prompt, fair, and equitable settlement of claims. The Commissioner has authority under CIC §790.10 to implement rules necessary to administer CIC §790, *et seq*., including curtailment of the violations described above. The proposed regulations do not prohibit insurers from conducting an inspection at any particular location; they only prohibit the insurer from "requiring" the

		consumer to take their vehicle to an insurer-designated repair shop if the consumer has already selected a different repairer. If the consumer agrees to the insurer's request for inspection at a particular location, the insurer is still free to conduct the inspection at that location. The numerous complaints received by the Department regarding illegal steering behaviors at insurer-designated inspection locations undermines Commenters' contention that these locations have been serving consumers "without problem." The proposed regulation does not require that insurers lease physical inspection premises, or hire additional employees or contractors. Also, insurers have not provided the Department (after several requests) with any data or other evidence to suggest that any significant percentage of insurer inspections are (1) completed at an

		insurer-designated repair shop, (2) where the claimant was "required" to take the vehicle to that location, and (3) where the claimant has already chosen a repair shop. Since the proposed regulations are narrowly written to only apply to prohibit an insurer from "requiring" the claimant to go to an insurer-designated repair shop where the claimant has already chosen a repair shop, this proposed regulation would have negligible impact on insurer operations and insurer costs. Insurers already employ mobile claims adjusting staff for inspection purposes; these staff can be utilized to inspect a vehicle at the consumer's home, business, or repairer of choice. Insurers also currently lease any number of branch office locations which could be utilized for an inspection, or work with their partner agents to conduct inspections at the agent's place of business. It is important to note that the proposed regulation only applies in a narrow class of circumstances

		where the consumer has already chosen a repairer prior to inspection of the vehicle and the insurer disagrees with the estimate completed by the consumer's repairer of choice; the proposed regulation would not affect the majority of inspections performed by insurers. Moreover, there is no general requirement that insurers conduct any inspection at all; insurers have a right to conduct an inspection and do so solely at their election. The insurer is also free to request competing estimates from multiple shops chosen by the consumer; the shops providing estimates would have an incentive to provide competitive pricing in order to get the repair work. The insurer may also request photographs of the damage in order to verify a repairer's estimate. Lastly, these regulations do not prohibit the insurer from suggesting or recommending that the claimant take the vehicle to an insurer-designated repair shop for inspection, so long as there is no requirement to conduct the inspection at the insurer-

		designated repairer where the claimant has already chosen a repair shop. The proposed regulation is not only supported by authority and reference, but is necessary to preserve the consumer's statutory right to select an auto body repairer of their choice. The Department has received frequent complaints regarding steering-related violations which can only be effectuated if the consumer is required to take their vehicle to a DRP or other shop specified by the insurer: 1) Insurers will reject all estimates from non-DRP shops and inform the consumer that the insurer is only willing to pay up to the amount of the estimate by a DRP shop. A second variation of this scheme involves the consumer receiving an estimate at a DRP shop, then being told to accept a settlement check for the estimated amount on the spot, prior to having the vehicle repaired at the shop chosen by the consumer. Both of these schemes violate the

		consumer's right to have the insurer pay for the vehicle to be repaired to BAR standards at the shop of the consumer's choosing. 2) Consumers will receive a far lower repair cost estimate at a DRP shop, as compared to surrounding shops, and insurers will use the lower DRP estimate as the basis for cash settlement negotiations. 3) Consumers will drop their vehicle off for inspection at a DRP shop return to find that the DRP shop has begun repairs on the vehicle without permission from the consumer. 4) Consumers who have selected a different repair shop report harassment and intimidation by DRP shop personnel and insurer adjustors when taking their vehicle to a DRP shop for inspection. This can include multiple calls to the consumer "to schedule repairs" from DRP shop staff who have access to the insured's contact information subsequent to the vehicle being brought in for inspection, even though the DRP

		staff know the consumer wishes to use an alternate repairer. Complaints to the Department also show that insurers have used the consumer's election of a non-DRP repairer as the basis to delay claim settlement or deny portions of a claims. These coercive practices often drive the consumer to consent to having a DRP shop conduct the repairs out of fear of losing benefits the insurer is required to provide, and are an additional basis for prohibiting the insurer from requiring an inspection at an insurer-designated location: 1) Insurers have refused to send adjustors to non-DRP repairers, despite a request from the consumer, and consent of the repairer. 2) Insurers have told consumers that their vehicle would be repaired at a DRP shop, but totaled if they select a non-DRP repairer. 3) Insurers have told consumers that towing fees or car rental will not be covered by the insurer

		unless the vehicle is repaired at a DRP shop. 4) Insurers have required inspections or re-inspections subsequent to work being completed at a non-DRP shop, which consumers have viewed as retaliation for selecting a non-DRP shop. The practices described above constitute just a sample of the complaints the Department has received regarding insurers steering towards DRP repairers; this track record of steering strongly supports the necessity of the proposed regulation prohibiting the insurer from requiring inspection at an insurer-designated location. Moreover, requiring inspection at a location designated by the insurer presents an inconvenience to the premium-paying consumer who has already selected an alternate repairer, costing that consumer time and money. Although Commenters also contend that the proposed

	Comment 11.15 California Insurance Code Section 758.5 prohibits insurers from suggesting or recommending "that a claimant select a different automotive repair dealer" after a claimant has "chosen" a shop, but it, in no way, prohibits inspection at a "non-chosen" shop, including DRP shops. There is absolutely no authority for the CDI to prohibit inspection at a particular body shop.	regulation is "bad public policy," they do not present any statements in support of this assertion. In light of the complaints history detailed above, the Department contends that the proposed regulation is good and necessary public policy. **Response 11.15** Commenters incorrectly assert that CIC §758.5 "in no way prohibits inspection at a 'non-chosen' shop" and that this somehow proves their contention that the proposed regulation is unsupported by authority. Commenters are missing the point by framing the discussion in these terms. The intent of CIC §758.5 is not to regulate vehicle inspections, but rather to prevent steering, which is what the proposed regulation does, by prohibiting insurers from requiring the consumer have their vehicle inspected at an insurer-designated shop. The Department has received frequent complaints, as described

	Comment 11.16 If the CDI is concerned that an insurer would break the law regarding "suggesting" or "recommending" a different shop, it should focus on that behavior and punish bad actors.	above, regarding steering schemes that can only occur when the insured is required to have their vehicle inspected at a shop of the insurer's choosing. By preventing compelled inspections at venues frequently associated with steering complaints, the proposed regulation directly addresses pervasive steering behaviors. The proposed regulation does not prohibit insurers from conducting inspections at insurer-designated repair shops so long as the consumer consents; insurers are only prohibited from requiring inspection at an insurer-designated shop. Given the foregoing, CIC §§758.5, 790.03(h)(3), 790.03(h)(5), and 790.10 provide ample authority and reference for the proposed regulation. **Response 11.16** The Department is not merely "concerned" about steering violations by insurers, but has compiled numerous complaints demonstrating that steering frequently occurs at insurer-

	Comment 11.17 But, instead, this overbroad provision would wrongly assume an inspection at a DRP shop is done for the purpose of getting a claimant to "un-choose" a body shop and be "steered" by the insurer into getting the car repaired at the inspection facility.	designated inspection locations. Despite the Department's enforcement efforts, these complaints persist in 2016, six years after CIC §758.5 became effective in 2010. **Response 11.17** Neither the Department, nor the proposed regulation text, make any assumptions regarding the purposes for which insurers require inspections at insurer-designated shops; the regulation text arose in context of consumer complaints. The proposed regulation is designed to, and would directly address documented steering behavior which occurs at insurer-designated repairers. Contrary to Commenters' assertion, the proposed regulation is not overbroad. There is no blanket ban in the proposed regulation against inspections at an insurer-designated repairer. The contemplated rule only applies to the narrow class of

	Comment 11.18 So, the CDI would rather force insurers to have cars inspected at unknown body shops that may be farther away from the consumer than known body shops, or force insurers to lease new "inspection only" facilities which add unnecessary costs to the claims system, or force insurers to hire new employees for the purpose of driving to conduct in-person inspections – rather than simply punish insurers who break the current anti-steering laws.	claims wherein the consumer has selected a repair shop prior to inspection and does not ban inspections at an insurer-designated shop even in those circumstances; inspections at the insurer's preferred location are free to commence with the assent of the consumer. Put another way, the prohibition in the proposed regulation only applies when a consumer has selected a repair shop prior to inspection and declines the insurer's request to have the vehicle inspected at the insurer's preferred location. **Response 11.18** The proposed regulation does not "force" insurers to do anything. As discussed above, no law requires insurers to inspect a vehicle; the decision to inspect is solely at the insurer's election. Commenters correctly identify three inspection options available to insurers wishing to inspect a vehicle under the proposed regulation: (1) inspection at a

		location chosen by the consumer, (2) utilization of non-repair shop inspection premises, or (3) mobile inspection by employees; these are all inspection methods currently used by insurers. However, Commenters fail to identify low- or no-cost inspection alternatives, including requesting that the consumer obtain competing estimates, or requesting photographs of the consumer's vehicle. Commenters incorrectly contend that the proposed regulation leads to increased costs: any increased costs would result from choices made by the insurer regarding whether or not to inspect a vehicle and which method of inspection to employ. Insurers already conduct inspections at non-repairer locations and employ personnel to conduct mobile inspections; use of these means represents the state of the world today, rather a purported cost-producing effect of the proposed regulation.

	Comment 11.19 Proposed Section 2695.8(e)(5) treats consumers like they are children who cannot handle their own affairs, will drive up the cost of auto insurance for all, has absolutely no public benefit, and is drafted solely for the benefit of protecting an auto body shop which "already has a job" and is afraid it will be "taken away" by an inspection at another shop. Why is the CDI so concerned about body shops that it would completely disrupt a system that ensures repairs of hundreds of thousands of cars every year with little to no complaints from actual car owners? This section needs to be removed from the Proposed Regulations.	As discussed above, the Department already conducts enforcement efforts directed at steering behavior by insurers. Six years after enactment of the anti-steering statute, the Department continues to receive consumer complaints about steering; the proposed regulation is intended to curb the steering behavior described in these consumer complaints. **Response 11.19** The proposed regulation assumes that the consumer is capable of exercising their statutory right to select a repairer of their choice, free from encumbrance and inconvenience created by being sent to the insurer's preferred shop for inspection. As discussed above in Response 11.3, any additional costs to the insurance claims system are imposed solely by the election of the insurer. Insurers are not required to inspect any vehicle and, if choosing to inspect a

		vehicle, are free to pursue low- or no-cost alternatives when conducting an inspection. The public benefit of the proposed regulation is obvious. The proposed regulation furthers the public policy, as expressed in CIC §758.5, that the consumer be able to select the auto repairer of their choice. Contrary to Commenters' assertion, the proposed regulation is designed to remedy steering behavior at the heart of numerous consumer complaints; the Department is not concerned with policing which shops do and don't get a consumer's business, so long as the consumer is able to make their choice freely. Despite Commenters' contention that the proposed regulation would "completely disrupt" the claims system, as described above, the proposed regulation only affects a narrow class of claims where the consumer has selected a repairer and declines the insurer's request

		for inspection at a DRP shop. Insurers are free to continue inspections at DRP shops, so long as the consumer consents. Although Commenters state that the current inspections system operates with "little to no complaints from actual car owners," frequent consumer complaints received by the Department put the lie to their contention. The Department declines to remove 10 CCR 2695.8(e)(5) from the proposed regulations, as it is necessary for the preservation of consumers' statutory right to choose their auto repairer.
	Comment 11.20 The insurance industry has worked diligently to determine an appropriate compromise position that would further the CDI's goals of protecting auto insurance consumers while permitting cost-effective operations of insurance companies, which benefits all auto insurance consumers. We ask that the CDI consider making the above changes to the Proposed Regulations in addition to the comments we submitted. Our requested changes are not an over-	**Response 11.20** Rather than working towards compromise, the insurance industry has continually insisted on weaker regulations that would

	reach and, in our view, are significant enough to continue pursuing in the event that the CDI closes its rulemaking file without addressing them. **Comment 11.21** If our proposed changes are not feasible for adoption, we reiterate our request for CDI to consider a reasonable alternative: Given the many unresolved questions and issues with the Department's Proposed Regulations on auto labor rate surveys and steering, we would like to work with the Department to convene a task force involving all the stakeholders to discuss a more comprehensive approach to these issues rather than moving forward with an incomplete and flawed regulation.	preserve the status quo they currently enjoy. The Department does adopt Commenters' suggestion of a 15 mile urban distance limit for inspections, but, after due consideration, declines to adopt the other suggested revisions. The revisions suggested by Commenters are an overreach, as they would hinder meaningful regulatory administration of the anti-steering statutes. **Response 11.21** The Department declines Commenters' request for a "task force" regarding anti-steering regulations. The proposed regulations are the result of years of workshops, public hearings, correspondence, and countless discussions between Department and insurance industry members. During this time, insurers have continually downplayed the importance of consumer complaints and sought to promote weak or ineffective regulations. The Department represents the interests of consumers, which, in

		this case, are not aligned with the interests of insurers. Given the long-standing differences between the stakeholders, the Department believes that there will always be disagreement about the steering regulations and that further delay will not resolve these differences. Therefore, the Department will move forward with its rulemaking at this time.
Terry Lambert, Collision Center [Testimony at Hearing (Tab 15)]: Verbatim, but with inserted parenthetical numbers keyed to responses indicated in blue	**Comment 12.1** Good morning. I have been in business in the same location for the last 30 years. And I have to say that regardless of the laws and regardless of what's supposed to happen as far as steering, a lot of the insurance companies ignore it. Ameriprise Insurance Company, which I was at one time a DRP with, has decided to re-group their areas and put in independent appraisers, and then at that time anybody who had a low claim rate, they would drop you from the policy. I was the only shop within a 4-mile radius. Caliber Collision bought another independent shop that is less than 3 miles from me. After I was dropped, they were added on. If you go -- and unfortunately you can't do this or I would have done it today and screen shot it and sent it to you. Because I had been in	**Response 12.1** The Department thanks the commenter for the comment. As the comment is not specifically addressed to the text of the proposed regulations, the Department interprets the comment as evidence that the commenter believes tends to show that steering is prevalent among insurers he has dealt with. Commenter identifies instances where an insurer stated to the consumer that the consumer was required to take their vehicle to a

	the same location 30 years, I have a very strong customer base. I have a lot of my clients that always want to come back to me. One of my clients came into my office very upset because they found out I was no longer on the Ameriprise list. The reason that they told me this is because when they turned in a claim, they were given a claim number, a website to go to and a password to log in. When they logged in to their website, it says, To choose a shop, click here. There the link took them straight to Caliber Collision. There is a shop in San Bernardino. There's a shop in Riverside. I'm in between those two. I was not listed on the list of shops that they could take their car to. So they called me and said, Why can't you do my car? I said, Well, I can. And they said, Well, they told me you can't because you're not on the list anymore. And they insisted to bring the car to me and they kept telling them they had to take it to another shop. I've had in the last six months State Farm Insurance people who are steering my customers away. My customers have come in and told me, You know, you've done two cars for me. I want you to do another car. State Farm told me I have to go to this shop. And out of the six people, five of them were Caliber shops they were sent to all within my area within a couple of miles of me. They were told flat-out, You have to go there. My customer says to them, No, Blue Mountain Collision is with my shop. I've done business with them before. This is where I want to go.	specific repairer; such an assertion is contrary to CIC §758.5. The proposed regulations are intended to prevent exactly the kind of steering behaviors identified by Commenter; of particular relevance to Commenter's experience, the proposed regulation contains prohibitions against requiring repairs at a certain shop, suggesting or recommending a repair shop (other than in certain cases), and making false statements to the consumer. The Department believes that the proposed regulations would remedy the behavior identified by Commenter.

	And they go, No, you have to go to this shop. This is your closest shop in your area. Three times they repeated: No, I don't want to go there. I want to go to Blue Mountain Collision. And they were told, You have to go to Caliber. One of the guys is a good friend of mine and he flat told him, Look, I've been to a Caliber before. I don't like their work. I'm going to Blue Mountain. I'm taking the car there. I'm going to leave it on Monday. You either have an adjuster there or you don't but they're getting my car. And he hung up on him. So, does steering happen? Yes. All too often. And my customers that I've had for a long period of time want to come to me and they're being steered away. I know this for a fact because they come in and complain. Some of the claim numbers I have which I don't want to put on today. Most of these other customers that I have that have been steered away are being told, Well, we give you a lifetime warranty and we back it, but we have no idea what they'll give you. So the customer says, Well, what do you mean? And they go, Well, we give you a lifetime warranty if you go to one of our shops and these are our shops in the area. And they go, Well, I still want to go to Blue Mountain. And they go, Well, then you're not going to get a lifetime warranty.	

	I advertise a lifetime warranty. I've been there for 30 years. It's on my website. My customers know it. And the ones that have been there before have gotten it, and know it, and still come back to me. I'm losing some of my customer base because they're being steered away to other shops that are getting discounts, whereas I don't give them the discounts because I'm not a DRP repair shop for them. Most of the ones that are being steered away, depending upon which area of Southern California you're at, is either a Service King shop or a Caliber Collision shop. They have right now about 250 shops each and their goal is to get over 800. I know for a fact from someone that I spoke with that some of the insurance people are being told that they get extra bonuses or commissions based upon how many people they can send claims to one of these shops. It's hurting my business and my customers are beginning to question why am I not on one of their approved lists. My shop has a higher rating than most of the Caliber Collision shops, is more qualified than most of the shops, and I have to go through this with all of them. There's a company called VeriFacts, which I'm sure some of you are probably familiar with, that do independent ratings on shops. I have a five star Medallion rating in my area. There is only five within 10 miles and there's about 15 within 25 miles. None of those shops are Caliber Collisions. Caliber a long time ago, years ago, was on the program. They're not on the program anymore because they've decided that the quality of the repair and having someone come in, because you have to pay for this service for an independent company to come in and check the quality of your work, they think it's	

	cheaper to have to buy a couple of cars a year if they don't repair them right rather than have somebody check their quality and do it. I'm sorry. I lost my train of thought. Anyway, that's about all I have I guess. Unless you have any questions.	
California Auto Body Association April 21, 2016 Testimony at Hearing: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 13.1** Good morning. Jack Molodanof on behalf of the California Auto Body Association in support of these regulations. Current law provides for consumer choice. The law prohibits insurers from steering consumers to a particular direct repair company after a consumer makes a clear choice that they want to have their car repaired at a particular shop. Choice should be respected. Unfortunately, some insurers are trying to circumvent the current law and the spirit of the law. They're getting around it by using misleading, what we call, Word Tracks and these Word Tracks or phrases are designed to disparage and discredit consumer's choice. For example, after a consumer makes a clear choice, they want to go to a particular shop and they repeat it, the insurer tries to use word phrases such as, Your shop didn't make our preferred list. Or, If you take it to that shop, we cannot guarantee the repairs. Or, If you take it to that shop, we won't be able to get an adjuster out there for three weeks. Or, If you go to that shop, the repairs will cost more and you will have to pay the difference. All of these phrases or these types of phrases create doubt in the consumer's mind about your choice.	**Response 13.1** The Department thanks the Commenter for their commentary on the law and consumer choice. The Department is addressing some of these issues with the proposed regulations, however, the proposed regulations are designed to address untruthful statements in general, rather than ban certain statements, or types of insurer conduct. Not all "Word Tracks" are necessarily prohibited activities under proposed regulations, only those which contain untruthful or misleading statements. The Department thanks the Commenter for their general support of the proposed regulations.

	The proposed regulations are designed -- that's why we're supporting them -- to prohibit the insurers from making untruthful and deceptive statements that unreasonably influence a customer's right to select an auto repair facility of their choice. The regulations also prohibit insurers from requiring claimants to travel an unreasonable distance or wait an unreasonable time to have vehicles inspected. We think that's a good thing. We think that's good for consumers. The regulations also clarify that after a consumer has made a choice, they're not required to go to another shop to have their vehicle inspected, another shop that the insurer recommends. We believe that these regulations will clarify and strengthen the consumer's right to select an auto repair shop of their choice to have their car repaired. And we feel strongly that insurers who don't steer will not have a problem with these regulations at all. So thank you for all your good work and we appreciate it. Thank you very much.	The Department thanks the Commenter for their general support.
Association of California Insurance Companies April 21, 2016 Testimony at Hearing: Verbatim, but with inserted **Comment Numbers** keyed to responses.	Good morning. Armand Feliciano on behalf of ACIC Property Casualty Association of America. We do have written comments, so I'll be brief. I think I have more questions this time around than I did yesterday. **Comment 14.1** So let me just kind of kick it off. Tony, we had mentioned yesterday about the rulemaking file. I presume those are public record?	**Response 14.1** The rulemaking file was made available to the public from the

	MR. CIGNARALE: That's correct. MR. FELICIANO: And how long will that be open for us to inspect that? MR. MARGOLIS: Probably for the entire time until our record retention schedule, like seven years or something, along those lines; whatever's in the law. MR. FELICIANO: So it didn't close with today's testimony? MR. MARGOLIS: No. And I meant that in all seriousness. It won't close. We might say at the Department that we have closed it when we submit it to OAL, but that doesn't mean that it's closed from view by you or anybody else. So you can look at it any time during the rulemaking process or from many years afterwards. MR. FELICIANO: Okay. I think we did try. And I was reminded yesterday by some members of our company that it's only available in San Francisco. Is that correct? MR. MARGOLIS: No, not correct at all. We have -- we have official documents duplicated both in Sacramento and in San Francisco, and frankly, could do so in Los Angeles as well. So we can make that available to you in any location. MR. FELICIANO: All right. Well, I appreciate that. It's just, we checked the law and it does say under 1291.2 that it has to be available in all three offices.	first day that it the proposed regulations were noticed. The rulemaking file is available as long as the retention schedule requires us to maintain our public files. The rulemaking file did not close with the hearing testimony. The Commenter is incorrect; the rulemaking file is available by making a request to the lead attorney, but may be made available with other arrangements. The Commenter's citation to the 1291.2 appears to be a reference to Ins. Code 12921.2, which pertains to records of the Department generally. The Department's research shows that the regulation public file does not have to be available in all three offices. The Department did list San Francisco as the location to make an appointment since the lead attorney's office is located in San

