

## Financial Services Commission of Ontario

### *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 *Underwriting Rules Filing Guidelines* 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 *Underwriting Rules Filing Guidelines*) 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;
- 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). Please refer to Regulation 664.

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;

- fifteen days have elapsed since it was appropriately filed; 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 *Underwriting Rules Filing Guidelines* set out the format for the filing of rules. Please ensure you adhere to these guidelines to avoid delays in authorizing your rules. The 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, 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 the 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. 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 should 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 some 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;
- vehicles with U.S. exposure of less than 160 km;
- withdrawal from a segment of the marketplace that could result in market disruption.

#### **6. Examples of rules that can be used**

Included as Exhibit 1 are examples of rules that are acceptable. The review of the filing can be expedited where these rules are included.

#### **7. Filing of rules for deductibles and limits of liability**

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.

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 should 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.

**8. 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.

**9. 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.

**10. 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.

**11. Rate manuals**

You are not required to show in your rate manual the underwriting rules you use. If you do, you should ensure that you have followed the proper filing and authorization process for changing your underwriting rules before updating your manual pages. Please refer to the *Rate Manual Filing Guidelines*.

**12. 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.

**13. Rates and Risk Classification System**

When you are making an underwriting rule exception, the rates and risk classification system, by which you underwrite such a risk, must have already been filed and approved by FSCO. eg. If an insurer decides to now insure snowmobiles with higher vehicle values, the rates

(i.e. vehicle rate group differentials) for such snowmobiles must be available (i.e. approved).

#### **14. 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.

#### **15. 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 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.

#### **16. Rules based on Administrative Lapse/Suspension of a drivers licence**

FSCO will only accept 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". Please refer to Bulletin A-04/06 on FSCO's website.

#### **17. Accident Forgiveness for underwriting**

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

**18. Underwriting rules regarding OPCF28A**

Provided the endorsement has been signed, FSCO will not accept any declination rules as this is a mandatory endorsement.

**19. Tied Selling**

The proposed underwriting rules must be in compliance 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."

**20. 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.

**21. Bulletin A-01/09 – Automobile Insurance Quoting and Underwriting Practices**

Companies should review this bulletin to ensure their procedures conform to acceptable practices in providing automobile insurance coverage and automobile insurance quotes.

## Examples of Acceptable Underwriting Rules

The following are examples of acceptable underwriting rules. 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.**