

Guidance

Interpretation

Approach

Information

Decision



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Reporting and resolution of rating and underwriting errors

Purpose and scope

This Approach and Interpretation Guidance (“Guidance”) sets out regulatory requirements and the Financial Services Regulatory Authority of Ontario’s^[1] (“FSRA”) compliance expectations, principles, processes, and practices to all insurers offering automobile insurance^[2] in Ontario (collectively referred to as “insurers”) regarding the regulatory reporting and resolution of rating and underwriting errors.

Rationale and background

The objective of this Guidance is to ensure that:

1. insurers are aware of FSRA’s processes and expectations when an automobile insurance rating or underwriting error occurs, and reporting is consistent across the sector
2. insurers treat consumers fairly in the resolution of rating and underwriting errors^[3].

Rating errors

A rating error occurs when an insurer charges a consumer a rate other than the approved rate as filed with FSRA pursuant to the:

1. *Automobile Insurance Rate Stabilization Act* (“AIRSA”) for the Private Passenger Automobile (“PPA”) category
2. *Insurance Act* (the “Act”) for the other than PPA categories^[4]

A rating error also occurs when an insurer implements processes or procedures that result in the incorrect classification of a consumer and thereby impacts their rating or ability to purchase insurance.

Underwriting errors

An underwriting error occurs when an insurer uses reasons other than the approved reasons as filed under s. 238 of the Act^[5] to:

1. decline to issue, terminate, or refuse to renew a contract^[6]
2. refuse to provide or continue a coverage or endorsement

An underwriting error also occurs when an insurer implements formal or informal processes and procedures, whether intentionally or unintentionally, that make it more difficult for consumers to interact with the insurer, its appointed broker(s) or its Agent(s) and thereby discourage or delay consumers from applying for, renewing, or otherwise obtaining automobile insurance.^[7]

Need for Guidance on reporting and resolution of errors

FSRA does not currently have guidance establishing its view on the reporting and resolution of rating and underwriting errors. The reporting of such errors remains inconsistent across the automobile insurance sector and there is a lack of transparency regarding how FSRA will address circumstances where an unreported error is discovered through alternative means (e.g., while reviewing a consumer complaint or reviewing an insurer’s rate or underwriting rules filing).

Further, there is no express requirement in the *Act* or AIRSA regarding the reporting of rating and underwriting errors to FSRA or how such errors are to be resolved.

Interpretation - Regulatory requirements

Rating errors

FSRA is interpreting the following subsections of the *Act* as requiring insurers to report and resolve rating errors:

- In relation to automobile insurance for the other than the PPA categories, s. 417(1) and s. 417(2) of the *Act* prohibit insurers from using a risk classification system or rate that has not been approved by FSRA. Given that a rating error is prohibited by the *Act*, as such an error constitutes using a risk classification system or rate not approved by FSRA, FSRA views the word “approved” according to this Guidance as requiring insurers to report and resolve rating errors for the non-PPA categories of automobile insurance.
- In relation to the PPA category of automobile insurance, s. 8 of AIRSA prohibits insurers from charging a rate other than the authorized rate. Given that a rating error is prohibited by AIRSA, as such an error constitutes using a non-authorized rate, FSRA views the word “authorized” in this Guidance as requiring insurers to report and resolve errors for the PPA category of automobile insurance.
- Paragraph (3) of s. 442.3(1) of the *Act* requires insurers in the context of an inquiry to provide FSRA with information about their activities related to the business of insurance. It is FSRA’s position that the phrase “information about the activities related to the business of insurance” includes the reporting and resolution of rating errors by insurers for all categories of automobile insurance.
- S. 3(1)(f) of the *Financial Services Regulatory Authority of Ontario Act* (the “FSRA Act”) states that an object of FSRA is to promote transparency and the disclosure of information by the insurance sector. FSRA’s interpretation of the requirements of the *Act* and AIRSA, as noted above, is consistent with the position that the reporting and resolution of rating errors for all categories of automobile insurance promotes transparency and the disclosure of information by insurers.