	I would note, though, I think it says in your statements -- it doesn't say only in San Francisco. It does say you have to make an appointment to go to San Francisco to look at it, so you might want to clarify that. I appreciate it. MR. MARGOLIS: Thanks. So for all those here, we will look at that language and see about correcting that. That may be duplication of language that is long and historic here at the Department from a time when the rulemaking process was focused out of our San Francisco office. With today's technology, we have Kara who is in our San Francisco office who is our legal team, but we have other folks that are significant to other projects in other places and we make sure those records are available in all three locations. And we'll be happy to make them available to you here in Sacramento. MR. FELICIANO: And do I make an appointment with Kara or who else? MR. MARGOLIS: Just contact me and we'll figure out a way to get you those documents. MR. FELICIANO: Okay. Fair enough. **Comment 14.2** Now, looking at the regs real quick, I was given a couple questions by my member companies. Let me see here ... Subdivision (e) of section 2695.8, specifically (e)(3), (b) and (c) are the questions that I would like to kind of go over real quick. There's a provision in there	Francisco. The filing documents stated to contact the lead attorney or the secondary attorney to make an appointment. [All requestors have received access to the regulations public file.] **Response 14.2** The Department contends that "similar allegations" is not inherently vague, and must be read in the context of the sentence in

	about -- on (b) advising the claimant that the automobile repair shop chosen by the claimant has a record of poor service, or poor repair quality, or other similar allegations. Any thoughts on what that's about? That "similar allegations"? It's a little vague. I guess that's the question. It's a little vague. What's other "similar allegations"? Any opinion on that? **Comment 14.3**	which it appears. Section 2695.8(e)(3)(C) retains the "similar allegations" language; in that section, "similar allegations" is understood to refer to allegations based solely on the repair shop's participation or non-participation in a labor rate survey. [The relevant text reads: "Advising the claimant that the automobile repair shop chosen…has a record of poor service…or of other similar allegations against the repair shop, solely on the basis of the shop's participation or nonparticipation in a labor rate survey."] There is a limited universe of statements about an auto repairer which might reasonably be considered to be based on the repairer's non/participation in a labor rate survey. For that reason, the Department maintains that the phrase "similar allegations" provides sufficient clarity when read in context of its sentence. **Response 14.3** The Department appreciates the

	MR. FELICIANO: So I guess a hypothetical. Word-of-mouth type of stuff? Is there an expectation -- let's say, Auto Body Repair Shop X, general reputation around town, people are talking, and saying, Ah, they overcharge, and we hear about that -- our member companies hear about that, how would you look at the type of documentation in that kind of thing? MR. FELICIANO: I'm not saying so much the insurers making that statement. What if one of the DRPs actually said, Hey, you know, we've checked, and yeah, they're our competitors, but they're known to do dismal business. Do we take their word and write it down that we were told as such? MR. FELICIANO: Okay. MR. MARGOLIS: Hold on. Can I follow up, Armand, on your first statement? You seem to raise issue with the expression "similar allegations"; that that wasn't clear to you. So my question back to you is your -- is your objection with the word "similar"? Is it that you want to make certain allegations and not support them as compared to other allegations? Because I'm trying to find out where do we need to draw a clearer line? Or, should we just say "all allegations"? Is there certain allegations you ought to be able to make without -- are you here today suggesting there are certain allegations you should be able to make without documentation and other allegations not? **Comment 14.4**	Commenter's comment, as it appears there may have been a clarity issue with the wording "clear documentation." In addition, some commenters raised concerns that the "clear documentation" requirement might infringe on First Amendment rights. The Department's Final Text of Regulations has removed the wording "clear documentation in the claim file supporting these statements" to address the clarity issue, and avoid any potential First Amendment issue, to the extent any might exist. **Response 14.4** As described above, the Department has removed one

	MR. FELICIANO: I think what I'm saying -- well, at least from the feedback we've gotten, I think there's a little bit of concern of people really don't know what to say at this point. I mean, yeah, it's poor quality, poor services, or other similar allegations. We got their documentation. You know, they're day-to-day folks. They're not constitutional folks, but they are asking us, Well, what can we say at this point? I mean, we can go with different hypotheticals here. A whole day of hypothetical conversation may take place. So we are trying to look for some kind of clarity. I am not a constitutional expert. So what I'm asked, Is this a freedom of speech issue for my companies? Is there any case law you guys can point us to show that saying stuff like this with clear documentation is within -- it's okay under free speech? I don't know. **Comment 14.5** MR. FELICIANO: All right. Well, I'll just sum it up, because I think we raised our points in a comment letter, so. As I said yesterday, we still feel it's sort of a one-sided regulation at this point. It's all on us, insurers. There's the other side. Yeah, we're talking about rates. We're talking about their practices. There's	instance of "similar allegations" during a redraft of that section, but retains the phrase "similar allegations" in another section; the Department maintains that "similar allegations" is sufficiently clear in context of its sentence. The Department appreciates the Commenter's comment, since it appears there may have been a clarity issue with the wording "clear documentation." The Department's Final Text of Regulations has removed the wording "clear documentation in the claim file supporting these statements," to address a clarity issue and avoid any potential First Amendment issues to the extent they might exist. **Response 14.5** The Commenter's comment that this is one sided is vague and unclear as to what "one-sided" is meant. However, it must be noted that the Department of Insurance has authority to regulate the insurance industry, and not the auto body shops. The Department

	two sides to this. And one of the questions asked of me is, Well, haven't you guys talked to the Department about a reasonable alternative? **Comment 14.6** And we've said, Yeah. We communicated, How about doing a task force? We'll get the BAR in the room. We'll get the policymakers in the room. And we raised that again in our comment letter. I'm sure you guys will answer that question at some point. But the question is: We think that's a reasonable approach. I don't know if you have an opinion today whether that's not a reasonable approach to get all the parties involved. But I'm sure -- you've said in the beginning, Geoff, that you guys will respond, so we can wait for that. Either way. I just want to close with that; that we still would like -- rather than moving forward with an incomplete proposal, we would like to get everybody in the room and kind of talk about how we regulate their side as well. Thank you.	has carefully considered and rejected many alternatives to the proposed regulations. **Response 14.6** The Department considered a task force in the past, and it did not lead to a fruitful result. The Bureau of Automotive Repairs was invited to participate in the rulemaking but chose not to participate. Given that consumers and the members of the public are potentially being impacted by steering, the Department feels that his is the most appropriate time to promulgate rulemaking, rather than waiting for all parties to finally participate in another task force that will not appropriately deal with the issues and delay the process.
Chris Evans, State Farm [Testimony at Hearing (Tab 15)]: Verbatim, but with inserted parenthetical numbers keyed to responses indicated in blue	**Comment 15.1** Good morning. Chris Evans with State Farm. Thank you for allowing me to address the panel. My comments are going to be very narrowly focused on a reference that was made this morning by Mr. Lambert.	**Response 15.1** The Department thanks the commenter for the comment. As the comment is not specifically addressed to the text of the proposed regulations, the

	And I just want to address specifically the issue of freedom of choice and State Farm's policy on that. And I want to make it very clear that State Farm's policy is that customers have the freedom to choose the repair facility that will repair their vehicle. In fact, I have in front of me the Select Service Agreement and section (1) Customer Protections letter (a) the very first provision on this multiple page document, says: Freedom of Choice. Provider agrees that vehicle owners have freedom of choice when selecting repair facility. So that language is very consistent with any Word Tracks that were referenced earlier that do exist. That is the very first thing that is articulated to customers that have claims with State Farm. So I just want to set the record in terms of my comments addressing those. Mr. Lambert was kind of enough to give me a claim number for that specific incident that he referenced. So I will assure him and I have that I will follow up on this because we take those issues very seriously. As stated, those are the sum of my comments. Thank you.	Department interprets the comment as evidence from State Farm as to their internal practices regarding Word Tracks and steering.
Personal Insurance Federation April 21, 2016 <u>Testimony at Hearing:</u> Verbatim, but with inserted **Comment Numbers** keyed	Good morning. Michael Gunning, Personal Insurance Federation. We too will be submitting similar to the Labor Rate Reg a coalition letter of all the trades and we'll be sending that over this afternoon on this steering -- on this subject matter. **Comment 16.1**	**Response 16.1** The proposed regulations does not

to responses.	I just have to respond to my good friend Jack Molodanof, because it certainly sounds like just before 2009 when he made the same claim about our actions and Assemblywoman Hayashi passed Assembly Bill, AB 1200, which allows us to talk to our insurers constitutional free speech and tell insurers truthful, non-deceptive information about the benefits of their relationship with their insurance company. I thought we handled that back then, but I guess Jack is still of the opinion that we're not doing that. So I want to clarify and make sure you guys remember that 1200 did take care of this or look at this. In that sense, similar to yesterday, I want to suggest some changes. Some thoughts we've had about how to make these better or more functional. Armand touched upon it for us. **Comment 16.2** Clear documentation I think is vague and ambiguous. And so, we're just not sure, Tony, what is in the file. What would constitute clear documentation? So something more about letters, notes, pictures or something like that to clarify that. And that's in, of course, subdivision (e)(3), (b) and (c), wherever you have clear documentation listed. **Comment 16.3** Secondly, in section (e) for (a) (b) and (c), the regulations require	interfere with constitutional free speech, and does not prohibit truthful, non-deceptive information. Since the proposed regulations does not deal with these issues, this comment is beyond the scope of the proposed regulations. Further, the Department is aware of AB 1200, which amended Ins. Code Section 758.5. However, these proposed regulations do not conflict AB 1200 or any other portion of Ins. Code Section 758.5. The Department thanks the Commenter for the suggestions. **Response 16.2** The Department appreciates the Commenter suggestion, and all reference to "clear documentation" has been removed from the proposed regulations. **Response 16.3** The Department agrees with this statement.

	insurers to inspect the claimant's car within six days from the time the claimant makes the car available. I guess in regulatory terms, and for us, "claimant" means the person filing the claim including policyholders and third party claimants. We would argue that we don't necessarily have a relationship with the third party claimants, so we think the regulation should only apply to our insurers. **Comment 16.4** And the regulation should also consider inspection times beyond six days. What if there's a catastrophe? What if it's rain? A storm? San Diego, we know the wildfires. Mud slides, the fires up here. There should be some accommodation for a catastrophe if someone can't make the vehicle available. Lots of times people don't repair their car right away. They'll wait and see or hold onto the car or wait till it's more convenient for them. And so, the regulations should allow for that or accompany that.	The Department appreciates the Commenter's concerns regarding third party claimants. In the Final Text of Regulations under subdivision (4)(C), the Department addressed third party claimants. The six business days applies only after the insurer has decided to inspect the third-party vehicle and notifies the third-party claimant of its intention to inspect the damaged vehicle. **Response 16.4** Although the Department agrees that exceptions should be made for unusual circumstances such as catastrophes, the Department feels that it is unnecessary to state them here in these proposed regulation. Existing regulations already make an exception for the existence of extraordinary circumstances under the Fair Claims Settlement Practices Regulation section 2695.12(a)(1). Thus this section would also apply to the proposed regulations.

	Comment 16.5 The next section, the regulations propose that insureds not ask customers to travel more than 10 miles in urban areas with populations over 100,000 and 25 miles for everywhere else. We think this is restrictive and we probably want to see you make a move to have a set distance. I'd throw out 25 miles all around the state. We think that would work better. Given the geography of California, traffic in urban areas, 25 miles would probably be more consistent and easier for us to implement. **Comment 16.6** Third comment. The regulations would not allow insurers to have inspection centers and claim offices or located in their direct repair shops. We think this restriction is costly and prohibitive. Require us	In addition, to address Commenter's concerns and similar comments received from others, the Department has added Section (e)(4)(D) to the final regulation text; this section governs inspections if the claimant has not made the vehicle reasonably available for inspection. **Response 16.5** The Department understands the Commenter's concerns regarding 10 miles, however disagrees with 25 miles given the diverse geography of California, especially in urban areas. However, the Final Text of Regulations now reflects fifteen (15) miles for more populous areas under subdivision (e)(4)(A). **Response 16.6** The Commenter is incorrect, the proposed regulations do not prohibit insurers from having inspections centers in their claim

	to set up new inspection centers, expend millions of dollars frankly. I touched upon that yesterday. We think these regs full of limitation would cost millions of dollars. Requesting vehicle inspection and repair shop is just a good claims practice. We think it helps to assure the claimant that the repair evaluation provided by the chosen shop will result in a safe and satisfactory repair. There's nothing in section 758.5 that justifies or requires the elimination of the good claims practice. Geoff, do you have a thought? MR. GUNNING: So what happens is, some of our members will literally rent space from a shop and have a person available at all times to go in there and inspect a vehicle. And so, that's what we mean, an inspection facility in a shop. And so we think this prohibition against inspections at direct repair shops would affect that process. MR. GUNNING: Okay. We'll take that back. It's good to know. That's it for me. Thanks guys.	offices or direct repair shops, and this topic is beyond the scope of the regulations. The proposed regulations only state that an insurer may not compel the consumer to submit to inspection at a DRP shop and that the inspection must take place within a certain radius; the regulations are otherwise silent on where an insurer may inspect a vehicle, or have an inspection center. The proposed regulations do not impose any costs on insurers; all costs result from decisions made by the insurer regarding whether or not to inspect a vehicle, and the means of inspection employed.
Hillel Shaman **Eli's Body Shop** April 21, 2016 Testimony at Hearing [Tab 15]:	**Comment 17.1** Hillel Shaman. Good morning. Thank you. I will try and do a better job than I did yesterday. I'm getting a little used to this.	**Response 17.1** The Department thanks the commenter for the comment.

Verbatim, but with inserted **Comment Numbers** keyed to responses.	So, you know, I'm not that prepared but I definitely noticed some things that ... I'll probably want to come back up again. But, I'm going to try to make this non-personal too and strictly about business. Honestly, as I was saying yesterday, if these guys would follow the rules, none of us would be here. All these things -- the problem is that they say they're going to do something and they don't. And the problem is, is they're such a big company, it's hard for them to be consistent. You know, there's several times I'll talk to one person at State Farm and then someone else will say something totally different and they're just not well-informed. **Comment 17.2** So my main issue is: Is there teeth in some of this? So like, if they don't make it in six days, what happens to them? So let's say they -- I'm thinking I was reading this in the ... In this, that if they have to come and reinspect, they have, what, six days to come out. Is that right? And no later than that? I think it says if there's a supplement. MR. CIGNARALE: Correct. Six business days. MR. SHAMMAN: Okay. So six business days. So they don't make it in six business days, what happens? MR. CIGNARALE: Well, enforcement of these regulations are subject to the Unfair Practices Act which has a specific laid out	**Response 17.2** Commenter contends that six days is an excessively long period for the insurer to complete inspection of the damaged vehicle and that a fine should be established for insurers not complying with the deadline. The Department believes that a six day inspection window strikes a balance between the consumer's interest in getting their vehicle repaired quickly, and the insurer's business realities; insurers want a longer period than six days.

	administrative process which includes a hearing process and potential sanctions at the end of that process. MR. SHAMMAN: So can we recommend to have a specific penalty like they pay for the rental car? Because that's their thing. They'll go on the phone and say, Oh, yeah, come to our shop, because our cars get fixed a lot faster. Because guess what? They don't have to reinspect. Well, that's a total obvious unfair business practice. You know, they're selling policies and now they're able to control the expenses too. I mean, that's not set up right. I mean, honestly, I was talking to some business owners yesterday. It's obvious that they're trying to put body shops that are not good for them out of business. So you can't sell policies and then control the expenses. Just right there, it's already a problem. It's like it's a conflict of interest. I'm going to sell you a policy and then I'm going to tell you how your car gets fixed. So my whole thing is that, if they're going to be able to do that, there needs to be some consequences when they don't follow the rules. So if they're going to come out and say, Okay. We're going to come reinspect. I think it's reasonable that if they're not out there in six business days -- and I think that's way too long. I think the amount of days that they're up to come and reinspect, they should pay. Because why do they need to reinspect? For what? What? I'm not doing the right thing? Prove it. I mean, they could still prove it. They'll have my invoice. They can ask for pictures or whatever. They already do. Why do they need to	Because failure to inspect a vehicle within six days would constitute an unfair claims practice if the proposed regulations take effect, the Department believes that a separate fine for missing the inspection deadline is unnecessary. In response to Commenter's concern, and similar comments received from others, the Department has modified the final regulation text at Section (e)(4)(B) to address reinspections.

	come and reinspect? So if they have to, they should have to pay for the rental car? So can we do that? Can I make a recommendation MR. CIGNARALE: You can make that recommendation. MR. SHAMMAN: Okay. Thank you. I would like to make that. **Comment 17.3** All right. Then secondly, when they are proven to be out of compliance, I don't think monetary fees -- and I never know what they are -- really hurt them. I don't think they care. They're like, That's okay. Because they use it as a business practice also. And this is an assumption, but I think based on what happens, is they don't really care how much they get fined, because overall they're still making a ton of money and saving money. But I think what would really hurt them -- because I know it hurts us as a body shop. Is that, when I'm not in noncompliance -- and by the way, I've never been out of compliance or been proven to be out of compliance. But if I am, it's advertised by the BAR. Why can't it be by them? State Farm is out of compliance once again for, you know, taking three weeks to inspect and for recommending other shops. And they do that all the time. All the time. They are the worst. I mean, I know he says that they are always following the rules. I don't think he knows. I really don't think he's in touch. Because I see it all the time. I'm on the phone listening to it sometimes. Oh, no, don't go there. Based on what? Why not?	**Response 17.3** Commenter recommends a system whereby insurers with multiple violations of the steering regulations are listed publicly. Commenter's proposal is outside the scope of the proposed regulations, which are intended to prohibit steering practices, rather than to create new penalties. Penalties for repeat violations already exist in the Fair Claims Settlement Practices regulations.

	So my other point is: What exactly does it -- like, what evidence do they need to have to say that I'm not a compliant shop? Do we know that? Does that mean like I've actually had a BAR penalty or -- I don't know. What is it exactly? **Comment 17.4** Can I make that recommendation that they actually have to have a certain -- you know, a shop has to be a certain penalty or something for them to even suggest that that shop either takes too long, costs too much or doesn't do good work? **Comment 17.5** And they don't warranty their repairs. I hear that all the time. We warranty our repairs. Even that, that should be in there. They don't	**Response 17.4** The Department declines to adopt Commenter's suggestion that insurers be required to produce proof of regulatory actions against an auto repairer prior to making statements about the quality of repairer's work. As discussed in the response to other comments, the Department removed the requirement that insurers provide "clear documentation" when making negative statements about the quality of an auto repairer; this language was omitted out of concern that the requirement violated presented a potential clarity issue. **Response 17.5** The proposed regulations are responsive to Commenter's concerns, in that the proposed regulations ban false or misleading

	warranty repairs. They are an insurance company. They're not in the body shop business. They should never be able to say they warranty their own work. We recommend shops that warranty their own work. But they should never be able to say that we warranty our own work and they shouldn't suggest that any other shop does either. So any way. **Comment 17.6** What else? And I may come back because I'm still kind of reading through some of this. The response to 25 miles. I mean, LA it takes me an hour to get 5 miles. Really? I mean, 25 miles, that's ridiculous. That's like two days on certain traffic days. You know, so it should be like 2 miles. All right. Anyway, what else is there? Anyway, just the bottom line is, I really believe that -- I mean, they want these big shops to handle all their business, do all the HMOs -- I mean, there are all these MSO car companies buying all these shops. They don't want these individual shops charging them money. And honestly, there is value to small high quality shops. And the way this is structured, it's really difficult for us to compete. **Comment 17.7** If their shops don't have to get inspected and I do, and I have to sometimes pay for their delays, and they always say, Oh, the shop never called us. We send them faxes. They require us to send a fax.	statements. Under the proposed regulations, it is a violation of the Fair Claims Settlement Regulations for an insurer to make false or misleading statements, including falsely asserting that the insurer warranties auto repairs. **Response 17.6** Under the proposed regulations, as revised, claimants residing in urban areas could be required to travel up to 15 miles for a vehicle inspection; this distance was adopted as a compromise suggested by insurance industry commenters. Claimants residing in rural areas could be required to travel up to 25 miles, which is reflective of the distances between many rural communities. **Response 17.7** The delays described by Commenter violate current Fair Claims Settlement regulations and are beyond the scope of the current rulemaking, which is

	We'll send it to them and they can't find it or you have to go through three different people. And they're, Oh, yeah, they did send it. Sorry about that. And then, where's the accountability? Okay. We'll pay for it. No, they don't. They never pay unless you have to go to court. And then you have to go to small claims court and you have to try and sue them, and blah, blah, blah. And you have to get the customer guy, and honestly we do that. But, you know, it's a pain. And, you know, it's hard to stay in business. And if I didn't have a good reputation and if I didn't have a good referral source, I don't think I would be able to compete. And that's happened to a lot of shops. And the cars are becoming even more smart, for lack of a better term. They're not going to be able to get in accidents as much. There will be less work. There will be less body shops. And now we got to compete with their unfair business practices too? **Comment 17.8** So I really appreciate this. I think this is great. I just -- I still don't see the teeth. I wish you guys could put a little more teeth in it and be a little more specific on what the penalty is. You need to reinspect; you pay for the rental charge. Maybe they won't reinspect so much. Maybe that won't cause a delay. Because based on, Why do they have to reinspect? They're not experts. They don't fix cars. They hire appraisers that were old techs or out of college. And all of a sudden now they know how to fix cars? And they tell me how to do it after I spend all this money on training? That's ridiculous. I mean, they have to?	solely focused on curbing steering behaviors. **Response 17.8** By incorporating the proposed anti-steering regulations into the Fair Claims Settlement Practices regulations, violations of the anti-steering regulations would be punishable under the penalty provisions of the Fair Claims regulations. The broader Fair Claims regulation text was not included in documents provided to the public, as those regulations already exist; Commenter likely had not seen the Fair Claims regulations, hence he did not infer

	They go and recruit college kids and come out and say, Okay, this guy's an expert. This guy is going to tell your painter how to paint a car. That's ridiculous. Why do I have to wait for them to reinspect? To make sure that I'm following the law? What kind of arrogance is that? Are they following the law? No. That's why we're here. They don't follow the law. They don't follow this. They can't control it. They're too big. **Comment 17.9** What's up? I mean, I think they should be sued. I think they should be put out of business. They're putting me out of business. And he's laughing. And nothing personal. I mean, honestly, I could probably hang out with all these people afterwards. But the bottom line, this is business and they are trying to put me out of business. And so, it's not funny. It's really not. And I don't really see any teeth in this. I really don't see how this is going to change anything. Unfortunately. I hope it will because I definitely see that you guys are trying to do something and I totally appreciate it. But I need to see some teeth. Anyway, thank you for giving me the time.	the "teeth" provided under the Fair Claims regulations. **Response 17.9** Regulation of the relations between insurers and auto repairers is beyond the scope of this rulemaking. The proposed regulations are intended solely to address steering behaviors. As a general rule, the Department does not have a statutory mandate to regulate the business relations between insurers and auto repairers, unless it concerns claims settlement practices or the very narrow issues described in Ins. Code Sections 758(a) and (b), which are not applicable to this rulemaking.
John Tyczki J&M Auto Body, Eldorado Collision Center, and John's Collision Center	**Comment 18.1** I have three auto body shops in San Diego County, J&M Auto Body, Eldorado Collision Center and John's Collision Center.	**Response 18.1** The Department thanks the commenter for the comment.

