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Technical Notes for Underwriting Rules

A. Introduction

All insurers that are licensed to write automobile insurance in Ontario are required to make a filing in respect of their underwriting rules with the Financial Services Commission of Ontario (FSCO).

The [Filing Guidelines for Underwriting Rules](#) set out the information that is required to be filed and the format for the filing. These Technical Notes identify the relevant legislation and regulations, and other specific items to take into consideration in developing your underwriting rules.

Underwriting rules are those rules that a company uses to decline all coverages to a risk, or to deny certain coverages to a risk, or to limit coverage in some way such as offering only higher deductible levels or lower liability limits. Underwriting rules deal with the coverage that will or will not be provided.

B. Legislation and Regulations

The requirements to file underwriting rules are outlined in section 238 of the Insurance Act (the Act), R.S.O. 1990, chap. I.8, as amended.

- Under subsection 238(1), an insurer cannot decline to issue, terminate or refuse to renew a contract or refuse to provide or continue a coverage or endorsement except on a ground (underwriting rule) filed with the Superintendent.
- Subsection 238(2) requires every insurer to file underwriting rules with the Superintendent.
- Subsection 238(3) requires that underwriting rules be filed in a form approved by the Superintendent (i.e., the Filing Guidelines for Underwriting Rules) together with other information as may be specified.

An insurer will be prohibited from using an underwriting rule if the Superintendent is of the opinion that the rule, or the manner in which it is applied:

- is subjective;
- is arbitrary;

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- has little or no relationship to the risk to be borne by the insurer in respect of an insured; or
- is contrary to public policy.

Certain rules are prohibited from use under O. Reg. 664 section 5 (Refusal to Issue Contracts). Refer to Regulation 664 for more information.

In addition, termination of a policy after 60 days is governed by section 12 of the Compulsory Automobile Insurance Act, and the Statutory Conditions of OAP 1.

An underwriting rule may only be used if:

- it has been filed appropriately, that is, in accordance with the guidelines;
- thirty days have elapsed since the date the filing was deemed complete; and
- the insurer has not been notified by the Superintendent that the rule is prohibited.

C. Technical Notes

Outlined below are specific items to take into consideration when preparing your underwriting rules filing.

1. Filing of Underwriting Rules

The **Filing Guidelines for Underwriting Rules** set out the format for the filing of rules. Ensure you adhere to these guidelines to avoid delays in authorizing your rules. FSCO must have on file at all times a **consolidated** list of all underwriting rules for all categories of insurance written by the company. The rules for each category of insurance written must be separated and each list should be started on a new page. In addition, in Appendix C, Section B must be started on a separate page from Section A.

It is this official filing that will be referenced in the event that any market conduct or consumer complaints arise. If an insurer uses underwriting rules that have not been appropriately filed and authorized by the Superintendent, it may be prosecuted under the Act. Therefore, it is important that your filed rules accurately and comprehensively catalogue all the rules you will be using.

2. Disclosure of underwriting rules

An applicant or an insured must be given, in writing, the specific reason(s) he or she has been turned down for insurance, non-renewed or cancelled. In the case of non-renewal, 30 days notice must be provided to the insured based on section 236 of the Act. The written notice to the consumer must quote exactly the applicable filed underwriting rule(s) from the insurer's official filing.

3. Rules cannot be subjective or arbitrary

One of the standards in the Act is that underwriting rules cannot be subjective or arbitrary. That is, rules must not be written in vague or complicated terms that can be open to various interpretations. For example, a rule stating that an applicant would be declined because of "poor" payment history would obviously mean something different to everyone who reads it and does not allow the applicant or FSCO to

know precisely the basis for being declined.

A clear description of the characteristic considered and how it is applied must be contained in the underwriting rule filed. The rule should be based on specific and verifiable measurements. For example, the following rule would **not** be considered subjective or arbitrary:

“We will decline to issue, or refuse to renew a policy, where there have been four cancellations of a policy for non-payment of auto insurance premiums within the three years immediately preceding the date of application or renewal.”

If specific terminology is used, it should be defined in Section C of Appendices C or D, as applicable. For example, an insurer may, for purposes of its underwriting rules, reference the definition of at-fault accident that the insurer uses in its approved risk classification system for classifying and rating purposes. That reference must be included in Section C.

4. Rules must bear relationship to the risk

One of the standards in the Act is that underwriting rules must bear relationship to the risk. While the Section 238 Underwriting Rules Filing Guidelines do not require that statistics be provided when filing rules, if a rule is challenged, you may be asked to provide such support.

