

Guidance

Interpretation

Approach

Information

Decision



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Proposed Guidance for Reporting and Resolution of Automobile Insurance 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’s¹ (“FSRA”) compliance expectations, principles, processes, and practices to all insurers offering automobile insurance² in Ontario (collectively referred to as “Insurers”) regarding the regulatory reporting and resolution of rating and underwriting errors.

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.

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 categories⁴

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 Act⁵ to:

³ Fair Treatment of Customers in Insurance: <https://www.ccir-ccrra.org/Documents/View/3450>

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.

1. decline to issue, terminate, or refuse to renew a contract⁶
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.

⁶ 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].

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 (the "UW Definition") into the Guidance, although the language of the UW Definition would also be expressly provided for in s. 9(1)(i) [2020-002] *Unfair or Deceptive Acts or Practices* (the "Proposed Rule"). The inclusion of s. 9(1)(i) of the Proposed Rule into the Guidance is subject to change and will only be included if the Minister of Finance (the "Minister") approves the Proposed Rule and the Proposed Rule comes into force.

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.

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 (11) of s. 1 of O. Reg. 7/00 (the “UDAP Regulation”) prescribes as an unfair or deceptive act or practice (“UDAP”) misclassifying a person or vehicle under the Insurer’s risk classification system when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for an automobile insurance policy.⁸ 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 a state of affairs that would constitute a UDAP in response to which FSRA may take action pursuant to s. 441(1) of the *Act*.
- 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.

⁸ If approved by the Minister, the Proposed Rule would replace the UDAP Regulation upon the Proposed Rule coming into force. S. 9(1)(v) of the Proposed Rule would make the failure to report and resolve underwriting errors as conduct, including inaction or omission, which would reasonably be expected to result in an Insurer misclassifying a person or vehicle under its risk classification system.

- 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.

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.⁹ 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.¹⁰

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 Principles¹¹ ("RRP") are foundational to FSRA's approach to automobile insurance rate regulation. In developing a framework for the handling of automobile insurance

⁹ 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.

¹⁰ For a breach of AIRSA, see s. 11(1). For a breach of the Act, see s. 441(2)(b).

¹¹ Rate Regulation Principles: <https://www.fsrao.ca/industry/auto-insurance-sector/guidance/standard-filing#appendix1>

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.¹²

¹² FSRA Objects (see section 3): <https://www.ontario.ca/laws/statute/16f37#BK4>

Approach - supervision, processes, and practices

Reporting of errors

Insurers are expected to report all rating and underwriting errors to FSRA through FSRA's [Automated Rates and Classification Technical Information Communication System \(ARCTICS\)](#) or any future system that may succeed ARCTICS. 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 and reporting mechanism
Major	<p>Rating error threshold:</p> <ul style="list-style-type: none"> The sum of the absolute value of premium overcharges and premium undercharges resulting from the rating error is equal to or greater than 0.02% of the insurer's total written premiums¹³ for the category affected.¹⁴ 	Report through ARCTICS within 25 business days from the time the rating and/or underwriting error is identified.

^{13, 15} Based on the latest full year data reported to GISA. FSRA will update the threshold annually and will include this information in ARCTICS for each insurer.

^{14, 16} Threshold is based on the written premiums or written exposures for the specific category of automobile insurance affected by the error.

- The number of written exposures impacted from overcharges and undercharges due to the rating error is equal to or greater than 0.5% of the insurer's total written exposures¹⁵ for the category affected.¹⁶

Underwriting error threshold:

- More than 100 policies are affected by the underwriting error.

Minor

When the rating and/or underwriting error falls below the above threshold.

Report through ARCTICS annually at a date established by FSRA.

For the purposes of this Guidance, “near miss” events are also considered to be minor errors. This includes, but is not limited to, incorrect rates that were implemented but no consumers were impacted by the error.

Regardless of whether the error is major or minor, Insurers must remediate in favour of all consumers affected by the error. 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 and proposed timing (“remediation plan”).

It should be noted that Insurers are permitted to propose a different error reporting threshold to FSRA with an appropriate rationale and supporting data, if applicable. However, the proposed error reporting threshold is subject to FSRA’s written approval. FSRA may also 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.

Resolution of errors

Insurers must correct rating and underwriting errors upon discovery regardless of whether they are major or minor and remediate in favour of consumers.¹⁷ Insurers should also provide detailed remediation plans to FSRA in a timely manner.¹⁸ FSRA expects insurers to resolve any rating or underwriting errors in accordance with the timelines set out in the table below.

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.

Resolution	Rating error timelines	Underwriting error timelines
Correction of the error	Within 45 business days from the time the error is first identified.	
Remediation to consumers	Within 12 months from the time the error is first identified.	Within 3 months from the time the error is first identified.

Insurers requiring additional time to either correct an error or remediate 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.

Publishing of errors

Consistent with FSRA’s principles of transparency and disclosure, all rating and underwriting errors will be published on the FSRA website. The approach to publishing major and minor errors will be as follows:

Type of error	Publishing approach
Major	Each error will be published, identifying the insurer, the insurer group, details of the error, and the insurer’s remediation plan.
Minor	Errors will be summarized for each insurer group.

Supervisory approach

FSRA may formally examine an insurer's processes and practices¹⁹ 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 [Date] and will be reviewed no later than [Date plus three years].

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.

¹⁹ Part XIX of the Act provides FSRA with examination and enforcement powers.

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.