April 21, 2016 Testimony at Hearing [Tab 15]: Verbatim, but with inserted **Comment Numbers** keyed to responses.	Again, thank you for being here and allowing us to speak our opinion, maybe make some recommendations that you'll take to the Commissioner and see if we can fix some things. I've been part of the CRA for years. If you've heard of the CRA before, we're not – there is no CRA any longer, but ... So I've been up here quite a bit. I've been dealing with a lot of this stuff for years. So I have a lot of comments and I'm going to – a lot of the stuff that I have to say, a lot of guys have already said. A lot of people have already said. Like Jack, he's 100 percent right, those comments, and I know State Farm came up here and tried to say that these comments aren't said. And, you know, I'm not going to pat State Farm on the back too much because there are some issues. But they are one of the better ones about not steering when they speak to the customer. But if you go to their website and look for a select service shop, they put at the top of that list who is the best that plays their game with their numbers. So that's the shops that the customers select first. Because if you're at the top of the list right in the mind, right, people think, Oh, top of the list. I'm going to him. Okay? So they don't tell customers on the phone that you need to go to this shop, but I do recommend you go to the website and select from there. And a lot of people – you know, I know a lot of shops. Been in this business 40 years. I know a lot of – all the shop owners in San Diego County. And those ones that play that game better are getting most of the work. It's funny that they measure cost per claim. They measure how many aftermarket bars are non-OEM parts you use, used parts versus OEM	Because the comment is not specifically directed at the text of the proposed regulations, the Department interprets the comment as evidence that the commenter believes shows that steering takes place within the auto repair marketplace.

	parts. They measure days in shop. They measure how much you repair versus you replace. They all – but what's funny is, they don't measure cycle time – excuse me – CSI, customer satisfaction. I have insurance companies that I work with that, though, I give zero discount, they have a deal where they measure the cycle time. And if your – or the CSI. And if your CSI is low, you have to give a very small discount at the bottom line. And I said, Well, this is great. That means I'm going to get more work because I'm doing the best job for the customer. Oh, no, it doesn't. All they really care about is how much it costs if you're playing their game, following their matrix. Unfortunately, for a lot of those shops that they are – you know, the big box shops they're sending to because they play the game the best, because they have internal people that just measure and watch and make sure they're doing everything they're supposed to do. They have people right now, some estimates, they're getting sent up to a hub inside their own big internal company, and they're being scrubbed, and they're saying what to do, and they're sending these estimates back to the shops. The shops – the shops at the particular location don't even have control of what they can charge. Because home office is controlling it so they can keep the numbers where they want them, so they can keep getting work. But what the result is, is bad repairs. Unsafe vehicles on the road. Okay? And if you want, I'd be happy to. You have my card. Send me an e-mail. I'll send you some claims that I've done for these big boxes. And the sad thing about it is the customer has no knowledge. And how did I get those jobs? Well, let me tell you: They had a bad experience. So the customer comes to me, he says, I'm never going to them again. So the customer comes to me. We do a walk around	

	the vehicle and we check for previous damage not related. And you notice the gaps aren't right, paint issues, so we bring it up. Oh, I had it repaired at Caliber, Service King, whatever. They're all at fault. So what insurance company was it? So let's say it's USA, for example. So USA – we notify USA that, Hey, this car has a problem. And yet, it was one of their recommended shops. So USA will pay me again to re-do it. Now, of course they go back to the body shop and extort the money out of them. Okay? Because if you don't pay us back, we're – you're going to be taken off the list. Okay? So when they say they're going to guarantee, they guarantee they're going to extort the body shop that did the work. Now, some body shops go out of business. Okay? So they roll the dice. Insurance companies to me, it's nothing but a gamble. They'll take the chance. Because they hope that the consumer has no knowledge of what to look for or what to look at when a car's repaired, and they don't. Evidence by, when a customer comes in and they go, Oh, your car's been repaired before. Well, how did you know? And we explain it to them. But we're the professionals. They're not. They get in the car and drive it. They put gas in it. You know, that's all they do. They don't know what to look for. So the sad thing is, by law the insurance company is supposed to notify the BAR when there's bad repairs and/or fraud. It's not being done. And I'll ask the local guy, Why isn't that being done? And he looks at me and smiles. Because I believe it was maybe Jack or Terry that said that there's these big bottom line discounts each	

	monitor or quarter, whenever they settle up. And there are. And it's all driven by how much they send to these big boxes. When you're dealing with 400, 500 shops – I mean, Caliber has closer to 400 shops between San Antonio – they're huge in Texas and in California. That number's huge. And it's all based off how much they give, you know. And we see their estimates from customers that have gone to them to get their estimates. And they're bottom line discounts are 8 percent, $42 an hour, which is $8 below the hour that they're paying me. Okay? Let's say, for instance, USA pays me 50 bucks an hour. I just got the quarterly reports. I get .5 back. I'm getting .5. It's almost immeasurable. Right? Caliber is giving 8 percent – 7, 8 percent. Fixed 7, 8 percent and with a lower rate with known bad quality, known fraud, and they do nothing about it. I could go on for hours about stuff like that. Terry mentioned the guarantee. We already talked a little bit about that, so we'll pass on. The thing about the shop starting the repair right away, that's a big deterrent for a customer. They want the car back. You know, the insurance companies, they charge for rental – you know, the insurance companies, maybe on the policy if they have a rent-a-car coverage, but it's limited. $600, 30 days. There's some cars that can't be done in that timeframe. You're talking $20,000 repair. You're waiting for a wiring harness for three to four weeks. I waited on a floor for a State Farm job for three months. The part kept coming in damaged for some unknown reason. Honda shipped it through UPS. A floor panel, the box is 20 feet long but the pack for	

	a floor panel is about 15 feet. And it kept getting damaged. They put that on us. That cycle time clock ticks on us. They can care less. So then, you're measured on the cycle time. So even though you're doing good quality repairs. You got great customer service. You don't get the work. That's unfair. **Comment 18.2** To make those comments, If you can't get there in time – you know, if you don't take it to our shop, we can't get there for a week. Well, they used to be able to get there before a week. And Michael said something about these costs of claim centers – or inspection centers. Well, when the DRP programs came out, they closed all their claims offices because they have us doing all the work. So they made billions of dollars by shutting down their claims offices. No big box. No employees. We do everything. We take the photos. We write the estimate. We send it to them. They have somebody sitting at a computer looking at a picture saying, Hmm, adjust this, adjust that, and they send us an estimate that we have to re-supplement anyway. But we're doing all the paperwork. So they basically got rid of their infrastructure. And now, because of this law, they're claiming, Poor us. They got rid of all their infrastructure and they made billions. Now, Okay, you got to put it back. Hire some people. We're doing all the work for them. We do their total losses for them. Get $0 for that by the way. Started off 75. But then, you know, just like stringing it on, stringing it on, dangle the carrot. You're the best. We're going to keep you the best. That's the other thing. I'm probably going to get in trouble because this truly does happen.	**Response 18.2** The proposed regulation is responsive to Commenter's concern regarding time to inspect a vehicle, as it requires inspection within a six day period after notice of claim.

	When State Farm came out with their Select Service. It was service first before that. There was 125 shops in the market, 145. We're going to narrow it down to 45 because you're the best and we're going to pay you X amount of dollars for your total losses. That's gone away. You have do this. You got to follow this parts trailer. It's so inefficient. And all they're doing is watching us. The software suppliers are giving their information of where we're buying our parts, how much we're making on it. We're not allowed to make a profit. When I started my business – my own business, I really tried to do without DRP relationships, but you can't. Because the insurance companies use every deceptive way to get the car out of your shop. They don't even drive by anymore. They won't even drive by. You know, the average person, you know, every five to seven years gets in a car accident. So it's not the top thing in their head when they get in a car accident. First thing they do is call the insurance company. They think they're their friend. They're not their friend. They can care less about them. You know, I have a family business. I have 35 employees. We fix cars right and we have good customer service. We have great customer service. And we should be steered away so they could pad their pockets? There's some insurance carriers I don't even see. I can't remember the last time I saw a Progressive job in my shop. They don't exist. Because they were allowed to have the Concierge program. They have one big box. I consider it like, Welcome to my parlor. Everybody knows Charlotte's web. Right. Come on in. Then you're	

	stuck. They don't even have windows on that place. They bring cars in. They write a customer estimate. They put it on the car. Make them feel all fluffy. The customer has no idea where their car's going. And if you saw those place where the cars were going, you wouldn't take your car there. So we don't even see Progressive cars anywhere. They do great job security. Geico, great job security. I hear comments from some State Farm employees. We're at 43 cents on a dollar. Geico's at 22 cents. We need to get down to that. I go, It's impossible. You have agents. They have a lizard. It's not going to happen. Your agent's care. I have agents that I know that I'm about ready to be dropped out on one of my shops on the State Farm program because I don't play their game. I mean, I play their game, but I can't help it. The car dictates the repair. So because my average cost per claim is 4,000 bucks, you're going to drop me? Care less about my quality. Care less about my service. Well, I have agents that are committed to me because they've known me for 30-plus years. And they said, No matter what happens, I'm still sending you the car. State Farm doesn't use aftermarket parts, aftermarket sheet metal they say. So how are they going to get down to that number? They're going to get down to that number by driving these shop's numbers down and whoever plays the game the best, that's who it matters until they hit that number. You know, they just sent out a thing. They're going to start dropping other shops now based off their matrix, their RPM reports. But they do not allow any recognition for CSI. They don't call customers. We call customers. I have an employee that calls – the week after the repair, we call. Make sure they're happy. They don't	

	call any customers. They send down inspectors to look at the repair because it's a BAR requirement and that's all they do for CSI. So we're not being measured off CSI because really they could care less, so. You know, Michael said he wanted to straighten out Jack's comments but Mike's right – I mean, Jack's right. They say all this stuff. Everything Jack said, they said. If you take your vehicle there, we don't guarantee repairs. We already talked about they don't guarantee anything. If you take it there, we can't start on it for a week. **Comment 18.3** So let me propose, you know, they did it before and they're currently doing it now. Some insurance companies are currently doing it now. They're seeing cars the next day after a claim's being done. Right? And they're going to the claims office. And this is a whole other issue, not part of the discussion, but I got to tell you, if you saw these estimates coming out of these claims centers and the estimates that are being written by these adjusters that go out to these people's houses and handing them a check, you would be frightened. You would be frightened. There's no suspension damage on cars. You could visibly see it. Go ahead, people, drive the car away. There's known unibody or frame damage on these vehicles and they're letting people drive away. It's scary. Customer goes – we go, You can't drive this car. Well, the insurance company told me I could.	**Response 18.3** Commenter's comment is not responsive to the proposed regulation, as it addresses insurer claims settlement behavior; the proposed regulation is directed specifically at steering behaviors. However, the proposed regulation is responsive to Commenter's concern, as it prevents the insurer from communicating false or misleading information to the consumer. Informing the consumer that a vehicle is safe to drive when it is, in fact hazardous to drive, is prohibited under the proposed regulations. In addition, the practice described by Commenter likely constitutes a violation of existing Fair Claims

	It's not safe. Let me show you why and tell you why. Then I explain the whole process and make them understand what a unibody does. And today's cars, the suspension is so soft, one little impact could throw it out. Now, in 2008 when the economy took this big downturn, what do you think happened? The insurance companies started writing customers checks, leaving things knowingly off the estimate for them. Then they hand the customer the check and they know seven out of ten cash the check, because they don't know their car's not safe. I've seen estimates come into my shop. They pay the customer $647.37. I know that number. It ended up being $4,274.00. The bumper reinforcement severely damaged. Of course it had to be replaced. The radiator and A/C condensers were blown out. They had the guy drive the car out of there. So they measure some drivable cars with these reports and non-drives. They think just because the customer can start it and drive it away, it's a drivable car. It's ridiculous. I mean, we're here to protect the consumer. They should not be allowed to cash out a customer and steer them to wherever they want. **Comment 18.4** And, I think it was Michael again that brought up the inspection center thing. There should be a law not allowing them to have an inspector at a body shop, because that's just another way to steer. I mean, you come in. You don't have an estimate every five years.	Settlement Practices regulations, including 10 CCR 2695.7(g), prohibiting unreasonably low settlement offers. **Response 18.4** Commenter's request for a rule banning all inspections at auto repair shops is beyond the scope of the proposed regulation, as not all inspections at an auto repairer necessarily lead to steering

	You go into .... Oh, I'm meeting with a guy at the body shop. Geico does it all the time, their Express Repair Program. It's criminal. That program is criminal. They don't allow supplements. What do you think is happening? They don't allow when the – when they give the estimate to the body shop and they go, Can you get this done? How long will it take? Five days. All right. On the sixth day, guess who's paying for the rental car, the body shop. But they just collect the premium for 30 days. So why are they forcing the body shop to do it? And there's no supplements. I've had those Geico shop work jobs in my shop. And body shops are writing customers a check. Geico steps away. They guarantee, guarantee, guarantee. Well, they didn't guarantee these people. They said, Well, you deal with the shop. The shop's telling me, If it's not on the estimate, we don't do it. So because you made the deal with the devil, you're not going to fix the customer's car right? Look, we all make some deals. We still got to fix the car right. They are overlooking damages to keep the costs down. Not only with the body shops that they work with; the insurance companies themselves. All because they control that shop. Look, if one of those shops lose a big account, they're done. All of us in this – the body shop business guys, we're 90 days from bankruptcy and they	behavior by the insurer. However, the proposed regulation is responsive to Commenter's concerns; Section (e)(5) prohibits an insurer from requiring a vehicle be inspected at an insurer's DRP shop, or other location designated by the insurer. Commenter's comment regarding time for completion of repair work is beyond the scope of the proposed regulation; CIC §758(a) allows insurers and repair shops to negotiate the terms upon which an auto repairer will participate in an insurer's Designated Repairer Program.

	know it. You have three bad months in a row, you're done. That's what they want. They put the fear in us. We're going to leave you. I'm almost to my solutions if they make sense. And, uh ... Oh, Armand. Love that guy. Not really. He talks about making comments about bad work and overcharging. $42 an hour is not the going rate. They're undercharging. Shouldn't we be able to tell them – tell the customer that they're undercharging and they're promoting bad repairs on your car? Should we be allowed to do that? We don't do that. Again, the BAR – these insurance companies that are playing, Poor me, if they would follow the rules, we wouldn't be here. You know, the word "preferred" just sounds like, They're the best. It's like Progressive Concierge. Look, when you go to a concierge at a hotel and you ask them for, Hey, where do I get a steak? They tell you the nice places. That's not what's happening on these concierge programs in these preferred shop lists. **Comment 18.5** So what do we do about it? And I could tell you we've been talking about this a long time and steering's been going on ever since DRP started. Ever since DRP started has been the downturn of this industry. And the worst part is, the risk that they're putting the consumer in. Driving cars that are not safe. Today's vehicles are so	**Response 18.5** As discussed above, it is a violation of existing Fair Claims regulations to settle a claim for an unreasonably low amount. The behaviors described by Commenter, particularly those which result in the consumer driving an unsafe vehicle, likely

	technical. There's certain metals. There's crush zones. If those are compromised in any way, they're not safe to drive. Personally before I got up here this week, I had three vehicles come into my shop. Three different insurance companies, and they all had down, Buff wheel. Buff the wheel? You could see the wheel needs to be reconditioned. You shouldn't even recondition it. You should replace the wheel. But most manufacturers say, You cannot recondition that wheel. They force the shops to recondition them. Again, putting customers at risk. But what they do – they're slick – they put down, Oh, .3 buff wheel. Because what they're really hoping is the customer goes and cashes the check. You see? So they're underpaying the claim. They put five hours on the door knowing the door needs to be replaced. They're underpaying the claim. That's all part of the Unfair Claims Practice, isn't it? So should they be allowed to steer their customer to a shop knowing that that stuff's going on. I don't think so. So, I'm sure this probably won't go very far, but really? Free the market. Simple. Get rid of DRPs. Let people go shop. Let them go figure it out on their own. You know, when you sign a DRP contract, do you know they indemnify themselves? They take every risk out of it? It's all our fault even though they dictate how they want the car repaired. And if you don't repair the car and they want to, then you're not competitive. Is that fair? No. **Comment 18.6**	violate other regulations and provisions of the Insurance Code. **Response 18.6** Eliminating DRP programs altogether is beyond the scope of the proposed regulations.

	So my recommendation is: You get rid of DRPs and you pretty much solve this problem. Okay. We heard that the – Jack also mentioned, you know, if you take a ... Here's another thing they tell people. Especially claimants. Well, if you take it there, we can't get there if your car is drivable. How does the person on the phone in Atlanta or Illinois know that car's drivable? They don't know. Just because the customer can start and the wheels roll, they think it's drivable. It's not. The professional should be looking at that and determine if it's drivable. Not somebody that just got out of college as Hillel said, and went through some training, and telling us – the body shop guys how they're going to fix the car. Professionals should be looking at that. And all they're worried about is rent-a-car costs. So what they tell the customer is: Well, if you take it there, you're going to have to wait for us to get there. And, you know, we're not going to put you in a rental car until they have the parts there for your car. Not even knowing if the car is safe or not. Now some insurance companies like USA, they have some pretty good policies about if a car's drivable. Mirror's hanging off, not drivable. Headlight, tail light damage, not drivable. Any frame repair, unibody damage, not drivable. Nobody else has that. Why does USA have that and other people don't? So they're fair when it comes to that, but the car has to get to a professional to see that. So what they tell customers is: If you go there, we can't bill your rental car. They make it as hard as possible for them to do it. A lot of people don't have that expendable cash to put on their credit card to guarantee the rental car payment. And then, Send us the bill when you're done and we'll reimburse you. People don't. That's inconvenient. They do it on purpose. They bill direct with	

	everybody else, but they won't do it for – if you don't take it to their shop, they don't do that. That's unfair. So one of my recommendations is, is that they are required to bill the rental car direct and not make the insured or claimant pay that cost upfront. They've already accepted the liability. What's the issue? They're trying to make it inconvenient for them. **Comment 18.7** And lastly, I guess, this whole six days to me ridiculous. Forty-eight hours seems reasonable once a claim is filed and it is accepted. Okay? They do it now. They do it now. Most of them do it now, you know. Now, we talked a little bit about infrastructure and, you know, I just came to a thought. Because, you know, I know a lot of adjusters. I've been around this business for a long time and I've worked for a family-owned company. We had eight shops. Chapparone Auto Body in San Diego. Worked there 17 years. We cared about our customers. We were mostly ... This is before DRPs and people just came to us because we did good quality repairs and people heard about us. I lost my train of thought. Let me see ... So I think I got it back. So prior to this, they would come out within 48 hours. They would come out the same day. They had all their big infrastructure. Now they don't. But now what they're doing is, all these adjusters that used to work for me at Chapparone – that's where I was going – you know, a lot of these guys used to work for me. And now, they're working for insurance companies and they're saying, Man, I'm getting ten, 15, 12 claims a day. And I have to go look at these people's car. Well, they weren't doing it prior to 2008.	**Response 18.7** The six-day period contained in the proposed regulation represents the longest that an insurer may wait to inspect a vehicle, provided that the claimant makes the vehicle reasonably available for inspection. Many insurers can and do inspect vehicles more rapidly. The six-day period was derived from existing Anti-Steering regulations in place in New York state. Although insurers would like a longer period to inspect and repairers would like a shorter period, the Department believes that six days represents a reasonable compromise.

	Now they're all starting to catch on. They're all trying to get down to that 22 cents on a dollar like Geico and they're cashing people out. And infrastructure, they put them in a company car. They're working at home. They all got computers. You know, they will – they'll pay somebody based off a photos and write them an estimate based off a photo and send them a check and call it good. But they won't allow us to write it up, take a picture. Now, if you're on their program, you do. But what if I'm not on the program? Why can't I just send you a picture? You're paying people off a picture. Why can't I send you a picture, and take the photo, and send you the estimate and pay me? This could all happen in today's technology. They're making excuses. I probably missed something, but I've been up here a long time. Thank you for your time.	
SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE MODIFIED TEXT AVAILABILITY PERIOD OF SEPTEMBER 26, 2016 THROUGH OCTOBER 11, 2016		
John Torchia DRSN (Former) September 23, 2016 Written Comments 14L: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 19.1** Subject: Traditional anti-steering is moot You are tightening the anti-steering regulations that apply to a narrowing portion of the collision industry and are akin to "closing the barn door after the cows got out". As I testified in a preliminary hearing in LA on the subject a couple of years ago, the insurers are	**Response 19.1** The Department thanks Commenter for the comment. The comment discusses consolidation in the broader auto repair market; this topic is beyond the scope of the proposed regulation. The

	making advanced deals with the new breed of consolidators, and partial degrees with MSO (multi-shop operators) in advance of need. As these large businesses spread across not only California, but the nation, they have the ability to overshadow and change the business climate in a way no singular independent business may do. The threat is still new enough that it is not readily apparent, but the deals are in place in many instances, whether stated or sublime to include: Liberty Mutual Nationwide Allstate Mercury National General and others that don't quickly come to mind Certainly the consumers' rights to freedom of choice are independent of these backroom deals, and the regulatory intent is going to be purposeful, yet the move towards near monopolistic presence before the public mean the odds are stacked. Example: There are somewhere just below 100 Caliber Collision stores around the state (although that could change by time you absorb this!). The odds of a consumer ending up in one of these stores (or nearly as many with Service King), less with Fix or CarStar franchises, and the Boyd Group has chosen to avoid your environment {so far} is high; and the market is going to keep narrowing. While it may be said that capitolism and competition are good, it has to be looked at closer. Neither the independent, MSO, or even the franchise controllers can make the type of operational deals that consolidators have made with their suppliers. Their price on paint, equipment, and many things is so much less that they are able to artificially limit price increase. A regular shop may NEED $45.00	Department does not govern the business relations between auto repairers and insurers, other than as they directly affect the consumer via the Fair Claims Settlement Practices regulations and underlying statutes.

	in today's market to cover paint and materials, yet the consolidator is doing fine at $35.00. Do you see the enticement to the insurer, or the impact on rate survey? Additionally, the evolution that is coming will see your department's definition and control (in auto) reach near obsolesence if you don't adjust for the more technologic future to include the Internet of Things. The car companies are poised, as you have only flirtingly seen in past hearings with their presence, to wrestle control of the accident and the consumer from the insurance arena. FNOL will go to a computer station as On-Star like entities have very detailed sensor interaction with the car. Maybe a better question for your consumer protective practices is "Who has black box rights?". I can send you some futurist expert dialogue on this subject, if you like. I have some intervention to propose on the allied topic, rate survey. I will do so under separate cover to you, Tony. (I am chatting some of this up with PFIC as well.) I doubt I will be able to attend, but feel free to call on me. John Torchia formerly DRSN owner 916-995-9191	
Eric Dash **Black Walnut Body Works (PA)** September 28, 2016	**Comment 20.1** Subject: weakening consumer rights	**Response 20.1** The Department thanks Commenter for the comment. The

Written Comments 14M: Verbatim, but with inserted **Comment Numbers** keyed to responses.	Dear Mr. Dave Jones, As an shop owner, 35yrs now, I'm seeing so much Insurance abuse I'm wishing and planning an exit strategy as I can't take the abuse, and profit loosing stupid insurer driven mandates much longer! I ask you to re-consider softening or giving Insurers any more latitude to manipulate claimants than they currently do now. Here in PA we have NO way to facilitate any grievances', as our Insurance Commission is filled with ex insurance executives and was founded by the insurance industry, the ole fox in hen house politics as usual BS! I hope my home state of CA would be more progressive and democratic to the needs of "the People" vs. the corporate dollar…..My reason for writing is to try and help myself as CA often leads the rest of the country so please reconsider the current issues and reverse the trend towards corporate domination over us all! Sincerely Eric Dash Black Walnut Body Works, Ltd. 1620 Zion Road Bellefonte, PA 16823	Department disagrees that the proposed regulations weaken any rights currently enjoyed by consumers. The proposed regulations are intended to add an additional level of consumer protection by prohibiting insurer steering practices which are the subject of many Department complaint files. Auto repairer trade press reporting on the proposed regulations included discussion about how the amended regulations noticed in the 15 Day Notice removed the requirement for insurers to have documentation prior to making negative statements about auto repairers. This requirement, which was never in statute or regulation, was removed to avoid any potential clarity issues and the inference there may be a First Amendment issue. The Department believes that Commenter may be referring to the removal of this requirement when stating that the proposed regulation would weaken consumer protections. As

		described above, the documentation requirement was part of a prior draft of the proposed regulations and was never law; the proposed regulations as they currently exist expand consumer protections by regulating insurer steering behavior which has not yet been addressed via regulations.
Danny Discola **America's Auto Body (IL)** September 28, 2016 Written Comments 14N: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 21.1** What is needed to have this law passed into Illinois . Im sure a number of shops here would like this also. Please advise THANK YOU , DANNY AMERICAS AUTO-BODY 810 LUNT AVE SCHAUMBURG ILL 60193 847-985-3760 847-985-1837 FAX	**Response 21.1** The Department thanks Commenter for the comment. While the Department cannot assist with regulations in the State of Illinois, the Department suggests that Commenter check to see if Illinois has an anti-steering statute similar to Ins. Code §758.5. If so, he can speak to the Illinois Department of Insurance regarding adoption of anti-steering regulations. If no anti-steering statute exists in Illinois, Commenter should speak to his representative regarding having a statute enacted.