5. Rules must not be contrary to public policy

One of the standards in the Act is that rules must not be contrary to “public policy”. While it is not possible to have an unqualified definition of “public policy”, any rule filed should take into consideration the Human Rights Code and the Canadian Charter of Rights and Freedoms. For example, underwriting rules based on religion, race, nationality or ethnic group of the applicant or individuals to be insured under the policy would be contrary to these pieces of legislation.

Examples of other factors contrary to “public policy” include declining insurance based on:

- age, sex or marital status of the individuals to be insured under the policy;
- newly licensed drivers, where this is the sole factor for the declination;
- drivers “new” to Canada;
- lapse in coverage;
- the principal location of the insured automobile, unless such a decision is for a business purpose and is not a pretext for unfair discrimination (e.g. red lining);
- the person to be insured under the policy has been convicted of an event unrelated to driving an automobile or automobile insurance;
- personal vehicles with U.S. exposure (unless in U.S. for extended period of time);
- withdrawal from a segment of the marketplace that could result in market disruption.

6. Examples of rules that can be used

The following are examples of acceptable underwriting rules. The review of the filing can be expedited where these rules are included. A risk could be declined where there are:

1. 2 or more at-fault accidents in the preceding 3 years **OR** 2 at-fault accidents in the preceding 5 years
2. 1 or more Criminal Code convictions in the preceding 3 years
3. 1 or more major convictions in the preceding 3 years including operating a vehicle without insurance, or making a false statement in the certificate of insurance required for the issuance, validation or transfer of a vehicle permit
4. 4 or more minor convictions in the preceding 3 years **OR** 3 minor convictions in the preceding 3 years
5. 1 or more cancellations for material misrepresentation in the preceding 3 years
6. 1 or more convictions for auto insurance fraud in the preceding 10 years
7. 3 or more cancellations for non-payment of premium in the preceding 3 years
8. 1 at-fault accident in the preceding 5 years and 2 minor convictions within the preceding 3 years
9. 1 at-fault accident in the preceding 5 years and 2 minor convictions within the preceding 3 years and 2 cancellations for non-payment of premium within the preceding 3 years
10. 1 at-fault accident in the preceding 5 years and 1 minor conviction within the preceding 3 years and 2 cancellations for non-payment of premium within the preceding 3 years
11. 2 minor convictions within the preceding 3 years and 2 cancellations for non-payment of premium within the preceding 3 years

NOTE: The above rules are examples only and do not include all definitions and explanations that would need to be provided with the underwriting rules.

7. Underwriting Rules for Rebuilt Vehicles

The Ministry of Transportation defines a "rebuilt" branded vehicle as a vehicle that has been previously branded as "salvage" but has been rebuilt and inspected in accordance with regulatory criteria. In order to be able to drive the "salvage" vehicle, it must be upgraded to a "rebuilt" brand which can only be done if it has passed a strict structural inspection and passed a safety inspection so that it can be registered for on-road use.

FSCO will not accept any underwriting rules for PPA under Section A of Appendix C declining to issue, terminating or refusing to renew a contract when the vehicle has been branded as "rebuilt", has "RBT" in its VIN (i.e., Vehicle Identification Number), or has ever been declared a total loss/salvage regardless of the proof of repair. Rules under Section B for refusing to provide or continue a coverage of rebuilt vehicles are acceptable. For Other Than PPA, rules regarding rebuilt vehicles are acceptable under either section A or section B of Appendix D, but not both.

8. Filing of rules for deductibles, limits of liability and for declining Physical Damage coverages

The Act requires that underwriting rules be filed in circumstances where coverage is being limited. Rules must be filed if you will require minimum deductible levels on certain physical damage coverages or will not offer higher liability limits. All insurers must offer the minimum liability limits in Ontario.

Deductibles are available on Direct Compensation - Property Damage (DC-PD) so that consumers can benefit from lower premiums. FSCO will not accept any underwriting rule that imposes a minimum deductible level on DC-PD. The deductible level for DC-PD must be the consumer's decision based on the deductible levels for which the insurer has filed rates. In addition, FSCO will not approve any rules that are based on the frequency of DC-PD claims.

Certain deductible levels on physical damage coverages are prescribed by O. Reg 664 section 14.1 (i.e. \$500 Comprehensive, \$500 Collision, \$500 Direct Compensation – Property Damage deductibles must be offered). Refer to Regulation 664 for more information. An underwriting rule in section A that imposes minimum deductible levels on physical damage coverages that are higher than the deductible levels prescribed by the regulation cannot be proposed. Rules in section B restricting deductible levels for physical damage coverage based on the frequency of claims for this coverage are acceptable.