- S. 9(1)(v) of the Unfair or Deceptive Acts or Practices Rule (the “UDAP Rule”) prescribes as an unfair or deceptive act or practice any conduct, including inaction or omission, which results in or could reasonably be expected to result in unfair treatment by an insurer, agent or broker to a consumer with regard to any matter relating to the issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to, misclassifying a person or vehicle under the risk classification system used by an insurer or that an insurer is legally required to use.
- S. 3(1) of the UDAP Rule prescribes as an unfair or deceptive act or practice any conduct, including inaction or omission, which results in or could reasonably be expected to result in the commission of any act prohibited under the *Act*, or under any regulation or FSRA rule made under the *Act*, including ss. 417(1) and 417(2) of the *Act*
- FSRA’s position is that a failure by an insurer to report and resolve rating errors constitutes conduct which would reasonably be expected to result in the outcomes described in s. 3(1) and s. 9(1)(v) of the UDAP Rule (as mentioned above) and accordingly, FSRA may take action pursuant to s. 439 of the *Act*

Underwriting errors

FSRA is interpreting the following subsections of the *Act* as requiring insurers to report and resolve underwriting errors:

- S. 238(1) of the *Act* prohibits, with respect to automobile insurance, an insurer from declining to issue, terminating or refusing to renew a contract or refusing to provide or continue a coverage endorsement except on a ground filed with FSRA. FSRA regards the phrase “decline to issue, terminate or refuse to renew...except on a filed ground,” as requiring insurers to report and resolve an underwriting error to FSRA where such an error is based on a non-filed ground.
- Paragraph (3) of s. 442.3(1) of the *Act* requires insurers in the context of an inquiry to provide FSRA with information about their activities related to the business of insurance. It is FSRA’s position that the phrase “information about the activities related to the business of insurance” as including the reporting and resolution of underwriting errors by insurers.

- S. 3(1)(f) of the *FSRA Act* states that an object of FSRA is to promote transparency and the disclosure of information by the insurance sector. FSRA's interpretation of the requirements of the *Act* as noted above, is consistent with the position that the reporting and resolution of underwriting errors promotes transparency and the disclosure of information by insurers.
- S. 9(1)(i) of the UDAP Rule prescribes as an unfair or deceptive act or practice any conduct, including inaction or omission, which results in or could reasonably be expected to result in unfair treatment by an insurer, agent or broker to a consumer with regard to any matter relating to the issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to, variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance
- S. 3(2) of the UDAP Rule prescribes as an unfair or deceptive act or practice any conduct, including inaction or omission, which results in or could reasonably be expected to result in any provision of the *Act*, or a regulation or FSRA rule made under the *Act*, not being complied with resulting in the unfair treatment or unfair discrimination of a person
- FSRA's position is that a failure by an insurer to report and resolve underwriting errors constitutes conduct which would reasonably be expected to result in the outcomes described in s. 3(2) and s. 9(1)(i) of the UDAP Rule (as mentioned above) and accordingly, FSRA may take action pursuant to s. 439 of the *Act*

Consequences of the failure to report, or, if applicable, resolve errors

FSRA has the authority to impose an administrative monetary penalty on, or lay provincial offence charges against, an insurer who has committed a rating or underwriting error.^[8] FSRA also has the authority to impose an Order or seek a court order which requires the insurer to cease action, take action, or to suspend the insurer's license under the *Act*, without prior notice.^[9]

In general, insurers are responsible for ensuring that they have appropriate controls in place to identify and correct rating and underwriting errors and ensure the fair treatment of consumers related thereto. FSRA will consider this overriding obligation as critical to its Enforcement response where an insurer has failed to report such errors or adequately resolve them.

FSRA considers insurers’ compliance, or lack thereof, with this Guidance as one of several factors in determining FSRA’s Enforcement response to a rating or underwriting error.