David McClune **CAA** October 10, 2016 Written Comments 14O: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 22.1** October 10, 2016 Damon Diederich California Department of Insurance 300 Capitol Mall, 17th Floor Sacramento, CA 95814 Damon.Diederich@insurance.ca.gov Re: Amended Anti-Steering in Auto Body Repairs Regulation-Support CDI Regulation File: REG-2015-00015 Dear Mr. Diederich: The California Autobody Association (CAA) is pleased to support the amended Anti- Steering Auto Body Repair Regulation. The CAA is a non-profit trade association comprised of over 1100 individual and independent repair businesses within the collision repair industry. We appreciate the extensive time and energy the Department has spent working on these regulations with the various stakeholders. The CAA believes the proposed regulations will clarify and strengthen the consumers right to select an auto body shop of choice to have their car repaired. Moreover, the proposed regulations will allow auto body shops to compete freely in an open market and increases openness and transparency in business and government. Thank you for all your efforts on this very important regulation.	**Response 22.1** The Department thanks Commenter for his comment in support of the proposed Anti-Steering regulations, as amended.

	[Signed David McClune, Executive Director] Cc: CAA Executive Committee Jack Molodanof, Attorney at Law	
Greg Nichols **Caliber Collision** October 10, 2016 Written Comments 14P: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 23.1** October 10, 2016 Damon Diederich California Department of Insurance 300 Capitol Mall, 17th Floor Sacramento, CA 95814 Telephone: (916) 492-3567 Email: Damon.Diederich@insurance.ca.gov Re: Notice of Proposed Rulemaking re Anti-Steering in Auto Body Repairs (CDI Regulation File: REG-2015-00015) Dear Mr. Diederich: Caliber Collision Centers ("Caliber"), the nation's leading collision repair business with more than 148 locations in California, appreciates the opportunity to comment on the California Department of Insurance's proposed regulations on "steering" in connection with auto body repairs. **Comment 23.2** As an initial matter, Caliber recognizes that the purpose of California Insurance Code section 758.5 ("Section 758.5") is to allow claimants to select an auto body repair facility without being influenced by untruthful or deceptive statements. Similarly, the changes proposed	**Response 23.1** The Department thanks Commenter for the Comment. In the Department's September 26, 2016 Notice of Availability of Amended Text, the Department solicited comments on the regulation text only as revised by that Notice. Commenter's comment addresses the proposed regulation generally. The comment period for the originally noticed 45 Day text closed on April 22, 2016. Therefore, Commenter's comment is not timely, being five months late. **Response 23.2** Given Commenter's overarching concern that the proposed regulation could lead to the consumer having inadequate

	on March 4, 2016 and September 23, 2016 to Title 10, California Code of Regulations ("CCR"), Chapter 5, Subchapter 7.5, Article 1, section 2695.8(e) (the "Anti-Steering Regulations") are intended to help clarify what can be considered as "steering" and to help define what can be considered as "false, deceptive or misleading information" for purposes of section 758.5. Caliber supports these goals as they are consistent with businesses operating in truthful and nondeceptive manner. Nevertheless, Caliber is concerned that the proposed amendments to the Anti-Steering Regulations may impair the delivery of truthful and nondeceptive information to claimants, and moreover may result in delay in completion of repairs, may result in repairs made by unqualified facilities or may result in claimants receiving insufficient warranty protection for repairs. Thus, Caliber requests that the proposed amendment not be adopted at all.	information, it is important to note that the Consumer is *always* free to request as much information as they wish, from whatever source they wish. The proposed regulation only imposes restrictions on the ability of insurers to provide untrue deceptive and misleading information to the consumer. The Department disagrees that the *sole* purpose of CIC §758.5 is "…to allow claimants to select an auto body repair facility without being influenced by untruthful or deceptive statements…" The purpose and effect of CIC §758.5 is far broader than suggested by Commenter, encompassing, at its core, the policy that the consumer has the statutory right to select the auto repairer of their choice, that the consumer has the right to make that choice absent misleading statements by the insurer, and that, once the consumer has chosen a repairer, the consumer not be subjected to insurer suggestions that the vehicle be repaired elsewhere, except as may be

		permitted by the underlying statute CIC §758.5. The Department similarly disagrees with Commenter's interpretation of the "intent" of the proposed regulations; the proposed regulation text says what it says, no more and no less. The Department disagrees that the proposed regulations may impair delivery of truthful information, result in delay of repair completion, result in repairs completed by unqualified shops, or result in insufficient warranty protection. Commenter fails to state the sections of the proposed regulations purported to have this effect and further fails to state the mechanism by which the proposed regulations are supposed to lead to these unsavory consequences. The proposed regulations only prohibit untruthful, or misleading statements, no more and no less. Under the proposed regulation, consumers are always free to request as much information from their insurer as they desire and may thus freely avoid the "harms"

		alleged by Commenter, to the extent that such harms exist at all. The proposed regulations are the result of many months of dialogue between the Department and stakeholders; the Department therefore declines to forego their adoption based solely on Commenter's untimely comment.
	Comment 23.3 Caliber also is concerned about two specific aspects of how the proposed amendment to the Anti-Steering Regulations is drafted. The definition of "chosen" may prevent claimants from receiving important information before they have committed to a particular repair facility. Additionally, the proposed amendment should contain specific safe-harbor language to expressly allow provision of certain truthful and nondeceptive information even after a claimant has selected a facility to perform a repair. At a minimum, the Department should address these issues in the final regulation, to protect claimants from being inadvertently harmed by being deprived of truthful and nondeceptive information that otherwise could be made available to them.	**Response 23.3** The Department disagrees that the definition of "chosen" in the proposed regulations would "prevent claimants from receiving important information before they have committed to a particular repair facility." This proposed regulation does not narrow or broaden the type and breath of information permitted to be communicated to the claimant under CIC §758.5 and is reasonably necessary to prevent undue pressure from being placed on the consumer after they have affirmatively made their shop selection.

		The Department disagrees that a Safe Harbor is necessary, or even contemplated by the proposed regulations. The proposed regulations do not prohibit any conduct beyond clarifying which conduct is already prohibited by CIC §758.5, the Unfair Practices Statutes of CIC §790, *et seq*., and the Fair Claims regulations. Commenter's request for a Safe Harbor does not relate to any of the proposed regulations text and is, therefore, irrelevant. As discussed above, Claimants are always free to request information from their insurer and, therefore, cannot be subject to the "inadvertent harm" that Commenter reads into the proposed regulations. The Department declines to adopt Commenter's untimely and irrelevant suggestions into the final rule.
	Comment 23.4 Existing Law Adequately Protects the Public	**Response 23.4** The Department disagrees that existing law adequately protects

	Existing Law allows insurers to provide certain truthful and nondeceptive information to claimants regarding the services and benefits available to them during the claims process. Such information includes, but is not limited to, "information about the repair warranties offered, the type of replacement parts to be used, the anticipated time to repair the damaged vehicle, and the quality of the workmanship available to the claimant." Section 758.5(b)(2). This is so even after the claimant has chosen an automotive repair dealer. Section 758.5(c) ("Except . . . as to information of the kind authorized by [Section 758.5(b)(2)], after the claimant has chosen an automotive repair dealer, the insurer shall not suggest or recommend that the claimant select a different automotive repair dealer."). Truthful information about repair warranties, replacement parts, the anticipated time to repair, and the quality of the workmanship allows claimants to make informed choices, whether or not the claimant has expressed an initial preference for a particular facility. Indeed, even after a repair has begun, this information can be useful to claimants for the purposes of assessing the progress and quality of work-in-process, or to request a level of service or warranty protection comparable to other area facilities. For example, if an insurer is aware that a particular repair facility has a documented record of completing repairs more quickly than the norm, a claimant would benefit from being made aware of this information, even after first expressing a preference for a different facility. Indeed, a claimant may not be able to make a truly informed choice if he is deprived of this information when it is available. For these reasons, existing law already provides ample protection to the public, and there is no need for the amendment to be adopted.	the public, based on the frequent complaints received by the Department regarding steering behaviors by insurers. These complaints are incorporated into the rulemaking file. The Department agrees with Commenter's general premise that CIC §758.5 allows certain kinds of information to be communicated to a consumer even after they have selected a repairer. The Department further agrees that truthful information about the auto repair process can be helpful to the consumer. However, the Department disagrees with Commenter's implication that the proposed regulation would "deprive" the consumer of any information desired by the consumer, or somehow impair the consumer's ability to make an informed decision. As discussed above, the proposed regulation imposes no limit on the consumer's ability to freely obtain all information desired from any source. The proposed regulation only defines certain terms used in

		the underlying statute, CIC §758.5, and identifies certain types of communications that are deemed false, deceptive or misleading.
	Comment 23.5 The Definition of "Chosen" Cuts Off Information to Claimants Too Early in the Process If adopted, however, the proposed definition of "chosen" threatens to work mischief as it could interfere with claimants' ability to obtain important information and could result in substantial delays in the completion of repairs. Proposed Section 2695.8(e)(2) would provide, "a claimant has chosen an automotive repair shop when the claimant has specified to the insurer a specific automotive repair shop where he or she wishes to repair the vehicle." This definition will have the unwholesome effect of preventing the delivery of important information to the claimant at the very time when such information is essential for the consumer to make an informed choice. A consumer may "specify" a shop without substantial knowledge of the shop's ability to perform the repair at issue, its level of service in comparison to other shops, its present state of backlog or the nature or scope of the shop's warranty. A consumer may make this specification simply on the basis of its proximity to the accident site or based on advertising it has seen prior to the accident, but without	**Response 23.5** As used by Commenter "important/valuable information" appears to mean the insurer's unsolicited recommendation of an auto repairer, regardless of whether the consumer has already selected a repairer. Commenter's suggestion that the proposed regulation "cuts off information" to the consumer is incorrect. Truthful information may be communicated to the consumer under the proposed regulation, regardless of whether or not the consumer has chosen a repairer. The only "information" that may not be communicated to a consumer once they have "chosen" a repairer is that prohibited by the underlying statute, CIC §758.5(c);

	any careful assessment of the shop's capabilities or limitations. Consider the following scenarios: • The consumer specifies a shop, but only after the vehicle is examined does the shop inform the claimant that it lacks essential equipment to perform the repair. For example, aluminum-body vehicles require specialized equipment. As drafted, the regulation would forbid an insurer from informing the claimant, after the claimant specifies a shop, of the presence of other shops with such specialized equipment. The consequence of this could be a substantial delay in the commencement of repairs, as the consumer will not learn of the issue until after the vehicle is examined by the initially specified shop. • The claimant specifies a shop, but unbeknownst to the claimant, the shop's time to complete repairs is substantially longer than other shops in the area. In this scenario, the insurer would be forbidden from informing the claimant of other shops with shorter backlog. • The claimant specifies a shop before knowing the shop's warranty policies. In this scenario, the insurer would be forbidden from informing the claimant of other shops with more protective warranty policies. • The shop may decline to perform a repair or may quote a price or terms that the claimant deems unacceptable. The regulation as drafted does not say at what point the insurer may provide information about a different shop, or how the claimant may revoke an earlier specification of a shop, so he may obtain information about alternatives.	suggestions or recommendations that the claimant select a different repair shop. The types of information contained in Commenter's examples are not banned by the proposed regulation, even after the consumer has chosen a repairer. Under the proposed regulations (and underlying statute), insurers are free to communicate information on the topics noted by Commenter, so long as the information is truthful and does not contain a suggestion or recommendation that the claimant select a different repair shop. Commenter notes that the proposed regulations do not state the means by which a consumer may revoke their choice of a repair shop. The Department responds that such a provision is not necessary; the underlying anti-steering statute at CIC §758.5(c) states that insurers may always suggest or recommend a repairer whenever requested by the consumer, even after consumer

	To guard against premature cut-off of valuable information, we suggest a different definition of the term "chosen" in proposed Section 2695.8(e)(2): "a claimant has chosen an automotive repair shop when the claimant has informed the insurer that he has received an estimate from a specific automotive repair shop where he or she wishes to repair the vehicle, and that he would like to approve the work set forth on the estimate." This improved definition will permit the free exchange of information during the pre-- estimate stage, and even while an estimate is being considered, so the claimant can make a fully-informed decision about where the vehicle should be repaired.	has chosen a repairer. The proposed regulations do not need a means for the consumer to "unchoose" their chosen repairer, because the consumer may always ask for a referral if they are having difficulties with their chosen repairer and may do so by any means. Similarly, the Commenter requests that the ability to recommend a repairer be extended through the time when the consumer authorizes work to be done to the vehicle, regardless of whether the consumer has made their repairer preference known to the insurer. Commenter does not provide any compelling argument for why the consumer would be unable to make an informed decision as to where to repair their vehicle without the recommendation of a repair shop by the insurer. The Department declines to weaken the proposed anti-steering regulation by giving insurers additional means to provide unsolicited recommendations to the consumer.

	Comment 23.6 Certain Information Should Be Allowed to Be Shared Even After a Shop Is "Chosen" The regulation also should clarify that certain information always may be provided, even after the claimant has chosen a particular shop. This information may assist the claimant in evaluating the quality of the repair process and the service provided at the chosen shop. It is beneficial to claimants to know what is standard practice in the industry, so that they can insist upon quality performance by the shop of their choosing, and so they can effectively monitor the repair process while it is underway. Accordingly, we suggest inclusion of the following safe harbor language as new Proposed Section 2695.8(t): "Notwithstanding anything in subparagraph (e) herein, an insurer may communicate to a claimant any of the following: (1) truthful and non-deceptive information about prevailing repair times generally or at other specific automotive repair shops; (2) truthful and non-deceptive information about equipment or other technical capabilities available generally or at other specific automotive repair shops; (3) truthful and non-deceptive information about prevailing warranty generally or at other specific automotive repair shops; or (4) any other information which may be lawfully communicated pursuant to Insurance Code Section 758.5."	**Response 23.6** Commenter's keen desire to give the consumer information never requested by the consumer leads to a request that the proposed regulations contain a Safe Harbor allowing "certain information" to be communicated even after the consumer has selected a repairer. The Department notes that some of the information described by Commenter may be useful to the consumer and reiterates that the consumer is free to request this information as they will. The anti-steering statutes at CIC §758.5(b)(2) permit the insurer to communicate to the consumer "specific truthful and nondeceptive information regarding the services and benefits available to the claimant during the claims process," even after a consumer has selected a repairer.

	Comment 23.7 Conclusion Caliber commends the Department for its efforts to ensure that claimants receive truthful and nondeceptive information regarding the services and benefits available to them during the claims process. Because we believe existing law already substantially achieves this goal, the Amendment need not be adopted at all. If adopted, however, the additional changes described above are necessary to prevent the Amendment from inadvertently depriving claimants of	The proposed regulations follow the statute and similarly permit the sharing of truthful information as allowed by statute. Because the proposed regulations and underlying statute already allow for insurers to share information after a consumer has selected a repairer, there is no need for creation of a Safe Harbor. Moreover, a Safe Harbor is neither discussed in, nor contemplated by the proposed regulation text; therefore, Commenter's request for a Safe Harbor is not related to the text of the regulation and has no probative value with respect to the proposed regulation text. **Response 23.7** The Department thanks Commenter for the comment. The Department disagrees that existing law satisfies the purposes of CIC §758.5, a conclusion supported by frequent steering-related complaints received by the Department, even subsequent to CIC §758.5 becoming effective.

	important information that will help them make appropriate choices during the claims and repair process. Thank you for your consideration of the above points. Should you have any questions or concerns about the above, we invite you to please contact Nathan Fay, Senior Corporate Counsel for Caliber at 469-948-9459 or nathan.fay@calibercollision .com. Sincerely, [Signed: Greg Nichols] Chief Administrative Officer Caliber Collision Centers	The Department disagrees that changes to the proposed regulations are necessary. The proposed regulations do not "inadvertently deprive" consumers of information. Consumers are always free to request whatever information they desire. The proposed regulations only prevent insurers from making unsolicited recommendations that the claimant choose a different repair shop after they have already chosen a shop to repair the damaged vehicle.

Tim Chang **Auto Club of SoCal** October 11, 2016 Written Comments 14Q: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 24.1** October 11, 2016 Via E-Mail Damon Diederich California Department of Insurance 300 Capitol Mall, 17th Floor Sacramento, CA 95814 916-492-3567 Damon.Diederich@insurance.ca.gov Re: Anti-Steering in Auto Body Repairs Proposed Regulations (REG-2015-00015) Dear Mr. Diederich: On behalf of our insurance affiliate, the Interinsurance Exchange of the Automobile Club (the Exchange), please accept the following comments and suggested changes to the proposed anti-steering revised regulations dated September 26, 2016. These comments supplement our submission dated April 22, 2016. The attached changes are designed to provide better clarity to the	**Response 24.1** The Department thanks Commenter for the comment.

	new rules and accommodate the realities of the claims handling process and to ensure an estimating and inspection process that is fair and reasonable for both claimants and insurers. **Comment 24.2** The regulations should be clarified to provide insurers a reasonable opportunity to inspect a vehicle (2695.8(e)(4)(A)-(B) & (D)) It is not uncommon for a claimant to provide us notice of a claim, but for various reasons such as a business trip, vacation or just everyday scheduling, the claimant may not be able to make the vehicle available for inspection or may only be able to make the car available intermittently on any given business day. An example would be that notice of claim is made on a Monday, but the claimant can only make the vehicle available on Wednesday during the following six (6) business days. Does that mean that the insurer must inspect on Wednesday or forego its right to inspect since the car was made available for one day during the 6 business day time period? Would the car be reasonably available for inspection if the claimant made it available for 2 days during the six day timeframe? The draft regulations implicitly suggest that once the car is available for inspection, it would be available to the insurer for six business days. That will not always be true. Thus, we suggest that subsections (A), (B) and (D) be amended to require the inspection take place within the 6 business days that the vehicle is actually available for inspection and that those days do not have to be consecutive days. This provides the insurer with a reasonable opportunity to inspect a vehicle and provides claimants with some flexibility since the car does not have to be available on consecutive days.	**Response 24.2** The Department believes that the proposed regulation, as previously drafted, accommodated the Commenter's concerns. Reasonable availability is necessarily a fact-specific inquiry which takes many considerations into account, including, for example: how promptly after notice of claim the insurer makes the inspection request; the times and places that the consumer is prepared to make the vehicle available for inspection; the times and places that the insurer is prepared to inspect the vehicle; the flexibility the insurer affords the claimant with respect to times and locations when and where the insurer is available to conduct inspection; the distance the insurer requires the claimant to drive (or have the car towed) in order to have the vehicle inspected or, alternatively, whether or not and

		the degree to which the insurer is prepared to send an adjuster to the location where the vehicle is parked or garaged; the extent to which the claimant is prepared to provide access to the vehicle in cases where the insurer is prepared to send an adjuster; for a vehicle that is operational, the length of time on the agreed-upon date or dates the insurer requires the claimant to be without a vehicle or, alternatively, whether or not and the terms under which the insurer makes a replacement vehicle available during the time the claimant's car is required to be unavailable for use as transportation, while it is waiting to be inspected; the breadth or narrowness of the choices the insurer offers the claimant with respect to times or locations that are available to the claimant for the inspection of the vehicle in question during the specified six-day period; the accessibility and relative safety of the location(s) where the insurer requires the vehicle to be inspected; the flexibility shown by the insurer,

		on the one hand, and the claimant, on the other, with respect to accommodating the scheduling needs and other concerns of the other party; and numerous other considerations affecting the vehicle and the parties to the claim. Thus, in the commenter's hypothetical example, depending on the factual context, the proposed regulations could conceivably require the insurer to inspect the damaged vehicle on the Wednesday in question, if under the particular circumstances in question the claimant's making the vehicle available only on that Wednesday was reasonable. In reality, arranging a mutually agreeable time and location for a damaged vehicle to be inspected necessarily requires a reasonable degree of flexibility and reasonableness on the part of both parties. This is true notwithstanding the operation of the proposed regulations. Thus, the insurer's own posture with respect to facilitating the inspection has much to do with the determination of whether or not

		under the regulations the claimant has made the vehicle reasonably available for inspection by the insurer during specified six-day period. In any case, whether or not a claimant makes a vehicle reasonably available for inspection involves so many different permutations of facts and considerations that a bright-line rule would be impracticable; accordingly, the Department has proposed a reasonableness standard, which insurers are quite accustomed to observing in regard to other aspects of their operations. Certainly, nothing in "[t]he draft regulations implicitly suggest[s] that once the car is available for inspection, it would be available to the insurer for six business days," especially if the commenter's expectation is that the claimant would be deprived of the use of an operational automobile during that entire period. (Nor does the comment identify any language in the proposed regulations that could be susceptible to such an interpretation.) However, in

		response to this and similar comments, the Department has nonetheless revised the proposed regulations to include Section (e)(4)(D) addressing the insurer's right to inspect the damaged vehicle subsequent to the specified six day period, in the event that the claimant fails to make the damaged vehicle reasonably available during that period. If the claimant does not make the vehicle reasonably available over the course of the six-day period specified in the proposed regulations, the insurer may subsequently inspect the vehicle as provided in Section (e)(4)(D).
	Comment 24.3 The regulations should be amended to create a rebuttable presumption for what constitutes reasonable time periods and distances (2695.8(e)(4)) We incorporate by reference our suggestion to create a rebuttable presumption for determining what constitutes a reasonable distance and a reasonable time period under these regulations. Please refer to our April 22, 2016 letter, with enclosure.	**Response 24.3** The Department declines Commenter's request for a rebuttable presumption regarding reasonable time and distance. The proposed regulations are intended to create rules that are easy for insurers to follow and easy for the Department to

	Please feel free to contact us at any time if you have questions concerning our comments. Thank you for your time and consideration. Respectfully Submitted, [Signed: Tim Chang] Tim Chang Legislative Counsel Automobile Club of Southern California Encl. **Comment 24.4** ~~(3)~~ (4) require a claimant to travel an unreasonable distance or wait an unreasonable period of time either to inspect a replacement automobile, to conduct an inspection of the claimant's vehicle, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop. (A)For purposes of this section, if an insurer chooses to exercise its right to inspect the damaged vehicle, the insurer shall inspect the damaged vehicle within six (6) business days after receiving the notice of claim, provided the claimant makes the vehicle reasonably available for inspection. For purposes of this section, a claimant makes the vehicle reasonably available for inspection when the vehicle is	administer; creating a rebuttable presumption would reduce certainty and hinder administration of the rule. **Response 24.4** For reasons discussed above, the Department declines to adopt Commenter's suggested revision regarding time for vehicle inspection. The six day period identifies an outer limit to when an insurer may inspect a vehicle, provided that the vehicle is reasonable available during that period. In response to Commenter's concern regarding the vehicle not being made reasonably available by the consumer, the Department has added Section (e)(4)(D), which addresses inspections after the initial six day period has lapsed.

	actually available for inspection by the insurer for six (6) business days, which do not have to be consecutive. (B) the insurer requests an estimate of repairs from the claimant in lieu of a physical inspection, such requests must be made within three (3) business days of notice of claim and the insurer must provide notification to the claimant that, upon receipt of the estimate, the insurer may elect to inspect the vehicle. If, after receiving the estimate of repairs from the claimant, the insurer subsequently elects to inspect the vehicle, the inspection must be made within six (6) business days following the receipt of the estimate by the insurer, provided the claimant makes the vehicle reasonable available for inspection. For purposes of this section, a claimant makes the vehicle reasonably available for inspection when the vehicle is actually available for inspection by the insurer for six (6) business days, which do not have to be consecutive. (C) For purposes of this section, an unreasonable distance shall be, for cities or urban areas with a population of 100,000 or ~~more~~ higher ~~population~~, more	

	than ~~ten (10)~~ fifteen (15) miles, and for all other areas of the state, more than twenty-five (25) miles, from the location where the vehicle is located and made available for inspection by the claimant. (D) Subdivisions (e)(4)(A) and (e)(4)(B) above notwithstanding, in the case of a third-party claim, should a third-party insurer exercise its right to inspect the damaged vehicle, the third-party insurer shall inspect the damaged vehicle within six (6) business days from the time the third-party insurer decides to inspect the third-party vehicle, provided the claimant makes the vehicle reasonably available for inspection by the third-party insurer. For purposes of the immediately preceding sentence, the third- party insurer's decision to inspect the third-party vehicle shall be deemed to have been made on the date the third-party insurer provides the third-party claimant with the information required by Subdivision (e)(2) of Section 2695.5, in the event the decision is not made prior to that date. For purposes of this section, a claimant makes the vehicle reasonably available for inspection when the vehicle is actually available for inspection by the insurer for six (6) business days, which do not have to be consecutive.	