Rules declining all Physical Damage coverages based on the frequency of **both** Collision and Comprehensive/Specified Perils type of claims are permitted provided they meet the statutory standards. The following is an example of an acceptable underwriting rule to decline Physical Damage coverages: "3 or more Physical Damage coverage claims (excluding DC-PD) on a per vehicle basis in the preceding 3 years. This must include at least one Collision and one Comprehensive/Specified Perils claim."

9. Deletion of coverage because of failure to have vehicle inspected

While there is no longer a regulation that requires inspection of a vehicle, some insurers are requiring inspection under certain circumstances. Insurers must file the conditions under which they would delete coverage or terminate a policy because of failure to have the vehicle inspected.

The following is an example of a rule to decline to issue, terminate or refuse to renew a contract that would be acceptable:

"If the policy has been in effect for 60 days or less, and either the company has not received a vehicle inspection report within 30 days from the date requested or the insured notifies the company that a vehicle inspection report will not be provided".

Rules regarding limiting or deleting optional physical damage coverage if a vehicle inspection is not completed are also acceptable provided the conditions for when the inspection will be required are present in the filing. These conditions should generally relate to the vehicle (not the driver), for example, "for vehicles that are more than 10 years old". They must satisfy the tests under Section 238 of the Act. Conditions for when the inspection will be required must be listed either with the rules in Section A/B or under the definition Section C, in Appendix C and D, as applicable.

10. Rules used to cede to the Risk Sharing Pool

You do not need to file any rules you use to cede risks to the Risk Sharing Pool. As you will still be providing coverage to such risks, the decision to cede, and the criteria you use, do not fall within the

underwriting rule filing requirements.

11. Underwriting rules for endorsements

Separate filing guidelines have been developed specifically for filing information on endorsements. This is a separate filing process. Refer to the latest [Endorsement Filing Guidelines](#) on FSCO's website.

12. Automobile Insurance manuals

You are not required to show in your automobile insurance manual the underwriting rules you use. If you do, you must ensure that you have followed the proper filing and authorization process for changing your underwriting rules before updating your manual pages. Refer to the [Automobile Insurance Manual Filing Guidelines](#) for more information.

13. Flexibility of underwriting rules

You may not decline a risk unless an appropriate underwriting rule has been filed and authorized. However, you are permitted to accept a risk that your underwriting rules state could be declined. For example, though you have a rule filed that you will decline a risk with two at-fault accidents, you may choose to write a risk that had two at-fault accidents because the policyholder was insured by you for 20 years and both of the at-fault accidents resulted in less than \$500 damage. Once the exception is made, you cannot use the same underwriting rule to decline the risk. Also, you must be consistent in making similar exceptions for other such cases.

You must document the reasons for the exception. Your reasons for the exception must be consistent with the statutory standards. The documentation of reasons for exception may be reviewed by FSCO. Insurers are also required to provide to FSCO an outline of their procedures and their information system to capture the reporting of exceptions.

There should be only a few exceptions. If there are consistently standard exceptions being used, the underwriting rules may need to be amended and re-filed with FSCO.

14. Rates and Risk Classification System

When you are making an underwriting rule exception, the rates and risk classification system by which you underwrite such risks, must have already been filed and approved by FSCO. For example, if an insurer decides to now insure snowmobiles with higher vehicle values, the rates (e.g. vehicle rate group differentials) for such snowmobiles must be available (i.e. approved).

15. Rules must be mutually exclusive

Underwriting rules must not contradict each other. For example, "will not accept logging trucks" or "will not accept logging trucks with 1 at-fault accident". One or the other, but not both should be present. The rules must be mutually exclusive.

16. Withdrawal from the market

Under Section 65.1 of the Act, there are specific requirements to be met where:

“the insurer does anything that results or is likely to result in a significant reduction in the amount of gross premiums written by the insurer for automobile insurance in any part of Ontario ...” [s. 65.1(1)]

Insurers are required to file a Notice of Withdrawal from the business of automobile insurance [s. 65.1(3)], where the insurer intends to take any course of action which might be considered as "withdrawal". This may range from cancelling brokers to the complete cessation of business. It is important to note that actions taken to reduce new business volume only are not likely to be considered a withdrawal. If the insurer intends to withdraw in less than 180 days after providing notice, the Superintendent must authorize the withdrawal [s. 65.1(7)]. The Superintendent may require the insurer to stay in the market for up to an additional 90 days if it is necessary to ensure availability to consumers.