Principles

FSRA’s Rate Regulation Principles^[10] (“RRP”) are foundational to FSRA’s approach to automobile insurance rate regulation. In developing a framework for the handling of automobile insurance rating and underwriting errors, FSRA was guided by the RRP’s principles of Consumer Focus and Transparency and Disclosure.

In supervising and regulating the insurance sector, FSRA is required to administer and enforce the *Act* and its regulations in a manner consistent with FSRA’s statutory objects.^[11]

Approach – Supervision, processes, and practices

Reporting and resolution of errors

Insurers are expected to report all rating and underwriting errors to FSRA in writing. Please see the table below for error types and how they should be reported. In advance of reporting rating or underwriting errors, insurers may contact their FSRA analyst for assistance.

Type of Error	Description	Timelines
Major	<p>Rating Error Threshold: A rating error is Major if,</p> <ul style="list-style-type: none"> the sum of the absolute value of premium overcharges and premium undercharges resulting from the rating error exceeds the greater of \$5000 or 0.02% of the insurer’s total written premiums^[12] for the category affected^[13] and 	<p>Reported within 30 business days from the time the rating and/or underwriting error is confirmed.^[16]</p>

Type of Error	Description	Timelines
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- the number of written exposures impacted from overcharges and undercharges due to the rating error exceeds the greater of 100 exposures or 0.5% of the insurer’s total written exposures^[14] for the category affected^[15]

Underwriting Error Threshold:

An underwriting error is Major if,

- more than 100 exposures are affected by the underwriting error

Minor	When the rating and/or underwriting error falls below the above threshold.	Reported in writing annually at a date established by FSRA.
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It should be noted that FSRA may require a lower threshold for an insurer where it determines warranted. This could include situations where the insurer has historically shown a higher propensity for committing rating or underwriting errors or there are concerns about the effectiveness of the insurer’s control environment as it relates to rating and underwriting errors.

Regardless of whether the error is major or minor, insurers must remediate in favour of all consumers affected by the error.^[17] FSRA will require additional information from the insurer, including a complete description and source of the error, how it was discovered, its impact and timing, corrective measures taken to-date, and an action plan to remediate the impact on affected consumers (“remediation plan”).^[18] Insurers requiring more than 30 business days to

report the error and prepare the remediation plan should contact FSRA to discuss potential options.

Refunds to consumers must include the amount of any premium overpayment together with interest for the period that the error was in effect.

Supervisory approach

FSRA may formally examine an insurer's processes and practices^[19] ensuring rating and underwriting errors are resolved, as is legally required under the *Act*. In deciding whether an examination is required, FSRA may consider:

1. the number of major and minor errors reported by the insurer or insurance group to FSRA in the previous 12 months
2. the insurer's or insurer group's history of reporting and resolving rating and underwriting errors
3. the frequency and extent of recent rating or underwriting changes, including policy management system changes

The above list is not exhaustive as additional factors may be identified and considered by FSRA which warrant a formal examination. FSRA will allocate its examination and enforcement resources based on its assessment of the insurer's compliance with this guidance and its approved prioritization mechanism.

Effective date and future review

This Guidance became effective on January 1, 2023 and will be reviewed no later than January 1, 2025.

About this Guidance

This Guidance is consistent with [FSRA's Guidance Framework](#). As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

As Approach guidance, it also describes FSRA's internal principles, processes and practices for supervisory action and application of Chief Executive Officer discretion. Approach Guidance may refer to compliance obligations but does not in and of itself create a compliance obligation.

Effective Date: January 1, 2023

^[1] Both the CEO of FSRA and FSRA may exercise regulatory authority under the *Insurance Act* and *Automobile Insurance Rate Stabilization Act*. However, for the purposes of this Guidance, reference will only be made to FSRA as the CEO may delegate authority to FSRA staff, as permitted by s. 10(2.3) of the *Financial Services Regulatory Authority of Ontario Act*.

^[2] Excludes fleet rated automobile insurance.