Insurance Industry Coalition October 11, 2016 Written Comments 14R: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 25.1** October 11, 2016 Damon Diederich California Department of Insurance 300 Capitol Mall, 17thFloor Sacramento CA 95814 Email: Damon.Diederich@insurance.ca.gov RE: Notice of Availability of Revised Text And of Addition to Rulemaking File– Anti-Steering in Auto Body Repairs -CDI Regulation File: Reg-2015-00015 Dear Mr. Diederich: On behalf of all the property casualty insurance trade organizations listed above, and the California Chamber of Commerce, we are writing to express our comments and questions to the California Department of Insurance's ("Department") proposed regulation on "anti- steering." At the outset, we appreciate the Department's time spent with us discussing the revisions to the proposed anti-steering regulation and recognize that some of these revisions appear to clarify some parts of the proposed regulation. Based on the feedback we have received, however, overall the proposed anti-steering regulation (even with the revisions to section 2695.8) fails to satisfy the authority, clarity, consistency, necessity, and reference standards under Government Code section 11349. Therefore, we are opposed to the proposed anti-steering regulation, and urge the Department to reconsider moving forward given our ongoing concerns as discussed below. **Comment 25.2**	**Response 25.1** The Department thanks Commenters for their comments. The Department disagrees that the proposed regulation does not satisfy the APA standards of review for regulations, for reasons discussed in detail below. **Response 25.2**

	I. Authority - The September 26, 2016, proposed revisions to subdivision (e) of section 2695.8 fail to comply with the authority standard. Government Code section 11349.1 requires all regulations to comply with the standard of authority. Government Code section 11349 (b) provides, "'Authority' means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation." The Department's continued reliance on Insurance Code sections 790.10, 12921 and 12926, Civil Code sections 3333, and Government Code sections 11152 and 11342.2 as authorities for the September 26 proposed revisions to section 2695.8 falls short of satisfying the authority standard. None of the cited statutes permit or obligate the adoption of the amendments. In citing section 790.10 as authority for the adoption of the proposed revisions to section 2695.8, the Department takes the position that the Insurance Commissioner's power to administer the Unfair Insurance Practices Act (UIPA) gives the Commissioner the authority to adopt regulations which define conduct that constitutes unfair or deceptive acts within the meaning of the provisions of UIPA. This reasoning was rejected by the Court of Appeal in Association of California Insurance Companies v. Jones (2015) 235 Cal.App.4th 1009. The Commissioner argued in Jones that the Commissioner's power to promulgate regulations to administer the UIPA gives the Commissioner the authority to define conduct that is unfair or deceptive through the adoption of a regulation. The Court of Appeal reviewed the provisions of the UIPA and concluded, "Read together, these provisions demonstrate that the Legislature did not give the Commissioner power to define by regulation acts or conduct not otherwise deemed unfair or deceptive in the statute." (Jones at p.1030) The ruling in the Jones decision compels the conclusion that the power granted to the Commissioner in Insurance	The Department notes that Commenters' comment regarding authority for the proposed regulation is not timely. The Department did not revise any of the authority notes in the 15 Day Amended text of regulation. Also, each and every statute identified by the commenter is not newly proposed to be added during this rulemaking; all of these statutes were part of the original regulations made effective in 1991 or were subsequently added in prior rulemakings, but not this rulemaking. Lastly, these statutes apply to the entirety of Section 2696.8 of these regulations, so need not all apply to the subdivision (e), which is the sole subdivision being amending in this rulemaking. Therefore, these comments are outside the scope of this current rulemaking. Commenters note that oral argument in *ACIC v. Jones* has been set and anticipate a ruling from the California Supreme Court in early 2017. Commenters contend that the *Jones* ruling

	Code section 790.10 to adopt regulations to administer the UIPA does not authorize the adoption of the proposed revisions. It is important to note that the Jones case is now pending before the California Supreme Court. A central issue in the case is whether the Insurance Commissioner has the authority to adopt a regulation that defines an unfair practice within the meaning of the UIPA. The Supreme Court will hear oral argument on the Jones case on November 2nd, 2016. The Court will hand down a decision in the case no later than February 1st, 2017. The Supreme Court's decision in the Jones case could have implications for the validity of section 2695.8(e). Therefore, it would be imprudent to adopt amendments to section 2695.8(e) before the Supreme Court issues its decision in the Jones case. We urge the Department to delay the adoption of any amendments to section 2695.8 (e) until the Department has the benefit of the Supreme Court's ruling in the Jones case. The Department's reliance on Subdivision (a) of section 12921 is misplaced. Section 12921(a) simply directs the Commissioner to perform the duties imposed upon him or her by the provisions of the Insurance Code and other laws relating to the business of insurance and to enforce those provisions and laws. As explained in the Jones case, the Insurance Code does not give the Commissioner the authority to adopt the proposed revisions that define unfair conduct within the scope of the UIPA. The other two subdivisions of section 12921 do not provide authority for the proposed regulations. Subdivision (b) relates to the Commissioner's authority to delegate the power to approve settlements, and Subdivision (c) relates to the Commissioner's acceptance and maintenance of records. Insurance Code section 12926, which states that the Commissioner must require every insurer to be in full compliance with the	could affect the proposed regulations and, on that basis, urge a delay in their adoption. In response to Commenters' contention, the Department reiterates its response that *Jones* is inapposite to the proposed regulations, based on the terms of the ruling now on appeal: The *Jones* court explicitly stated that "[Its] ruling today is limited to one conclusion – that the UIPA has not, as of yet, given the Commissioner authority to regulate the content and format of replacement cost estimates." (*ACIC v. Jones*, 235 Cal.App.4th 1009, 1036.) By its own terms, the *Jones* ruling excludes the possibility that the proposed regulations could fall under the *Jones* standard. Because the *Jones* ruling is inapplicable to the proposed regulations, the Department declines to delay their adoption until after the Supreme Court ruling. The remainder of Commenters' comment regarding authority is a rehash of Commenters' original

	provisions of the Insurance Code, does not provide authority for the adoption of the proposed revisions. Civil Code section 3333, which specifies the measurement of damages for the breach of an obligation not arising from a contract, does not provide authority for the adoption of the proposed revisions. Government Code section 11152 gives the head of each state department the authority to adopt regulations governing the activities of the department. The does not provide authority for the adoption of the proposed revisions. Government Code section 11342.2 gives a state agency general authority to adopt regulations to implement a statute, as long as the regulations do not conflict with the statute. The holding in the Court of Appeal's Jones decision clarifies that the Commissioner's authority to implement the UIPA does not extend to the Commissioner any authority to define new conduct, such as that specified in section 2695.8 (e), as an unfair act under the UIPA. The regulatory section is inconsistent with the limited authority granted by the statute.	April 22 comment letter; no new or novel arguments are raised. Therefore, the Department reiterates **Responses 6.3 – 6.6** in response.
	Comment 25.3 II. Reference - The September 26, 2016, proposed revisions to subdivision (e) of section 2695.8 fail to comply with the reference standard. Government Code section 11349.1 requires all regulations to comply with the standard of reference. Government Code section 11349 (e)	**Response 25.3** The Department notes that Commenters' comment regarding reference for the proposed regulation is not timely. The Department did not revise any of

	provides, "'Reference' means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation." The September 26 proposed revisions to section 2695.8 (e) continue to rely on Insurance Code sections 758.5 and 790.03 as reference for the regulation; however, neither statute provides reference for the revisions. Insurance Code section subdivision (f) 758.5 states, "The powers of the commissioner to enforce this section shall include those granted in Article 6.5 (commencing with section 790) of Chapter 1 of part 2 of division 1." The enforcement powers referred to in subdivision (f) are the enforcement powers the Commissioner has under the UIPA. Those powers do not include the authority to adopt regulations which define unfair or deceptive insurance practices. In the Jones decision, the Court of Appeal reviewed the provisions of the UIPA, including section 790.08 which describes the powers vested in the Commissioner. The court concluded, "Thus, section 790.08 emphasizes that the enforcement role of the Commissioner is tethered to acts and 'hereby declared to be unfair or deceptive,' to wit, defined or determined in the UIPA." (Jones at p. 1032) The Department of Insurance's reliance on Insurance Code section 790.03 as reference for the proposed revisions is not warranted. The Department seeks to define new unfair conduct within section 790.03 under the guise of implementing section 790.03. In ruling that the Legislature did not give the Commissioner the authority to adopt a regulation defining an unfair and deceptive practice set forth in section 790.03, the Jones decision concluded that "under the guise of 'filing in the details,' the Commissioner therefore could not do what the Legislature has chosen not to do." (Jones at p.1036)	the reference notes in the 15 Day Amended text of regulation, or in any phase of this current rulemaking. Each and every statute identified by the commenter is not newly proposed to be added during this rulemaking; all of these statutes were part of the original regulations made effective in 1991 or were subsequently added in prior rulemakings, but not this rulemaking. Lastly, these statutes apply to the entirety of Section 2696.8 of these regulations, so need not all apply to the subdivision (e), which is the sole subdivision being amending in this rulemaking. Therefore, these comments are outside the scope of this current rulemaking. Commenters note that oral argument in *ACIC v. Jones* has been set and anticipate a ruling from the California Supreme Court in early 2017. Commenters contend that the *Jones* ruling could affect the proposed regulations and, on that basis, urge a delay in their adoption. In

	The Supreme Court's decision in the Jones case could have implications for the validity of section 2695.8 (e). Therefore, it would be imprudent to adopt amendments to section 2695.8 (e) before the Supreme Court issues its decision in the Jones case. The Supreme Court will hear oral argument on the Jones case on November 2nd, 2016. The Court will hand down a decision in the case no later than February 1, 2017. We urge the Department to delay the adoption of any proposed regulations purporting to be referenced by the UIPA until the Department has the benefit of the Supreme Court's ruling in the Jones case.	response to Commenters' contention, the Department reiterates its response that *Jones* is inapposite to the proposed regulations, based on the terms of the ruling now on appeal: The *Jones* court explicitly stated that "[Its] ruling today is limited to one conclusion – that the UIPA has not, as of yet, given the Commissioner authority to regulate the content and format of replacement cost estimates." (*ACIC v. Jones*, 235 Cal.App.4th 1009, 1036.) By its own terms, the *Jones* ruling excludes the possibility that the proposed regulations could be affected by its holding. Because the *Jones* ruling is inapplicable to the proposed regulations, the Department declines to delay their adoption until after the Supreme Court ruling. The remainder of Commenters' comment regarding reference is a rehash of Commenters' original April 22 comment letter; no new or novel arguments are raised. Therefore, the Department

	Comment 25.4 III. Consistency - The September 26, 2016, proposed revisions to subdivision (e) of section 2695.8 fail to comply with the consistency standard. Government Code section 11349.1 requires all regulations to comply with the standard of consistency. Government Code section 11349 (d) provides, "'Consistency' means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." The September 26 proposed revisions to subdivision (e) section 2695.8 are inconsistent with the Court of Appeal's decision in Association of California Insurance Companies v. Jones and nothing in the proposed revisions addresses this inconsistency The Court of Appeal specifically held in the Jones decision as follows: "The language of the UIPA reveals the Legislature's intent to set forth in statute what unfair or deceptive trade practices are prohibited, and not delegate that function to the Commissioner." (Jones at p. 1030) The existing section 2695.8 (e) and the proposed amendments to the section are at odds with the holding in Jones. The Court of Appeal's decision in the Jones case is being reviewed by the California Supreme Court. Until the Court completes its review of the decision, the Department is not free to ignore the Court of Appeal's ruling and adopt regulatory amendments that are inconsistent with the ruling. The Supreme Court will hear oral argument on the Jones case on November 2nd, 2016. The Court will hand down a decision in the	reiterates **Responses 6.7 – 6.9** in response. **Response 25.4** The Department notes that Commenters' comment regarding consistency of the proposed regulation is not timely. Commenters' comment regarding consistency of the proposed regulation does not address any portion of the 15 Day Amended text of regulation; therefore, Commenters' comment regarding consistency pertains to the originally noticed 45 Day text, rather than the amended 15 Day text and, as such, is five months late. Commenters note that oral argument in *ACIC v. Jones* has been set and anticipate a ruling from the California Supreme Court in early 2017. Commenters contend that the *Jones* ruling could affect the proposed regulations and, on that basis, urge a delay in their adoption. In response to Commenters'

	case no later than February 1, 2017. We urge the Department to delay the adoption of .these proposed regulations until the Department has the benefit of the Supreme Court's ruling in the Jones case. Also, the proposed regulations are inconsistent with well-settled California law confirming that a claimant can choose the body shop of his or her choice to make repairs. The proposed regulations appear to circumscribe the distance within which a customer may have the repairs made. If a claimant wants to have repairs made in a geographic area outside the distance provided in these regulations, but more convenient to him or her, it does not appear that an insurer could accommodate that request, or allow for adequate documentation of such an accommodation that would be sufficient for the Department's purposes.	contention, the Department reiterates its response that *Jones* is inapposite to the proposed regulations, based on the terms of the ruling now on appeal: The *Jones* court explicitly stated that "[Its] ruling today is limited to one conclusion – that the UIPA has not, as of yet, given the Commissioner authority to regulate the content and format of replacement cost estimates." (*ACIC v. Jones*, 235 Cal.App.4th 1009, 1036.) By its own terms, the *Jones* ruling excludes the possibility that the proposed regulations could fall under the *Jones* standard. Because the *Jones* ruling is inapplicable to the proposed regulations, the Department declines to delay their adoption until after the Supreme Court ruling. Commenters raise one new (and untimely) argument regarding consistency, wherein they claim that the anti-steering regulation limits the distance within which a consumer may have their vehicle repaired, which would be

		inconsistent with the mandate of CIC §758.5, requiring that the consumer have free choice as to where to repair their vehicle. Commenters fail to state the sections of the proposed regulation supposed to have this effect, but merely make the blanket statement that "the proposed regulations appear to circumscribe the distance within which a customer may have the repairs made." Commenters' assertion appears to stem from an extraordinarily tortured interpretation of proposed 2695.8(e)(4)(A), which prohibits insurers from requiring consumers to travel an unreasonable distance to have their vehicle inspected or repaired. It is worth noting here that 2695.8(e)(4)(A), by its own terms, applies solely to insurers. (2695.8 "(e) No insurer shall:") The proposed regulation solely governs insurer conduct and, contrary to Commenters' overactive imaginations, does not impose any restrictions on the consumer. Moreover, the provision prohibits insurers from requiring claimants to travel

	Comment 25.5 IV. Clarity - The September 26, 2016, proposed revisions to subdivision (e) to section 2695.8 fail to comply with the clarity standard.	further than specified in the proposed regulation; in the situation the commenter alludes to, the insurer would not in fact be requiring the claimant to travel and, accordingly, there would be no violation of the regulations. Insurers may freely accommodate consumer choice under the proposed regulations as, choices made by the consumer are made by the consumer and, thus, not subject to the prohibition against unreasonable requirements imposed by the insurer. The remainder of Commenters' comment regarding consistency is a rehash of Commenters' original April 22 comment letter; no new or novel arguments are raised. Therefore, the Department reiterates **Response 6.10** in response. **Response 25.5** The Department thanks Commenters for the summary of the clarity standard. The Department disagrees that there

	Government Code section 11349.1 requires a regulation to comply with the standard of clarity. Government Code section 11349(c) provides, "'Clarity' means written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them." As noted in our introductory comments above, some of the revisions help clarify parts of the subdivision (e) 2695.8, but overall there are other parts of the proposed regulation that still fail to comply with the clarity standard because insurers will have difficulty understanding several provision of the proposed regulation. Section 2695.8 subdivision (e) (2) The proposed revision includes striking "to perform automotive repairs" and inserting "an auto body and/or paint shop." It is unclear why automotive repairs had to be changed to auto body and/ or paint shop. It seems to expand the definition of automotive repairs without much rationale and adds unnecessary confusion. **Comment 25.6** Section 2695.8 subdivision (e) (3) The proposed revision inserts the following standard: "if the statement is known to be, or should by the exercise of reasonable care be known to be, untrue, deceptive or misleading." This appears to be a legal standard that will not be	are clarity problems with the sections identified by Commenters, for the following reasons: The change to Section (e)(2) was made to conform the proposed regulation language to terminology used by Bureau of Automotive repair; "Auto Body and/or Paint Shop" is a classification of repairer used by BAR (see BAR Application for Automotive Repair Dealer Registration included in rulemaking file). Insurers have been doing business with Auto Body and/or Paint Shops for decades; the meaning of the term should be readily understandable to them. There is no clarity problem with respect to amended Section (e)(2). **Response 25.6** The amendment to Section (e)(3) was done to remove a prior clarity problem with the term "clear documentation"; the amended regulation language now

	easily understood by people directly affected by it. What does exercise of reasonable care be known to be, untrue, deceptive or misleading mean? Will word of mouth satisfy such a standard? Also, the language proposed to be added by section 2695.8 (e) (3) is unnecessary and creates a lack of clarity. Insurance Code section 758.5 allows insurers to provide truthful non-deceptive information. As drafted, section 2695.8 (e) (3) has the potential to create confusion because it makes the law less clear. We have already seen evidence of this confusion in recent articles in repair magazines (http://www.repairerdrivennews.com/2016/09/28/14389/), which contains the following excerpt: "Any other statement." Another confusing proposed change with section 2695.8 (e) (3) involves rewording the description of prohibited unsubstantiated comments from "has a record of poor service or poor repair quality, or of other similar allegations against the repair shop" to "has a record of poor service or poor repair quality, or making any other statement to the claimant with respect to the chosen repair shop." This is an interesting proposal, which could even be read as barring misleading positive speech that an insurer makes about its own Direct Repair Program (DRP) shop selected by a customer. In sum, misleading positive speech is already barred by Insurance Code section 758.5, but our concern is that auto body shops might complain if an insurer makes truthful positive statements about its network of auto body shops. If so, it would be a clear indication that the proposed regulations are likely to create confusion moving forward.	incorporates the "reasonable care" standard already contained in CIC §790.03(b), which has existed for decades. The Department disagrees that there is any clarity problem with this language. Insurers and their employees are sophisticated businesspeople and have been held to the "reasonable care" standard for decades since the enactment of CIC §790.03(b) and related Unfair Practices statutes in 1959. It's concerning that, after all this time, the industry would assert that it doesn't understand how to exercise "reasonable care," particularly given the common appearance of the "reasonableness" standard in the general stream of commerce. The Department cannot definitively state whether any one word-of-mouth statement will satisfy the "reasonable care" standard, as the determination would involve consideration of the content of the statement; the purported source of the statement; verification that the source did, in fact make the statement; and whether the

		source's statement is supported by external evidence. It is hoped that insurers are not repeating unverified hearsay statements to consumers, as that is not the sort of information upon which serious businesspeople should rely, let alone repeat as advice to a client. Section (e)(3) is necessary to resolve recurring complaints regarding insurer steering behaviors. Far from creating a clarity problem, it would appear that Section (e)(3) is necessary to add additional clarity to the statute; the volume of complaints received by the Department suggest that insurers were having difficulty understanding which truthful statements were permitted under CIC §758.5 and which untruthful statements were prohibited under CIC §790.03(b). Contrary to Commenters' assertion, Section (e)(3) adds clarity to the existing statutory scheme. In their zeal to create a clarity issue where none exists, Commenters misquote an article from a repairer trade publication;

		the quoted article does not actually say what Commenters represent it to say: http://www.repairerdrivennews.com/2016/10/13/calif-insurance-trade-groups-distort-repairer-driven-news-excerpt-in-comments-to-cdi/ The Department agrees with Commenters that Section (e)(3) has been reworded as they observe. However, the Department is uncertain about how the prohibition against misleading positive statements speaks to any lack of clarity caused by the revised regulation text. The effect of revised Section (e)(3) is to prohibit false or misleading statements of any kind regarding the repairer chosen by the consumer; this prohibition is consistent with the general prohibition against false or misleading statements by insurers contained in CIC §790.03(b). Commenters do not state any basis

		for their concern that the Department will receive complaints about truthful positive statements made by the insurer regarding one of the insurer's DRP shops; in any case, such complaints were always possible subsequent to the enactment of CIC §790.03(b) in 1959.
	Comment 25.7 Section 2695.8 subdivision (e)(4): The September 26 proposed revisions omit a refinement the Department included in its Amended Text dated August 15, 2016 to clarify that the insurer has six business days to inspect a claimant's vehicle, starting when the claimant makes the vehicle reasonably available for inspection. Without that refinement, it is unclear what an insurer's compliance obligations are when a claimant waits until the fifth or sixth day after notice of claim, or even later, to make the vehicle available for inspection. While we continue to object to the proposed regulations overall, we note that this particular change from the August 15, 2016 Amended Text to the current version contributes to creating even more confusion. If the Department insists on proceeding with the proposed regulation over the objections outlined herein, we propose that the Department return to its August 15, 2016 draft of paragraph (A): "For purposes of this section, if an insurer chooses to exercise	**Response 25.7** The Department is unaware of any August 15, 2016 Amended Text, as the only Amended Text noticed during this rulemaking was noticed on September 26, 2016 [A Second Amended text was noticed on October 17, 2016, subsequent to receipt of this comment]. The Department believes that the prior text was responsive to Commenters' concerns, given that the insurer's duty to inspect was contingent upon the consumer making the vehicle reasonably available for inspection.