The following have been considered by FSCO as significant, requiring an insurer to file a Notice of Withdrawal:

- where the insurer’s direct written premium for the particular category for the latest year for which statistics are available is more than 5% of the insurer’s total direct written premium for Ontario automobile insurance; or
- where the insurer’s direct written premium for the particular category for the latest year for which statistics are available is more than 1% of the total direct written premium for all insurers in the particular category of insurance.

Where an insurer is withdrawing from a specific category of automobile insurance only and not all categories, it will also need to make an appropriate underwriting rules filing.

If you are required to file a Notice of Withdrawal form, in addition to the underwriting rule filing, contact your Team Lead/Rate Analyst and request a template copy of this form.

17. Rules based on Administrative Lapse/Suspension of a driver’s licence

FSCO will accept only the following rule to decline the risk: “The named insured and all drivers listed on a policy are unlicensed for any reason, including an administrative lapse”. Refer to **Bulletin A-04/06** on FSCO’s website for more information.

18. Accident Forgiveness for underwriting

Some insurers offer accident forgiveness endorsements that apply not only to rating, but also underwriting. In such cases, the insurer must provide in the underwriting rule filing the description of their process and applicable “at-fault accident” definition.

19. Underwriting rules regarding OPCF 28A and OPCF 48

Other than requiring that an OPCF 28A be signed, FSCO will not accept any declination rules as this is a mandatory endorsement. OPCF 48 is also a mandatory endorsement that must be offered to insureds with no underwriting restrictions.

20. Tied Selling

Underwriting rules must comply with the tied-selling provision under the Insurance Act, Regulation 7/00 which defines the following as an Unfair or Deceptive Act or Practice: “making the issuance or variation of a policy of automobile insurance conditional on the insured having or purchasing another insurance policy.”

21. Termination provisions

Insurers that intend to terminate policies on the grounds referred to in s. 12 (1) of the Compulsory Automobile Insurance Act are advised to expressly reference those grounds in their filings, in keeping with FSCO’s requirement that insurers must file a consolidated list of all underwriting rules for all categories of insurance written by the company.

22. Automobile Insurance Quoting and Underwriting Practices

Companies should review Bulletin A-01/09 and O. Reg. 7/00 (Unfair or Deceptive Acts or Practices) to ensure their procedures conform to acceptable practices in providing automobile insurance coverage and automobile insurance quotes.

23. Affiliated Insurers

An insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other, both are subsidiaries of the same body corporate, or each of them is controlled by the same person.

The Superintendent may require that affiliated insurers who write automobile insurance file applications for approval of underwriting rules concurrently. The Superintendent generally treats affiliated insurers as a single insurer when examining compliance with statutory standards for approval of underwriting rules.

Following changes to O. Reg. 7/00 (see **Bulletin A-16/10**) regarding requirements for affiliated insurers, the following is an example of an acceptable rule to decline to issue, terminate or refuse to renew a contract for an insurer writing groups (as defined in Regulation 664) that belongs to an affiliated group of companies:

“The named insured/applicant is ineligible for the ABC Insurer group program (for which there is a marketing plan in place as required by Regulation 664). This rule will not be used to issue a refusal letter for the purposes of qualifying the risk for the Facility Association. Insurance coverage will be offered through an affiliated insurer, subject to that insurer’s eligibility requirements, and also provided the agent/broker requesting the quote/coverage has binding authority with that affiliated insurer.”

24. Bulletin A-4/91 – Non-renewal of risk due to broker cancellation

If the company chooses to have an underwriting rule in its filing that deals with the issue of a broker having no contract with the insurer, the proposed underwriting rule must conform with the above mentioned Bulletin.

25. Other prohibited rules for declining to issue, terminate or refuse to renew a contract:

- “outstanding auto insurance premiums owed to another non-affiliated insurer.”

This rule is contrary to section 5 of Ontario Regulation 664 as a basis for a declination rule given that the indebtedness of a prospective insured is prohibited by this section and the failure of a consumer to have paid premiums alleged to be owed to another insurer is not a sufficiently reliable indicator of risk represented by that consumer.

- “there is a lien on the vehicle” or “there are two or more lienholders on the vehicle”.

This rule is also contrary to section 5 of Ontario Regulation 664 in that the existence of a lien on a vehicle generally pertains to indebtedness.

Please refer to these sections in the regulation for more information.

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