^[3] [Fair Treatment of Customers in Insurance](#)

^[4] Insurers are prohibited from charging a rate other than the authorized rate for the PPA category of automobile insurance by s. 8 of AIRSA. For other than PPA categories, s. 417(1) and s. 417(2) of the *Act* prohibit an insurer from using a risk classification system or rate unless such a risk classification system or rate is approved by FSRA or Financial Services Tribunal, authorized under s. 413 or required under the regulations.

^[5] S. 238(1) of the *Act* prohibits, with respect to automobile insurance, an insurer from declining to issue, terminating or refusing to renew a contract or refusing to provide or continue a coverage endorsement except on a ground filed with FSRA.

^[6] Prior to April 1, 2022, FSRA's stated interpretation of what amounts to declining to issue or refusing to renew a contract is provided for in Interpretation of Sections 237 & 238 of the *Insurance Act* and Sections 1(1) and 2(1)(5) to 2(1)(8) of Regulation 7/00 *Unfair or Deceptive Acts or Practices* and Approach to Supervision [Take All Comers Rule]. After April 1, 2022, the aforementioned interpretation is expressly reinforced by the *Unfair or Deceptive Acts or Practices Rule*, which in s. 9(1)(i) prescribes as an unfair or deceptive act or practice any conduct, including inaction or omission, which results in or could reasonably be expected to result in unfair treatment by an insurer to a consumer with regard to any matter relating to the issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to, variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance.

^[7] S. 238(1) of the *Act* currently prohibits an insurer from declining to issue, terminating or refusing to renew a contract or refusing to provide or continue a coverage or endorsement, except on a filed ground. S. 238(1) of the *Act* provides a sufficient legal basis for the inclusion of this portion of the underwriting error definition into the Guidance.

^[8] For a breach of AIRSA, FSRA may impose administrative monetary penalties pursuant to s. 11.2(1)-(2), s. 11.3(1)-(2), s. 11.4(1)-(2), s. 11.5(1)-(2) and s. 11.6. of AIRSA; or lay charges for an offence pursuant to paragraphs

(1)-(3) of s. 12(1) of AIRSA. For a breach of the *Act*, FSRA may impose administrative monetary penalties pursuant to s. 441.2(1)-(2), s. 441.3(1)-(8), s. 441.4(1)-(7), s. 441.5(1)-(2) and s. 441.6(1)-(3) of the *Act*; or lay charges against an insurer for an offence pursuant to s. 447(2)(a)-(e) of the *Act*.

^[9] For a breach of AIRSA, see s. 11(1). For a breach of the *Act*, see s. 441(2)(b).

^[10] [Rate Regulation Principles](#)

^[11] [FSRA Objects \(see section 3\)](#)

^[12] Based on the latest full year data reported to GISA.

^[13] Threshold is based on the written premiums or written exposures for the specific category of automobile insurance affected by the error.

^[14] Based on the latest full year data reported to GISA.

^[15] Threshold is based on the written premiums or written exposures for the specific category of automobile insurance affected by the error.

^[16] A remediation plan must be included at the time of reporting.

^[17] If an insured has been incorrectly classified under a risk classification system used by an insurer, then s. 2(1) of O. Reg. 777/93: Statutory Conditions - Automobile Insurance (the “Statutory Conditions”) requires an insurer to make any required corrections.

If a correction made pursuant to s. 2(1) of the Statutory Conditions results in an insured’s premium being lowered, then the insurer is required by s. 2(2) of the Statutory Conditions to refund the amount of any premium overpayment together with the interest thereon for the period that the incorrect risk classification was in effect.

If such a correction is made within the first sixty days a policy is in force and results in an insured’s premium being increased, then pursuant to s. 2(4) of the Statutory Conditions the insurer may require the insured to pay the additional premium without interest.

^[18] Remediation plans should include details of the insurer’s communication plan for consumers affected by the error, as well as the protocol to deal with potential consumer complaints.

^[19] Part XIX of the *Act* provides FSRA with examination and enforcement powers.