	its right to inspect the damaged vehicle, the insurer shall, upon receiving notice of the claim, inspect the damaged vehicle within six (6) business days after receiving the notice of claim, provided the claimant makes the vehicle reasonably available for inspection."	However, in response to this and similar comments, the Department has made revisions to Section (e)(4). First, the Department has added language requiring the insurer to request from the consumer that the vehicle be made available for inspection, clarifying that the consumer would have notice of the insurer's request to inspect the vehicle. Second, the Department has added Section (e)(4)(D), which governs inspections occurring after the six day period due to the vehicle not being made reasonably available by the consumer. Reasonable availability is a fact-specific inquiry which takes many elements into account, including: how promptly after notice of claim the insurer makes the inspection request; the times and places that the consumer makes the vehicle available for inspection; the times and places that the insurer desires to inspect the vehicle; and other factors affecting the vehicle and the parties to the claim. If a vehicle is not reasonably available

	Comment 25.8 For the same reasons, and to avoid any confusion over the term "third-party insurer," we propose similar changes to paragraph (D): "Subdivisions (e)(4)(A) and (e)(4)(B) above notwithstanding, in the case of a third-party claim, should an third-party insurer exercise its right to inspect the damaged vehicle, the third-party insurer shall inspect the damaged vehicle within six (6) business days from the time the third-party insurer decides to inspect the third-party vehicle, provided the claimant makes the vehicle reasonably available for inspection by the third-party insurer. For purposes of the immediately preceding sentence, the third-party insurer's decision to inspect the third-party vehicle shall be deemed to have been made on the date the third-party insurer provides the third-party claimant with the information required by Subdivision (e)(2) of Section 2695.5, in the event the decision is not made prior to that date."	due to the actions of the consumer, the insurer may subsequently inspect the vehicle as provided in Section (e)(4)(D). **Response 25.8** Commenters suggest that Section (e)(4)(D) contains a similar time period issue to Section (e)(4)(A) and provides a suggested text revision. The Department is unable to find any difference in the text suggested by Commenters and the proposed regulations text, other than the change from "a third-party insurer" in the proposed text, to "an third-party insurer" in the version proposed by Commenters. However, the Department has modified the proposed regulation text to address Commenters' concerns. Section (e)(4)(B) has been rewritten to clarify that it applies only to first-

	Comment 25.9 It's also still unclear what happens when liability in a third-party claim has not been determined. There are times when the liability determination does not hinge on an inspection of the third party claimant's vehicle, and it might not make sense to inspect it until after liability is accepted. Paragraph (D) does not take this into account.	party claims and Section (e)(4)(C) has been rewritten to clarify that is only pertains to third-party claims. **Response 25.9** As discussed in other comment responses, the proposed regulations do not require any vehicle inspections. Vehicle inspections frequently occur in context of determining liability. In response to Commenters' concern and similar comments, the Department has modified the proposed regulation: the six day inspection period for third-party insurers (formerly Paragraph D, now Paragraph C) runs after the insurer decided to inspect the vehicle, addressing Commenters' concerns in context of third-party claims. However, the time to inspect runs independently of determination of liability, and the

	Comment 25.10 We also note that the Department fails to address what happens in a catastrophe situation. For instance, there is no discussion of whether the time frame is subject to revision in the case of a catastrophe. What happens if there is a catastrophe in an area and an insurer receives 1000 claims? Would that insurer be required to see the vehicle within six business days? If the Department insists on proceeding with the proposed regulations over the objections outlined herein, the Department should insert an exception for disasters declared by the Governor or Federal Emergency Management Agency. Or at a minimum, we request that the Department to at least indicate in writing that they would likely apply the leniency permitted in Title 10 CCR section 2695.12 (a) (1) in those situations: "In determining whether to assess penalties and if so the appropriate amount to be assessed, the Commissioner shall consider admissible evidence on the following: the existence of extraordinary circumstances."	insurer wishing to inspect a vehicle must do so within this time. The inspection time limitation is necessary to protect third-party claimants from excessive delay in having their vehicle inspected. **Response 25.10** This comment does not pertain specifically to the amended text and, therefore, is not timely because it was received after the 45 Day comment period closed. The Department acknowledges the need for an exception to the time rule in the aftermath of a major catastrophe. However, existing regulations already provide for this exception and the Department contends it is not necessary to create a new exception unique to the inspection time rule; 10 CCR 2695.2(e) sets forth a definition of "extraordinary circumstances," the existence of which are the first matter taken into account when determining violations of the fair claims regulations under 10 CCR

	Comment 25.11 Further, if the Department insists on proceeding with the proposed regulation over the objections outlined herein, we raise the following general implementation questions: • Insurers do not really have control of the time it takes a shop to return an estimate in all instances. Is the 6 day requirement applicable just to inspections? If so, what is an unreasonable period of time for a repair estimate and how do insurers control this? • How does the 6 day requirement work with supplements? • What does available for inspection mean? Where? How? What if vehicle is made available on the 6th day? The regulations should be clarified so that it is at least be six days from the date the vehicle is made available for inspection with some clear definition of what that is. • What about shops that create hostile work environment for insurer representatives? Can a carrier refuse to inspect or deal with a particular shop? Under what circumstances would a carrier be able refuse to inspect or deal with a particular shop? • How would the regulation work if two carriers are involved – with respect to 6 day requirement?	2695.12(a)(1). The "extraordinary circumstances" exception is sufficiently broad to encompass any catastrophe. **Response 25.11** These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. The Department will address each of Commenters' concerns in turn: • The proposed regulations only govern what the insurer may require of the consumer. No sections of the proposed regulations make an insurer liable for delays caused by a claimant's chosen shop or other third parties not under the control of the insurer. The Department has added Section (e)(4)(D) to address

	• What if a chosen shop refuses to admit carrier representatives to do inspections? • Section 2695.8 subdivision (e) (4) (B) - Is a request for photos via an app from a customer, a request for estimate from the claimant? • Section 2695.8 subdivision (e) (4) (C) – What defines an urban area? What specifically is "notice of claim"? Why is there no requirement for cooperation by claimant?	circumstances wherein a vehicle cannot be inspected within six days due to the consumer or consumer's chosen shop. Moreover, the Department has added Section (e)(4)(E) to clarify that the actions of a consumer's chosen shop are treated the same as the actions of the consumer. • The six day requirement applies only to the insurer's election to inspect a vehicle. In response to Commenters' comment, the Department has added Section (e)(4)(B)2., clarifying that reinspections subsequent to request for supplemental estimate must be conducted within six days of receipt of the request. • The Department cannot possibly write a rule contemplating all circumstances of a vehicle being not/available for inspection. Therefore, the

		Department's proposed rule requires that the vehicle be "reasonably available." In general, a vehicle will not be considered "reasonably available" if it cannot be inspected due to reasons outside of an insurer's control. • The comment does not specify what is meant by "hostile work environment." However, if any condition exists such that a vehicle is not reasonably available for inspection, then the insurer is not obligated to inspect the vehicle. If the claimant's chosen shop does not make the vehicle reasonably available for inspection (due to unreasonably hostile conditions) then the insurer is not obligated to inspect the vehicle. In this case, the insurer would have contractual remedies available to it in addressing

		this situation with the policyholder. Further, to the degree an auto repairer created a hostile environment for the insurer's personnel, depending on the facts, it could constitute an "extraordinary circumstance" under existing Department regulations. Such circumstances could be considered under 10 CCR 2695.12(a)(1) as described above. • The proposed regulations only govern what the insurer may require of the consumer. No sections of the regulations makes an insurer liable for delays caused by third parties not under the insurer's control, which is clarified in Section (e)(4)(E). However, Commenters also fail to state why the inspections of two insurers could not be conducted concurrently.

		• The proposed regulations only govern what the insurer may require of the consumer. No sections of the regulations makes an insurer liable for delays caused by third parties. A vehicle is not "reasonably available" for inspection if the chosen repairer refuses to admit the insurer's representatives to the premises; Section (e)(4)(E) clarifies that insurers are not liable for the actions of a consumer's chosen shop. • In response to Commenters' concerns, the proposed regulations have been revised to clarify that an in-app request for photographs would be treated as a request for estimate under. Requests for photographs or estimates are addressed under Section (e)(4)(B)3. of the proposed regulations. • An urban area is defined in these proposed regulation

		as areas with a population of 100,000 or more. Urban is anywhere that is not rural; i.e.: it is densely populated. "Notice of claim" is defined in the already effective Fair Claims Settlement Practices Regulations Section2695.2(n), of which, these proposed regulations are also part. The proposed regulations only govern insurer conduct; the Department has no authority to regulate consumer "cooperation," but the insurer would have contractual remedies available to it in addressing this situation with the policyholder, since all automobile insurance policies contain a duty to cooperate on the part of the policyholder.

	Comment 25.12 Section 2695.8 subdivision (e) (5) In our discussions with the Department, the Department indicated that insurers could still "request" to have a claimant's vehicle inspected at an insurer Direct Repair Program (DRP) under the proposed regulation. However, as the proposed regulation currently reads, insurers will not even be allowed to make a request that a claimant's vehicle be inspected at a DRP. Further, it appears that the Department is interpreting an insurer's reasonable request to have a vehicle inspected at a DRP as a requirement, or that the Department may interpret some carriers' inspection programs as a requirement rather than a request to have the vehicle inspected at a particular shop. As it stands, "require" is an ambiguous term.	**Response 25.12** These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. The Department agrees that an insurer could request to have a vehicle inspected at a DRP location subsequent to the consumer choosing a repairer under the proposed regulations; the proposed regulations only prohibit insurers from *requiring* that a vehicle be inspected at a DRP location after the consumer has selected a repairer. Commenters fail to identify their reasoning as to why the proposed regulations would prevent a request for inspection at a DRP location, and fail to identify the sections of the proposed regulation purported to have this effect. The Department reiterates that the proposed regulations only prohibit *required* inspection at DRP locations.

		Commenters make the nonsensical assertion that "it appears that the Department is interpreting an insurer's reasonable request to have a vehicle inspected at a DRP as a requirement, or that the Department may interpret some carriers' inspection programs as a requirement rather than a request to have the vehicle inspected at a particular shop." While this comment is not reasonably coherent, as a baseline, the proposed regulations are intended to address steering behaviors which are documented in Department complaint files; the proposed regulations do not specifically target any one insurer's behavior or inspection program. The proposed regulations do not "interpret" any past, present, or future conduct, but rather proscribe behaviors associated with steering complaints received by the Department. The plain English distinction between "request" and "require" could not be clearer. The former may be done at the

		recipient's option, while the latter is imposed upon the recipient. To the extent that any insurers' "reasonable requests" or "inspection programs" result in the consumer being compelled to submit to inspection at a DRP location in order to have the claim resolved, such "reasonable requests" or "inspection programs" are prohibited. The Department strongly disputes that "require" is an ambiguous term. **Response 25.13** These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. Commenters are incorrect in asserting that the regulation imposes costs on the insurer. The proposed regulation does not impose any costs upon the insurer; any cost is determined by the insurer's decision regarding whether or not to inspect a vehicle, and which method of inspection to employ. There is no
	Comment 25.13 Also, in our discussions with the Department, we have maintained that the proposal under this subdivision could be costly as some insurers may need to hire more employees to track down the location of the claimant's car so that they can inspect them. If the Department insists on proceeding with the proposed regulations despite the objections outlined herein, as an alternative, we suggest the Department strike the current proposed language and instead adopt the language below: (5) No insurer shall require that the claimant have a non-drivable vehicle inspected at an automobile repair shop identified by the insurer after the claimant has chosen an automobile repair shop, except that an insurer may have a non-drivable vehicle towed to an	

	automobile repair shop chosen by the insurer for inspection at the insurer's expense. This proposed language is clearer and would avoid the unintended consequence of increasing costs related to hiring more employees under the current proposal.	requirement in statute that an insurer conduct any inspection of any vehicle in any particular manner. There are a number of low- and no-cost inspection alternatives that insurers may employ, including requesting that the consumer obtain competing estimates, or requesting photographs of the damaged vehicle. The proposed regulation does not require insurers to lease any physical premises, or hire any additional personnel. Insurers already lease inspection premises and employ mobile claims adjusters whose services may be used to comply with the proposed regulation; Commenters do not provide any factual support for the costs they claim the proposed regulation will impose. The Department declines to adopt Commenters' proposed revision to Section (e)(5) as it has nothing to do with the proposed rule. The intention behind Section (e)(5) was to prohibit numerous steering

		behaviors which can only take place if the consumer can be compelled to take their vehicle to a DRP; the proposed rule has nothing to do with drivable versus non-drivable vehicles. Also, the Department notes that the commenter's language makes no mention of covering the cost to tow the vehicle back to the claimant's repair shop, only away from the claimant's shop. Commenter's proposed language would result in vehicles being towed to an insurer's chosen shop thereby creating greater propensity to steer that vehicle away from the claimant's chosen shop, the very practices these regulations are intended to mitigate. Commenters' proposed revision clarifies nothing, other than Commenters' persistent advocacy for weak regulations of limited applicability. As stated above, the proposed regulation imposes no costs on insurers; any costs incurred are a consequence of decision-making by the insurer. **Response 25.14**

	Comment 25.14 Another issue that has come up under this subdivision is what happens when a customer requests to have his or her vehicle inspected outside the radius. For instance, where a person commutes from San Diego to Los Angeles, which is not uncommon, the customer might prefer to have the vehicle inspected in between the two locations, where the traffic is not as congested. The proposed regulation appears to prohibit insurers from accommodating the customer's reasonable request to have the vehicle inspected at a place that is more convenient for the customer. If the Department insists on proceeding with the proposed regulation despite the objections outlined herein, we urge the Department to clarify this issue. **Comment 25.15**	These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. As described above, the proposed regulations limit insurer conduct, but do not circumscribe consumer choice. Section (e)(4)(A) prohibits an insurer from "requiring" a consumer to travel an unreasonable distance. Therefore, the prohibition has no effect under circumstances where the consumer has elected to have their vehicle inspected outside the radius specified by Section (e)(4)(A). Insurers are free to accommodate consumer requests to have a vehicle inspected outside the radius specified by Section (e)(4)(A), as the inspection is not arising from a requirement imposed by the insurer. The Department disputes that the application of this rule is unclear. **Response 25.15**

	More broadly, the proposed regulation assumes that all vehicles can be repaired at all licensed shops. This is not always the case. Some manufacturers (i.e., Audi, Land Rover and some other foreign manufacturers) do not sell OEM parts to any shop that is not certified to repair their vehicles. This is an example of a limitation that is not the fault of the insurer and an example demonstrating that we cannot always fix a vehicle in a shop picked by the claimant.	These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. The proposed regulation does not make any "assumptions" regarding where vehicles can be repaired, but merely effectuates the statutory mandate of CIC §758.5 requiring that the consumer be freely able to have their vehicle repaired at the repairer of their choice. The issue raised by Commenter concerns the statute, rather than the regulation.
	Comment 25.16 V. Necessity - The September 26, 2016, to subdivision (e) of section 2695.8 fail to comply with the necessity standard. Government Code section 11349.1 requires all regulations to comply with the necessity standard. Government Code 11349 (a), which defines the necessity standard, provides that the need for the regulation must be demonstrated in the rulemaking record "by substantial evidence." Title 10 CCR section 10 (b) explains that in order to meet the necessity standard, the rulemaking file must include "facts, studies, or expert opinion." We have reviewed the excerpts of the 16 complaints that the Department included in "Notice of Availability of Revised Text" and	**Response 25.16** These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. The Department has not amended its position with respect to the necessity for the proposed regulations. The Department disputes that the proposed regulations fail to comply with the necessity standard.

	submit that those complaints indicate a one sided representation of a particular case and thus fail to satisfy the necessity standard. From our review, the complaints are alleged violations of anti-steering laws under Insurance Code section 758.5, and they do not indicate whether such complaints were justified or whether any enforcement action ensued. If insurers are violating anti-steering laws, the Department already has the authority to enforce such laws and impose fines and penalties. We disagree that a whole new set of regulation are necessary based on a one sided representation of a particular case.	The Department thanks Commenters for their summary of the necessity standard under the APA. Commenters mention the 16 complaints, added by the 15 Day Notice. However, they omit reference to the 700+ pages of steering-related complaint files contained in the 45 Day Notice rulemaking file. The Department has received, and continues to receive consumer complaints about steering behaviors by insurers. These complaints by themselves constitute "substantial" evidence in support of the proposed regulation. In all likelihood, the steering complaints received by the Department represent a small fraction of all steering behavior on the part of insurers. Likely, only a small fraction of the consumer population knows what steering is, much less their rights under the steering statutes; of that small fraction, a smaller fraction is

		likely to actually complain to the Department. The volume of complaints received by the Department suggests ample necessity for the proposed regulation: insurers have demonstrated poor compliance with existing statutes and regulation, necessitating the implementation of new regulations to remedy the problem.
	Comment 25.17 Conclusions Given the fundamental differences between the industry and Department on the proposed anti-steering regulation and because the Association of California Insurance Companies v. Jones is pending before the California Supreme Court, which could partly address the authority, reference, and consistency issues raised here, we urge the Department not to move forward with the proposed anti-steering regulation. In our view, not addressing the issues here is tantamount to "regulatory overreach." In lieu of adopting this proposed anti-steering regulation, we reiterate our offer to work with the Department in convening a task force involving all the stakeholders (legislative policy staff of the Senate and Assembly Insurance Committees, Bureau of Automotive Repair, Governor's Office) to discuss a more comprehensive approach to these issues rather than moving forward with a one sided	**Response 25.17** These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. The Department admits that it has not been able to reach agreement with industry on all issues relating to the proposed regulations. However, the Department represents the interests of the Consumer, which, in this case, do not appear to be aligned with the interests of insurers. In Commenters' view, "regulatory overreach" consists of

	regulation. At this point, we are respectfully opposed to these proposals. Should you have any questions or concerns, please feel free to contact any of the following: Michael Gunning, PIFC Vice President (916-442-6646/mgunning@pifc.org), Armand Feliciano, ACIC Vice President (916-205-2519/armand.feliciano@acicnet.org), Shari McHugh, on behalf of PADIC, (916-769-4872/smchugh@mchughgr.com), Christian Rataj, NAMIC Senior Director (303-907-0587/crataj@namic.org), Katherine Pettibone, AIA Vice President (916-402-1678/kpettibone@aiadc.org), or Marti Fisher, California Chamber of Commerce, (916-930-1265/marti.fisher@calchamber.com).	any attempt to impose reasonable regulation on insurers; the Department does not share this perspective. As discussed above, the *Jones* decision is inapplicable to the proposed regulations, as the court specifically noted that its opinion was limited to the Department's replacement cost regulations. The Department declines Commenters' request for a "task force" regarding anti-steering regulations. The proposed regulations are the result of years of workshops, public hearings, correspondence, and countless discussions between Department and insurance industry members. During this time, insurers have continually downplayed the importance of consumer complaints and sought to promote weak or ineffective regulations. The Department represents the interests of consumers, which, in this case, are not aligned with the interests of insurers. Given the long-standing differences between

		the stakeholders, the Department believes that there will always be disagreement about the steering regulations and that further delay will not resolve these differences. Therefore, the Department will move forward with its rulemaking at this time.
SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND MODIFIED TEXT AVAILABILITY PERIOD OF OCTOBER 24, 2016 THROUGH NOVEMBER 8, 2016		
Bill Simpkins **Simpkins Auto** October 24, 2016 Written Comments 14S: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 26.1** Subject: ANTI-STEERING IN AUTO BODY REPAIRS Date: October 24, 2016 REGULATION FILE: REG-2015-00015 I agree that changes should be made,. The issues are the comments that the Insurance companies use to steer. Its what they are saying that should be added. They dont directly slander any shops, but they do use the following rhetoric. One, we wont guarantee the repairs unless you use our shop. two, the shop may charge you more than we agree to pay third, using another shop may delay your repairs	**Response 26.1** The Department thanks Commenter for the comment. The Department strongly disputes that the proposed regulations are "useless." In fact, the proposed regulations are directly responsive to the concerns raised by Commenter. Section (e)(3) of the proposed regulations prohibits insurers from making false or misleading statements to the consumer, including false or misleading statements about the repair shop chosen by the

	If this isnt Indirect steering, than WHAT IS? I know for a fact, as relayed by a State Farm agent in Fairfield , that she was told to read these comments to their insureds. The Anti-steering requirements that you have chosen to use are not even be used by insurance companies..so why make a law that is USELESS? Sincerely Bill Simpkins Simpkins Auto Benicia	consumer. The statements identified by Commenter, to the extent they are untrue or misleading in context of a particular auto repair claim, are prohibited by the proposed regulations. It is not possible for the Department to identify and prohibit each and every potential false or misleading statement, which is why the Department elected to prohibit false or misleading statements generally. In this way, the proposed regulation is responsive to the concerns raised by Commenter. The Department additionally thanks the Commenter for providing additional evidence of insurer steering practices.
Hamid Hojati **ICC Collision Centers** October 25, 2016 Written Comments 14T: Verbatim, but with inserted	**Comment 27.1** Subject: Department of Insurance Anti-Steering in Auto Body Repairs regulations, file no. REG-2015-00015 Can we talk?	**Response 27.1** The Department thanks Commenter for the comment. However, it is not responsive to the proposed regulations.

Comment Numbers keyed to responses.		
David McClune **California Autobody Association** November 8, 2016 Written Comments 14U: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 28.1** **Re: Second Revised Text--Anti-Steering in Auto Body Repairs Regulation** **CDI Regulation File: REG-2015-00015** Dear Mr. Diederich: The California Autobody Association (CAA) is pleased to provide the following comments to the second revised text to the Anti-Steering Auto Body Repair Regulation. The CAA is a non-profit trade association comprised of over 1100 individual and independent repair businesses within the collision repair industry. **Comment 28.2** We appreciate the Departments' attempt to further clarify 2695.8 (e) (4), however the revised text is confusing and creates more questions than answers with regard to re-inspections for supplement requests. Generally, when an auto body shop notifies the insurer of a repair supplement, the insurer not only knows where the vehicle is being repaired but most likely has inspected and approved the initial auto body repair estimate. The time frame for these	**Response 28.1** The Department thanks Commenter for the comment. **Response 28.2** The Department disagrees that the amendments to Sections (e)(4)(B) and (e)(4)(C) create confusion with respect to reinspections. References to reinspection in these sections were added in response to comments stating that insurers

	subsequent supplemental re-inspections and approvals are much shorter and usually accomplished very quickly. It would be excessive if the insurer had 6 business days to decide whether to exercise its right to re-inspect. This is especially concerning if the vehicle in question is on the frame rack, at a sublet vendor, disabled in a stall or simply near the end of the of the repair process. The six days would create unnecessary delays in the repair process. Furthermore, the section is silent as to how much more time the insurer would be provided to accomplish the actual re-inspection? Having no time limit on the re-inspection would cause further delays and hardships for consumers.	were taking an excessive amount of time to perform reinspections. Commenters also requested clarification as to the effect of the proposed regulations with respect to reinspections; the sections in question were added to address those comments. Commenter's concern is partially motivated by a misunderstanding of the proposed regulations. Contrary to Commenter's contention, the proposed regulations do not allow the insurer six days to decide whether to inspect the vehicle. Rather, upon receiving a request for supplemental estimate, the insurer must both notify the claimant of the insurer's intention to reinspect the vehicle and complete the reinspection. Therefore, the time to complete a reinspection is much shorter than what Commenter understood the proposed regulations to allow. While the Department is receptive to Commenter's concern that defining a time period for

		reinspection may delay the repair process, the Department observes that the current draft regulations afford consumers and auto repairers greater protections than existing regulations. Existing regulations do not define a time period within which an insurer must reinspect a vehicle. In response to comments on this issue and to protect against unreasonable delay in reinspections designed to convince the consumer to take their vehicle to another shop, it was reasonably necessary for the Department to promulgate a rule establishing a time limit within which the insurer must reinspect a vehicle. The Department does not anticipate that reinspections by the insurer will take the entire six-day period allowed by the regulation under most circumstances. The six-day time to reinspect represents an outer limit to the time allowed an insurer for reinspection. Contrary to commenter's assertion, the sections addressing reinspection

		are not silent on the time provided for the insurer to conduct the reinspection. The proposed regulations clearly state that the insurer is required to notify the claimant of their intention to reinspect and conduct the reinspection within the six-day period stated in the regulation, provided that the claimant makes the vehicle reasonably available for inspection. Current regulations do not state a time for reinspection, but the proposed regulations address this issue by stating that the insurer must conduct reinspection within six days. The Department believes that Commenter's concerns about potential hardship caused by the proposed regulations derive from a misunderstanding of the proposed regulations. As stated above, the proposed regulations affirmatively require reinspection to be completed within six days of receiving a request from an auto repairer; Commenter's concern appears to be based on the

		perception that the proposed regulations did not impose a time limit for reinspection. As the proposed regulations have not yet taken effect, the hardship envisioned by Commenter does not yet exist; the Department will continue to monitor claims settlement practices and may make future amendments to the regulations as necessary.
	Comment 28.3 The CAA recommends simplifying the entire section to simply provide insurers the right to decide and re-inspect vehicles for supplement requests within a reasonable period of time but not later than 3 business days from the time the insurer is notified of the supplement request and vehicle being made available for inspection. Thank you for your consideration. Very truly yours, David McClune Executive Director Cc: CAA Executive Committee	**Response 28.3** The Department believes that the proposed regulations are largely responsive to Commenter's concerns and operate in substantially the same manner as suggested by commenter. Under the proposed regulations, after receiving a request for supplemental estimate, insurers would be required to notify the claimant of their intention to reinspect the vehicle and to reinspect the vehicle in any event within six business days. While Commenter urges that three days is a more reasonable time period than six days, the Department

	Jack Molodanof, Attorney at Law	believes that six days represents an acceptable compromise between insurer requests for a longer time and auto repairer requests for a shorter time. The Department recognizes that in most cases an insurer can and reasonably should reinspect the vehicle in less than six business days, especially since supplemental damage is easier to appraise and, in most cases, the shop has made the vehicle available for reinspection at the time the request for supplement is made. However, since this proposed rule is intended to take into account different types of repairs and claims processes that exist in the industry, the proposed six-day rule is a reasonable outside timeframe for insurers to complete this process when conditions warrant.
Tim Chang **Auto Club SoCal** November 8, 2016 Written Comments 14V:	**Comment 29.1** **Re: Anti-Steering in Auto Body Repairs Proposed Regulations (REG-2015-00015)**	**Response 29.1** The Department thanks Commenter for the comment.

Verbatim, but with inserted **Comment Numbers** keyed to responses.	Dear Mr. Diederich: On behalf of our insurance affiliate, the Interinsurance Exchange of the Automobile Club (the Exchange), please accept the following comments and suggested changes to the proposed anti-steering revised regulations dated October 24, 2016. The attached changes are designed to provide better clarity to the new rules and to ensure an estimating and inspection process that is fair and reasonable for both claimants and insurers. **The regulations should be amended so that it is clear that a vehicle is not reasonably available for inspection by the insurer when either the claimant or the automotive repair shop chosen by the claimant does not reasonably make the vehicle available for inspection or re-inspection by the insurer (2695.8(e)(4)(E)(3), hereinafter "(E)(3)")** As currently drafted, this sub-section provides that a claimant fails to make a vehicle reasonably available for inspection when neither the claimant nor the automotive repair shop chosen by the claimant makes the vehicle reasonably available for inspection. We understand that this sub-section is supposed to mirror the preceding sub-section, which defines when a vehicle has been reasonably made available for inspection as when the claimant or the automotive shop makes the vehicle available. However, the use of "neither/nor" in (E)(3) creates ambiguity as to whether both the claimant and the automotive shop must refuse to make the vehicle available for the vehicle to be unavailable for inspection. The usual interpretation of "neither/nor" is to connect	The Department disagrees that Section (e)(4)(E)(3) creates any ambiguity. The regulation text says what it says, no more and no less. The section in question was added in response to comments from insurers to clarify that claimants and auto shops selected by claimants are essentially treated as the same entity for purposes of the proposed regulation; this drafting is desirable because either the claimant or the shop chosen by the claimant may have custody of the vehicle at any given point during the claims process. There is nothing ambiguous about the language in question; rather, the proposed alternative language actually is ambiguous, owing in part to the fact that it contains double negatives. Further, Commenter admits to correctly understanding the language of the proposed regulations. The statement that "[t]he regulations should be amended so that it is clear that a vehicle is not reasonably available for inspection by the insurer when either the

	two or more negative alternatives with both alternatives being satisfied or true. Thus, as drafted, we believe that (E)(3) requires both the claimant and the auto shop to deny access to the vehicle for the claimant to be deemed to have made the vehicle unavailable for inspection. We believe this is contrary to the intent of the sub-section, which is to define unavailability when either the claimant or auto shop denies access to the vehicle. For example, if a claimant authorizes access to his or her vehicle, but the body shop where the vehicle is located does not allow access, the vehicle would not be reasonably available for inspection. Accordingly, we suggest that (E)(3) be re-drafted as follows: **3. A claimant ~~fails to~~ <u>does not</u> make the vehicle reasonably available for inspection or re-inspection by the insurer when ~~n~~either the claimant ~~n~~or the automotive repair shop chosen by the claimant <u>does not</u> make~~s~~ the vehicle reasonably available for inspection or re-inspection by the insurer.** Please feel free to contact us at any time if you have questions concerning our comments. Thank you for your time and consideration. Respectfully Submitted, Tim Chang Legislative Counsel	claimant or the automotive repair shop chosen by the claimant does not reasonably make the vehicle available for inspection or re-inspection by the insurer" states a different rule ― one that is not being adopted by the Department ― which would result in the vehicle rarely if ever being made reasonably available for inspection under the proposed regulations. This is true because, presumably, if the complainant herself is the one making the vehicle reasonably available, for instance, then the shop necessarily cannot be doing so. The alternative proposed rule would thus produce the absurd result that the vehicle is not being made reasonably available for inspection under the proposed regulations when the claimant is doing that very thing, but the shop is not, and vice versa. It is conceivable that the sought-after clarity problem could exist in a different text from the one actually being proposed, which alternate text might actually contain the language and/or

		concepts the commenter uses to describe the proposed text, such as "authoriz[ing] access," "deny[ing] access" and "refus[al]" to make the vehicle available. However, the proposed regulations do not in fact contain this language. Rather, the complained-of language states clearly and unambiguously that the claimant fails to make the vehicle reasonably available when neither one of them (neither the claimant nor the shop) makes the vehicle reasonably available. This is the intended meaning and the only meaning to which the proposed language is susceptible. The language of preceding Section (e)(4)(E)2. makes it clear that the proposed regulations are intended to apply to either the claimant or the claimant's chosen auto repairer as essentially the same entity; Section (e)(4)(E)3. is intended to state the rule in the obverse. Claimant's construction of "neither/nor" does not make sense in context of the proposed regulations. Only one entity may have custody of the claimant's

		vehicle during the claims process (i.e.: either the claimant, or the shop chosen by the claimant). Therefore, it does not make sense to suggest that the proposed regulation requires both the claimant and claimant's shop to fail to make the vehicle available. The proposed regulation is only concerned with the entity in possession of the vehicle at the time the request is made; if the entity possessing the vehicle fails to make the vehicle available upon request, the vehicle is not reasonably available for inspection.
Insurance Industry Coalition November 8, 2016 Written Comments 14W: Verbatim, but with inserted **Comment Numbers** keyed to responses.	**Comment 30.1** RE: Notice of Availability of Second Revised Text - Anti-Steering in Auto Body Repairs - CDI Regulation File: Reg-2015-00015 Dear Mr. Diederich: On behalf of all the property casualty insurance trade organizations listed above, and the California Chamber of Commerce, we are writing to express our comments and questions to the California Department of Insurance's ("Department") proposed regulation on anti-steering. We appreciate the Department's efforts with this	**Response 30.1** The Department thanks Commenters for the comment. In response to Commenters' contention that the regulation text is "moving further from previous drafts and discussions," the Department notes that the majority of changes in the currently noticed draft are in response to comments

	revised version to address some of the issues we previously raised with the proposed anti-steering regulation. Nevertheless, we are disappointed that with this version the Department seems to be moving further away from previous drafts and discussions we have had. As a result, our overall feedback from our members, is that the October 24 second revised text on anti-steering fails to satisfy the authority, clarity, consistency, necessity, and reference standards under Government Code section 11349. Therefore, we are opposed to the proposed anti-steering regulation, and urge the Department to reconsider moving forward given our ongoing concerns as discussed below. **Comment 30.2** **I. Authority - The October 24, 2016, proposed revisions to subdivision (e) of section 2695.8 fails to comply with the authority standard.** Government Code section 11349.1 requires all regulations to comply with the standard of authority. Government Code section 11349 (b) provides, "'Authority' means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation." The Department's continued reliance on Insurance Code sections 790.10, 12921 and 12926, Civil Code sections 3333, and Government Code sections 11152 and 11342.2 as authorities for the October 24 proposed revisions to section 2695.8 falls short of satisfying the authority standard. None of the cited statutes permit or obligate the adoption of the amendments. In citing section 790.10 as authority for the adoption of the proposed revisions to section 2695.8, the Department takes the position that	from industry requesting revisions and clarifications. **Response 30.2** Commenters' comments regarding authority are not timely, as the Department has not changed any authority citations in the currently noticed regulations text. Other than rearranging a few words and sentences, Commenters' comments in this section are a verbatim recitation of their untimely comments in their letter of October 11. Therefore, the Department reiterates its responses contained in Response 25.2, as it incorporates Responses 6.3 and 6.6.

	the Insurance Commissioner's power to administer the Unfair Insurance Practices Act (UIPA) gives the Commissioner the authority to adopt regulations which define conduct that constitutes unfair or deceptive acts within the meaning of the provisions of UIPA. This reasoning was rejected by the Court of Appeal in *Association of California Insurance Companies v. Jones* (2015) 235 Cal.App.4th 1009. The Commissioner argued in *Jones* that the Commissioner's power to promulgate regulations to administer the UIPA gives the Commissioner the authority to define conduct that is unfair or deceptive through the adoption of a regulation. The Court of Appeal reviewed the provisions of the UIPA and concluded, "Read together, these provisions demonstrate that the Legislature did not give the Commissioner power to define by regulation acts or conduct not otherwise deemed unfair or deceptive in the statute." (Jones at p.1030) The ruling in the *Jones* decision compels the conclusion that the power granted to the Commissioner in Insurance Code section 790.10 to adopt regulations to administer the UIPA does not authorize the adoption of the proposed revisions. It is important to note that the *Jones* case is now pending before the California Supreme Court. The Supreme Court heard oral argument on the Jones case on November 1st, 2016 and will hand down a decision in the case no later than February 1st, 2017. A central issue in the case is whether the Insurance Commissioner has the authority to adopt a regulation that defines an unfair practice within the meaning of the UIPA. The Supreme Court's decision in the *Jones* case could have implications for the validity of section 2695.8(e). Therefore, it would be imprudent to adopt amendments to section 2695.8(e) before the Supreme Court issues its decision in the *Jones* case. We urge the Department to delay the adoption of any	

	amendments to section 2695.8 (e) until the Department has the benefit of the Supreme Court's ruling in the *Jones* case. The Department's reliance on Subdivision (a) of section 12921 is misplaced. Section 12921(a) simply directs the Commissioner to perform the duties imposed upon him or her by the provisions of the Insurance Code and other laws relating to the business of insurance and to enforce those provisions and laws. As explained in the *Jones* case, the Insurance Code does not give the Commissioner the authority to adopt the proposed revisions that define unfair conduct within the scope of the UIPA. The other two subdivisions of section 12921 do not provide authority for the proposed regulations. Subdivision (b) relates to the Commissioner's authority to delegate the power to approve settlements, and Subdivision (c) relates to the Commissioner's acceptance and maintenance of records. Insurance Code section 12926, which states that the Commissioner must require every insurer to be in full compliance with the provisions of the Insurance Code, does not provide authority for the adoption of the proposed revisions. Civil Code section 3333, which specifies the measurement of damages for the breach of an obligation not arising from a contract, does not provide authority for the adoption of the proposed revisions. Government Code section 11152 gives the head of each state department the authority to adopt regulations governing the activities	

	of the department. The does not provide authority for the adoption of the proposed revisions. Government Code section 11342.2 gives a state agency general authority to adopt regulations to implement a statute, as long as the regulations do not conflict with the statute. The holding in the Court of Appeal's *Jones* decision clarifies that the Commissioner's authority to implement the UIPA does not extend to the Commissioner any authority to define new conduct, such as that specified in section 2695.8 (e), as an unfair act under the UIPA. The regulatory section is inconsistent with the limited authority granted by the statute. **Comment 30.3** **II. Reference - The October 24, 2016, proposed revisions to subdivision (e) of section 2695.8 fail to comply with the reference standard.** Government Code section 11349.1 requires all regulations to comply with the standard of reference. Government Code section 11349 (e) provides, "'Reference' means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation." The October 24 proposed revisions to section 2695.8 (e) continue to rely on Insurance Code sections 758.5 and 790.03 as reference for the regulation; however, neither statute provides reference for the revisions.	**Response 30.3** Commenters' comments regarding reference are not timely, as the Department has not changed any reference citations in the currently noticed regulations text. Other than rearranging a few words and sentences, Commenters' comments in this section are a verbatim recitation of their untimely comments in their letter of October 11. Therefore, the Department reiterates its responses contained in Response 25.3, as it incorporates Responses 6.7 and 6.9.

	Insurance Code section subdivision (f) 758.5 states, "The powers of the commissioner to enforce this section shall include those granted in Article 6.5 (commencing with section 790) of Chapter 1 of part 2 of division 1." The enforcement powers referred to in subdivision (f) are the enforcement powers the Commissioner has under the UIPA. Those powers do not include the authority to adopt regulations which define unfair or deceptive insurance practices. In the *Jones* decision, the Court of Appeal reviewed the provisions of the UIPA, including section 790.08 which describes the powers vested in the Commissioner. The court concluded, "Thus, section 790.08 emphasizes that the enforcement role of the Commissioner is tethered to acts that are 'hereby declared to be unfair or deceptive,' to wit, defined or determined in the UIPA." (Jones at p. 1032) The Department of Insurance's reliance on Insurance Code section 790.03 as reference for the proposed revisions is not acceptable. The Department seeks to define new unfair conduct within section 790.03 under the guise of implementing section 790.03. In ruling that the Legislature did not give the Commissioner the authority to adopt a regulation defining an unfair and deceptive practice set forth in section 790.03, the *Jones* decision concluded that "under the guise of 'filing in the details,' the Commissioner therefore could not do what the Legislature has chosen not to do." (Jones at p.1036) The Supreme Court's decision in the *Jones* case could have implications for the validity of section 2695.8 (e). Therefore, it would be imprudent to adopt amendments to section 2695.8 (e) before the Supreme Court issues its decision in the *Jones* case. The Supreme Court heard oral argument on the *Jones* case on November 1st, 2016. The Court will hand down a decision in the case no later than February 1, 2017. We urge the Department to delay the	

	adoption of any proposed regulations purporting to be referenced by the UIPA until the Department has the benefit of the Supreme Court's ruling in the *Jones* case. **Comment 30.4** **III. Consistency - The October 24, 2016, proposed revisions to subdivision (e) of section 2695.8 fail to comply with the consistency standard.** Government Code section 11349.1 requires all regulations to comply with the standard of consistency. Government Code section 11349 (d) provides, "'Consistency' means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." The October 24 proposed revisions to subdivision (e) section 2695.8 are inconsistent with the Court of Appeal's decision in *Association of California Insurance Companies v. Jones* and nothing in the proposed revisions addresses this inconsistency. The Court of Appeal specifically held in the *Jones* decision as follows: "The language of the UIPA reveals the Legislature's intent to set forth in statute what unfair or deceptive trade practices are prohibited, and not delegate that function to the Commissioner" (*Jones* at p. 1030). The existing section 2695.8 (e) and the proposed amendments to the section are at odds with the holding in *Jones*. The Court of Appeal's decision in the *Jones* case is being reviewed by the California Supreme Court and until the Court completes its review of the decision, the Department is not free to ignore the Court of Appeal's ruling and adopt regulatory amendments that are inconsistent with the ruling.	**Response 30.4** Other than rearranging a few words and sentences, Commenters' comments regarding consistency are a verbatim recitation of their comments in their letter of October 11. Therefore, the Department reiterates its responses contained in Response 25.4, as it incorporates Response 6.10.

	The Supreme Court heard oral argument on the *Jones* case on November 1st, 2016. The Court will hand down a decision in the case no later than February 1, 2017. We urge the Department to delay the adoption of these proposed regulations until the Department has the benefit of the Supreme Court's ruling in the *Jones* case. The proposed regulations are inconsistent with well-settled California law confirming that a claimant can choose the body shop of his or her choice to make repairs. The proposed revisions appear to limit consumer choice by circumscribing the distance at which a customer may travel to have their repairs made. California is a very large state and our citizens travel its entirety. If a claimant wants to have repairs made in a geographic area outside the distance provided in these regulations, but more convenient to him or her, it does not appear that an insurer could accommodate that request, or allow for adequate documentation of such an accommodation that would be sufficient for the Department's market conduct purposes. **Comment 30.5** **IV. Clarity - The October 24, 2016, proposed revisions to subdivision (e) of section 2695.8 fail to comply with the clarity standard.** Government Code section 11349.1 requires a regulation to comply with the standard of clarity. Government Code section 11349(c) provides, "'Clarity' means written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them."	**Response 30.5** The Department thanks Commenters for summarizing the APA clarity standard. The Department disputes that the proposed regulation text is convoluted or difficult to understand. The complexity of the auto claims process necessitates comprehensive regulations which

	As noted in our introductory comments above, the October 24, 2016, proposed second revised text to subdivision (e) of section 2695.8 has reached a new level of convolution. The proposed regulation fails to comply with the clarity standard because insurers will have difficulty understanding and implementing several provisions of the proposed regulation. Consider the following ambiguities: **Comment 30.6** **Section 2695.8 subdivision (e):** The industry had recommended that insurers be allowed to require that a vehicle be inspected by an automobile repair shop of the insurer's choice in section 2695.8(e)(5). The Department has refused to make this change. The failure to make this change negates the changes proposed by the Department in section 2695.8(e)(4) because once a claimant has chosen an automobile repair shop, an insurer cannot require the vehicle to be inspected anywhere else regardless of distance or the time within which the vehicle must be inspected.	address those complexities. In response to Commenters' comments requesting clarification on how the regulations would operate, it was necessary to add additional text to address the perceived ambiguities. Insurance is a highly regulated industry and insurers are experienced in complying with comprehensive regulatory schemes; insurers should have no trouble implementing the proposed regulations. **Response 30.6** Commenters' comment regarding the interaction of Sections (e)(4) and (e)(5) arises partially from a misreading of Section (e)(5). Section (e)(5) prohibits an insurer from requiring the claimant to have their vehicle inspected at a location specified by the insurer if the claimant has already chosen an auto repairer. Insurers are free to require that the claimant have the vehicle inspected at an insurer-designated location, so long as the claimant has not yet selected an

	Comment 30.7 **Section 2695.8 (e)(4)(B):** In general, the language and grammar structure of this section lack clarity because they all refer back to different sub-sections of the section. Each numbered sub-section makes reference to another numbered sub-section. For example, (e)(4)(B)(1) references (e)(4)(B)(2) and (e)(4)(B)(3), (e)(4)(B)(2) references (e)(4)(B)(1) and (e)(4)(B)(3), which makes the revisions difficult to understand and interpret. Additionally, the numbered sections talk about different types of inspections - initial inspections (e)(4)(B)(1), inspections & re-inspections in response to supplement request (e)(4)(B)(2), photo and estimate submitted to insurer (e)(4)(B)(3).	auto repairer, in which case the distance rule in Section (e)(4)(A) would apply. The inspection time rules in Section (e)(4) are applicable both to insurer-designated inspection locations and claimant-selected repairers. Therefore, there is no conflict with respect to the operation of Sections (e)(4) and (e)(5). **Response 30.7** The Department disagrees that the inclusion of cross-references in Section (e)(4)(B) make the section inherently unclear. The rules in that section, per the request of Commenters in prior comments, prescribe different rules for first- and third-party claims, and for different types of inspection or information request. It was, therefore, necessary in drafting the section to include cross-references to specify which rules applied to which circumstances. Drafting these rules without cross-references would have resulted in rule statements that were far longer and far more cumbersome.

	Comment 30.8 **Section 2695.8 subdivision (e)(4)(B)(1)(b):** What does "reasonably available" mean? The attempt to define the term in (e)(4)(E)(1)(2)(3) as either the claimant or repairer making the vehicle "reasonably available" remains vague at best. Rather than provide clarity, it sets up a tautology—that is, the definition merely reuses the term itself. The proposed definition literally states, "A claimant makes the damaged vehicle reasonably available for inspection or re-inspection by the insurer when the claimant…makes the vehicle reasonably available for inspection or re-inspection by the insurer." If the insurer has to inspect the vehicle within 6 days of receiving notice of the claim, but the insured does not determine the location of the vehicle until day five, does "reasonably available" require the insurer to inspect by the next day, on day six?"	The Department agrees that the subsections of Section (e)(4)(B) refer to different inspection methodologies; these sections were added in response to Commenters' comments requesting clarification as to how the regulations would affect different types of inspection methodologies. **Response 30.8** Commenters misunderstand the purpose of Sections (e)(4)(E)(1-3). These sections are not definitions, but were added to clarify that claimants and auto repairers selected by the claimant are essentially treated as the same entity for purposes of the proposed regulations; requests may be made to either and either may be held responsible for making the vehicle reasonably available. This is reflective of the fact that insurers may be dealing with either the claimant, or a repairer designated by the claimant, depending on who has custody of the vehicle

		during any particular point of the claims process. The rules in Section (e)(4)(E) were added in response to comments from Commenters requesting clarification as to how the proposed regulations applied to auto repairers selected by the claimant. Reasonable availability is necessarily a fact-specific inquiry which takes many considerations into account, including, for example: how promptly after notice of claim the insurer makes the inspection request; the times and places that the consumer is prepared to make the vehicle available for inspection; the times and places that the insurer is prepared to inspect the vehicle; the flexibility the insurer affords the claimant with respect to times and locations when and where the insurer is available to conduct inspection; the distance the insurer requires the claimant to drive (or have the car towed) in order to have the vehicle inspected or, alternatively, whether or not and the degree to which the insurer is prepared to

		send an adjuster to the location where the vehicle is parked or garaged; the extent to which the claimant is prepared to provide access to the vehicle in cases where the insurer is prepared to send an adjuster; for a vehicle that is operational, the length of time on the agreed-upon date or dates the insurer requires the claimant to be without a vehicle or, alternatively, whether or not and the terms under which the insurer makes a replacement vehicle available during the time the claimant's car is required to be unavailable for use as transportation, while it is waiting to be inspected; the breadth or narrowness of the choices the insurer offers the claimant with respect to times or locations that are available to the claimant for the inspection of the vehicle in question during the specified six-day period; the accessibility and relative safety of the location(s) where the insurer requires the vehicle to be inspected; the flexibility shown by the insurer, on the one hand, and the claimant,

		on the other, with respect to accommodating the scheduling needs and other concerns of the other party; and numerous other considerations affecting the vehicle and the parties to the claim. Thus, in the commenter's hypothetical example, depending on the factual context, the proposed regulations could conceivably require the insurer to inspect the damaged vehicle on the sixth day in question, if under the particular circumstances in question the claimant's making the vehicle available only on that sixth day was reasonable. In reality, arranging a mutually agreeable time and location for a damaged vehicle to be inspected necessarily requires a reasonable degree of flexibility and reasonableness on the part of both parties. This is true notwithstanding the operation of the proposed regulations. Thus, the insurer's own posture with respect to facilitating the inspection has much to do with the determination of whether or not under the regulations the claimant

		has made the vehicle reasonably available for inspection by the insurer during specified six-day period. In any case, whether or not a claimant makes a vehicle reasonably available for inspection involves so many different permutations of facts and considerations that a bright-line rule would be impracticable; accordingly, the Department has proposed a reasonableness standard, which insurers are quite accustomed to observing in regard to other aspects of their operations. In response to this and similar comments, the Department has nonetheless revised the proposed regulations to include Section (e)(4)(D) addressing the insurer's right to inspect the damaged vehicle subsequent to the specified six day period, in the event that the claimant fails to make the damaged vehicle reasonably available during that period. If the claimant does not make the vehicle reasonably available over the course of the six-day period specified in the proposed regulations, the insurer

	Comment 30.9 **Section 2695.8 subdivision (e)(4)(B)(1):** If a customer chooses to go beyond the 6 days (for example, they opt to have a drive in appointment in two weeks because they have vacation etc.) what are the insurers obligations under that scenario? □ What are the ramifications on day 7? □ Will the clock start over? **Comment 30.10**	may subsequently inspect the vehicle as provided in Section (e)(4)(D). **Response 30.9** As discussed above, if the claimant does not make the vehicle reasonably available for inspection during the six-day period, the insurer may then inspect the vehicle within a "reasonable" time, as set forth in Section (e)(4)(D). Therefore, in a case where the claimant does not make the vehicle reasonably available for inspection during the six-day period, going forward from the seventh day, the insurer may then inspect the vehicle within a "reasonable" time; the six-day clock does not reset. However, if the claimant makes the vehicle reasonably available and the insurer fails to inspect the vehicle within the six days, the insurer forgoes the right to inspect the vehicle. **Response 30.10**

	Section 2695.8 subdivision (e)(4)(B)(2): We question in this section on re-inspections (and inspections) that if we do not request to see the vehicle within 6 days, are we obligated to pay whatever the auto repair shop states is necessary? There are times when shops will insist on this outcome where they perceive some deficiency in the insurer's adherence to its regulatory obligations. What about circumstances where a customer and/or a shop requests a supplemental inspection, however the status of the vehicle has not changed from the original inspection. Are insurers still obligated to inspect the vehicle within 6 days? What happens when the vehicle has not had a "pre-pull" inspection? What would happen in a circumstance where a customer has received an estimate from a shop and the estimate is different from the insurers but no additional damages have not been made visible?	Regarding Commenters' question on failing to conduct a reinspection within the required six days: nothing in the proposed regulations requires insurers to settle any claims or make any payments in any particular manner. In the event that the insurer does not conduct a reinspection within the six days, the insurer may still adjust the claim in a manner which produces a fair and equitable settlement. However, the insurer must arrive at that fair and equitable settlement without conducting a reinspection. Similarly, nothing in the proposed regulations imposes any affirmative duty on an insurer to conduct any reinspection at all. In the event that the claimant or auto repairer requests a reinspection and the "status of the vehicle has not changed," the insurer may simply decline to reinspect the vehicle and is under no obligation to conduct a reinspection with respect to that request for supplemental estimate. The

		proposed regulations apply to all inspections, regardless of timing or purpose and has no specific effect with respect to pre-pull inspections. The final portion of Commenters' questions on this section is difficult to understand, as it contains a double-negative. However, assuming that the estimate obtained by the claimant differs from the insurer's estimate and additional damage is subsequently located, the insurer may elect to reinspect the vehicle of its own volition, or subsequent to receiving a request for supplemental estimate from the auto repairer. Further, current regulations, subdivision (f) of this Section 2695.8, require the insurer to reasonably adjust the repair shop's estimate. **Response 30.11** While the scenario presented is not how claims are presented and processed in practice, the proposed regulations are responsive to Commenters' concerns regarding requesting
	Comment 30.11 **Section 2695.8 subdivision (e)(4)(B)(3):** The proposed revisions do not take into account circumstances when it is difficult to make contact with the customer and/or situations when the insured may not be sure if they want to pursue a claim. For example, if a customer files a claim but is unsure if they want to pursue the claim	

	at that time but then on day four decides they want to pursue, it seems insurers are barred from requesting they obtain estimates and photos. The same issue would apply if an insurer receives notice of the claim from a 3rd party but cannot reach the insured until day four. Also, it is inconsistent to have a three day requirement on photos after the notice of claim and six days for a physical inspection. What is the rationale for the difference?	estimates or photographs from claimants. In the event that an insurer desires to obtain photographs or estimates from a claimant, the insurer is required to make the request within three days of receiving notice of the claim. Insurers are not required to notify the claimant in any specific manner, so long as notice is made within that time period; once the insurer has made timely notice, the insurer is not responsible for delays on the part of the claimant in complying with the insurer's request. Further, whether or not a claimant is unsure if he or she wants to pursue the claim, the insurer knows what information it needs to process the claim and is required to diligently pursue the claims investigations, per Section 2695.7(d), and to specify the information the claimant must provide for proof of claim, per Section 2695.5(e) of these same regulations, so is already required to provide this type of notice. In addition, presentation of a claim by the insured necessarily involves the claimant providing the insurer

		with means of contacting the claimant. The proposed regulations establish a shorter time period for requesting estimates or photographs because all that is required of the insurer is to make the request. By contrast, inspecting a vehicle requires the insurer to (1) request the claimant make the vehicle available for inspection and (2) have representatives physically inspect the vehicle, which entails additional logistics. Because sending a request to the claimant is far simpler than conducting an inspection, the proposed regulations require the request to be made in a more reasonable time frame. **Response 30.12** Section (e)(4)(C) states that it operates notwithstanding Section (e)(4)(B), meaning that third-party claims are to be resolved under the rules governing third-party claims (Section (e)(4)(C)) and that the
	Comment 30.12 **Section 2695.8 subdivision (e)(4)(C):** This section addresses third-party inspections but references (e)(4)(B), which talks specifically and only about first-party inspections. This drafting is unclear because the two sections are mutually exclusive based on the structure where one section talks about first-party inspections only	

	and the other about third-party inspections only. The section mentions nothing about requesting estimate/photos from a claimant. Does this imply that when insurers need to get an estimate of damages (either inspection or requesting estimate/photos) they will be required to inspect the vehicle within six days and have no option to request an estimate/photo from the claimant? Furthermore, the regulation currently references "when an insurer decides to *inspect*," so if insurers decide to obtain estimate/photos from a claimant, does the six days apply? Our concern is that if the Department decides to interpret that phrase as "when an insurer decides to inspect or get an estimate for damages", then it appears that insurers would be barred later from inspecting if we request estimate/photos and do not receive them for six days. **Comment 30.13**	rules governing first-party claims (Section (e)(4)(B)) are not applicable. There is nothing unclear about this drafting. The proposed regulations are silent with respect to requesting estimates or photographs from third parties, based on the unique nature of the third party claims relationship. In recognition that an insurer does not have a direct contractual relationship with a third-party claimant, the regulations do not set forth rules governing how the insurer may request photographs or estimates from the insured; insurers may request these materials as they see fit, consistent with the insurer's general obligation to settle claims in a fair and equitable manner. For these reasons, the hypotheticals posed by Commenters regarding third-party claims are not affected by the proposed regulations. **Response 30.13** These comments do not pertain specifically to the amended text

	Section 2695.8 subdivision (e)(5) We continue to urge the Department to clarify this section. At one point, the Department indicated that insurers could still "request" to have a claimant's vehicle inspected at an insurer Direct Repair Program (DRP) under the proposed regulation. However, as the proposed regulation currently reads, insurers will not even be allowed to make a request that a claimant's vehicle be inspected at a DRP. Further, it appears that the Department is interpreting an insurer's reasonable request to have a vehicle inspected at a DRP as a requirement, or that the Department may interpret some carriers' inspection programs as a requirement rather than a request to have the vehicle inspected at a particular shop. As it stands, "require" is an ambiguous term.	and, therefore, are not timely because they were received after the 45 Day comment period closed; Section (e)(5) has not been modified since the proposed regulations were first noticed in March 2016. The Department agrees that an insurer could request to have a vehicle inspected at a DRP location subsequent to the consumer choosing a repairer under the proposed regulations; the proposed regulations only prohibit insurers from *requiring* that a vehicle be inspected at a DRP location after the consumer has selected a repairer. Commenters fail to identify their reasoning as to why the proposed regulations would prevent a request for inspection at a DRP location, and fail to identify the sections of the proposed regulation purported to have this effect. The Department reiterates that the proposed regulations only prohibit *required* inspection at DRP locations. Commenters make the nonsensical assertion that "it appears that the

		Department is interpreting an insurer's reasonable request to have a vehicle inspected at a DRP as a requirement, or that the Department may interpret some carriers' inspection programs as a requirement rather than a request to have the vehicle inspected at a particular shop." While this comment is not reasonably coherent, as a baseline, the proposed regulations are intended to address steering behaviors which are documented in Department complaint files; the proposed regulations do not specifically target any one insurer's behavior or inspection program. The proposed regulations do not "interpret" any past, present, or future conduct, but rather proscribe behaviors associated with steering complaints received by the Department. The plain English distinction between "request" and "require" could not be clearer. The former may be done at the recipient's option, while the latter is imposed upon the recipient. To the extent that any insurers'

	Comment 30.14 In our previous discussions with the Department, we have maintained that this section will be costly for insurers. Insurers will need to hire more employees to track down the location of the claimant's car so that they can inspect them and increase the number of staffed centers and drive-ins. If the Department insists on proceeding with the proposed regulations despite the objections outlined herein, as an alternative, we suggest the Department strike the current proposed language and instead adopt the language below: *(5) No insurer shall require that the claimant have a non-drivable vehicle inspected at an automobile repair shop identified by the insurer after the claimant has chosen an automobile repair shop, except that an insurer may have a non-drivable vehicle towed to an*	"reasonable requests" or "inspection programs" result in the consumer being compelled to submit to inspection at a DRP location in order to have the claim resolved, such "reasonable requests" or "inspection programs" are prohibited. The Department strongly disputes that "require" is an ambiguous term. **Response 30.14** These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed; Section (e)(5) has not been modified since the originally noticed text of the proposed regulations. Commenters are incorrect in asserting that the regulation imposes costs on the insurer. The proposed regulation does not impose any costs upon the insurer; any cost is determined by the insurer's decision regarding whether or not to inspect a vehicle, and which method of inspection to employ. There is no

	automobile repair shop chosen by the insurer for inspection at the insurer's expense. This proposed language is clearer and would avoid the unintended consequence of increasing costs related to hiring more employees under the current proposal.	requirement in statute that an insurer conduct any inspection of any vehicle in any particular manner. There are a number of low- and no-cost inspection alternatives that insurers may employ, including requesting that the consumer obtain competing estimates, or requesting photographs of the damaged vehicle. The proposed regulation does not require insurers to lease any physical premises, or hire any additional personnel. Insurers already lease inspection premises and employ mobile claims adjusters whose services may be used to comply with the proposed regulation; Commenters do not provide any factual support for the costs they claim the proposed regulation will impose. The Department declines to adopt Commenters' proposed revision to Section (e)(5) as it has nothing to do with the proposed rule. The intention behind Section (e)(5) was to prohibit numerous steering

		behaviors which can only take place if the consumer can be compelled to take their vehicle to a DRP; the proposed rule has nothing to do with drivable versus non-drivable vehicles. Also, the Department notes that the commenter's language makes no mention of covering the cost to tow the vehicle back to the claimant's repair shop, only away from the claimant's shop. Commenter's proposed language would result in vehicles being towed to an insurer's chosen shop thereby creating greater propensity to steer that vehicle away from the claimant's chosen shop, the very practices these regulations are intended to mitigate. Commenters' proposed revision clarifies nothing, other than Commenters' persistent advocacy for weak regulations of limited applicability. As stated above, the proposed regulation imposes no costs on insurers; any costs incurred are a consequence of decision-making by the insurer. **Response 30.15**

	Comment 30.15 Another issue that has come up under this subdivision is what happens when a customer requests to have his or her vehicle inspected outside the radius. For instance, where a person commutes from San Diego to Los Angeles, which is not uncommon, the customer might prefer to have the vehicle inspected in between the two locations, where the traffic is not as congested. The proposed regulation appears to prohibit insurers from accommodating the customer's reasonable request to have the vehicle inspected at a place that is more convenient for the customer. If the Department insists on proceeding with the proposed regulation despite the objections outlined herein, we urge the Department to clarify this issue.	These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. As described above, the proposed regulations limit insurer conduct, but do not circumscribe consumer choice. Section (e)(4)(A) prohibits an insurer from "requiring" a consumer to travel an unreasonable distance. Therefore, the prohibition has no effect under circumstances where the consumer has elected to have their vehicle inspected outside the radius specified by Section (e)(4)(A). Insurers are free to accommodate consumer requests to have a vehicle inspected outside the radius specified by Section (e)(4)(A), as the inspection is not arising from a requirement imposed by the insurer. The Department disputes that the application of this rule is unclear. **Response 30.16**

	Comment 30.16 More broadly, the proposed regulation assumes that **all** vehicles can be repaired at **all** licensed shops. This is not always the case. Some manufacturers (i.e., Mercedes, Audi, Land Rover and some other foreign manufacturers) do not sell OEM parts to any shop that is not certified to repair their vehicles. This is an example of a limitation that is not the fault of the insurer and an example demonstrating that we cannot always fix a vehicle in a shop picked by the claimant. **Comment 30.17** **V. Necessity - The October 24, 2016, proposed revisions to subdivision (e) of section 2695.8 fail to comply with the necessity standard.** Government Code section 11349.1 requires all regulations to comply with the necessity standard. Government Code 11349 (a), which defines the necessity standard, provides that the need for the regulation must be demonstrated in the rulemaking record "by substantial evidence." Title 10 CCR section 10 (b) explains that in	These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. The proposed regulation does not make any "assumptions" regarding where vehicles can be repaired, but merely effectuates the statutory mandate of CIC §758.5 requiring that the consumer be freely able to have their vehicle repaired at the repairer of their choice. The issue raised by Commenter concerns the statute, rather than the regulation. **Response 30.17** These comments do not pertain specifically to the amended text and, therefore, are not timely because they were received after the 45 Day comment period closed. The Department has not amended its position with respect to the necessity for the proposed regulations. The Department disputes that the proposed regulations fail to comply with the necessity standard.

	order to meet the necessity standard, the rulemaking file must include "facts, studies, or expert opinion." We have reviewed the 16 “CDI Complaint File” excerpts that the Department included in September 23 “Notice of Availability of Revised Text and Addition to the Rulemaking File.” In our opinion the complaints are alleged violations of anti-steering laws under Insurance Code section 758.5, and they do not indicate whether such complaints were justified or whether any enforcement action ensued. We believe the complaints are an unfair representation of a particular case and thus fail the substantial evidence test to meet the necessity standard. If insurers are violating anti-steering laws, the Department already has the authority to enforce such laws and impose fines and penalties. We disagree that a whole new set of regulation is necessary based on a one-sided representation of a particular case.	The Department thanks Commenters for their summary of the necessity standard under the APA. Commenters mention the 16 complaints, added by the 15 Day Notice. However, they omit reference to the 700+ pages of steering-related complaint files contained in the 45 Day Notice rulemaking file. The Department has received, and continues to receive consumer complaints about steering behaviors by insurers. These complaints by themselves constitute “substantial” evidence in support of the proposed regulation. In all likelihood, the steering complaints received by the Department represent a small fraction of all steering behavior on the part of insurers. Likely, only a small fraction of the consumer population knows what steering is, much less their rights under the steering statutes; of that small fraction, a smaller fraction is

		likely to actually complain to the Department. The volume of complaints received by the Department suggests ample necessity for the proposed regulation: insurers have demonstrated poor compliance with existing statutes and regulation, necessitating the implementation of new regulations to remedy the problem. **Response 30.18** Although Commenters contend that competition among insurers promotes fast resolution of claims, complaints to the Department have shown otherwise. Commenters also casually overlook the strong insurer incentive to cut costs by steering the consumer to the insurer's DRP shop. Consumers have frequently complained that insurers have made them wait a significant amount of time to have their vehicle inspected. The Department has received consumer complaints stating that, after the consumer has chosen a
	Comment 30.18 ***Conclusions*** The auto insurance business is extremely competitive. Our goal is to retain customers, not lose them to dissatisfaction during the claims process. Every year, J.D. Power rates insurance companies by surveying auto insurance customers who settled a claim within the past six months. Insurance companies compete for customer satisfaction and distinguish themselves through the claims process. This regulation and the proposed revisions inaccurately attempt to tie steering to the claims and inspection process – the area that companies are most competitive for a consumer's business. Our goal is to return a customer's vehicle to them as soon as possible. To create a false paradigm of timeframe for inspection as a prevention against steering, fails to recognize the reality of the auto insurance marketplace.	

		repair shop outside the insurer's Designated Repair Program network, the insurer has informed the consumer that inspection cannot be scheduled for a number of days at the consumer's shop of choice, but can be done immediately at one of the insurer's DRP shops. The proposed regulation addresses this pattern of delay. As noted in the Initial Statement of Reasons, the Department has received complaints from consumers that some insurers have advised them that it will take several extra days or even weeks for the insurer to inspect the damaged vehicle, unless the claimant goes to the insurer's chosen Direct Repair Program ("DRP") shop. Insurers must have processes in place to inspect damaged vehicles in a timely and reasonable manner, no matter whether the claimant chooses his or her own repair shop or whether a DRP shop is chosen by the claimant. It is inherently unreasonable and unfair to delay

		inspection (and thus delay the repair) of vehicles because the claimant chooses a repair shop other than one suggested by the insurer. The complaints included in the rulemaking record demonstrate that inspection time is frequently used as a steering device in the auto insurance marketplace. **Response 30.19**
	Comment 30.19 After thorough review of this second revised text by the entities listed above, we are convinced that the regulations fail to satisfy the authority, clarity, consistency, necessity, and reference standards under Government Code section 11349. In fact, this draft reaches a new level of convolution that will make comprehension and compliance extremely difficult. We urge the Department not to move forward with the proposed anti-steering regulation specifically while *Association of California Insurance Companies v. Jones* is pending before the California Supreme Court and the potentiality for a decision that could partially address the authority, reference, and consistency issues raised in this letter. Given the fundamental differences between the industry and Department on the proposed anti-steering regulation, we reiterate our	As described above, the Department strongly disputes that the proposed regulations fail to meet the APA standards. As additionally described above, the additional sections of the regulation, which Commenters regard as "convoluted," were added to address concerns raised by Commenters in prior comments. The complexity of the claims process necessitates comprehensive rules to prevent steering during that process. As discussed above, *ACIC v. Jones* is not a final decision and is not binding precedent. By its own

	offer to work together to convene a task force involving all the stakeholders (legislative policy staff of the Senate and Assembly Insurance Committees, Bureau of Automotive Repair, Governor's Office) to discuss a more comprehensive approach to these issues rather than moving forward with a flawed regulation. Should you have any questions or concerns, please feel free to contact any of the following: Michael Gunning, PIFC Vice President (916-442-6646/mgunning@pifc.org), Armand Feliciano, ACIC Vice President (916-205-2519/armand.feliciano@acicnet.org), Shari McHugh, on behalf of PADIC, (916-769-4872/smchugh@mchughgr.com), Christian Rataj, NAMIC Senior Director (303-907-0587/crataj@namic.org), Katherine Pettibone, AIA Vice President (916-402-1678/kpettibone@aiadc.org), or Marti Fisher, California Chamber of Commerce, (916-930-1265/marti.fisher@calchamber.com).	terms, the *Jones* decision is limited to homeowners' replacement cost regulations and is inapplicable to the proposed regulations. The Department declines Commenters' request for a "task force" regarding anti-steering regulations. The proposed regulations are the result of years of workshops, public hearings, correspondence, and countless discussions between Department and insurance industry members. During this time, insurers have continually downplayed the importance of consumer complaints and sought to promote weak or ineffective regulations. The Department represents the interests of consumers, which, in this case, are not aligned with the interests of insurers. Given the long-standing differences between the stakeholders, the Department believes that there will always be disagreement about the steering regulations and that further delay will not resolve these differences. Therefore, the Department will

		move forward with its rulemaking at this time.