

# Rate Rules



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Ontario's 27-year-old rate approval process can be confusing, especially for those insuring fleets in multiple provinces.

Ontario's permanent rate and risk classification regulation for automobile insurance has generally not changed since 1990. Despite nearly three decades of experience, there is no jurisprudence that could help insurers who disagree with decisions made by the Financial Services Commission of Ontario (FSCO). While commercial auto has a file-and-use scheme, how it applies to fleets of vehicles can be a source of confusion.

While the regulatory scheme provides an appeal mechanism when insurers are unhappy with the regulator's decisions, there have never been any appeals that have gone to a hearing. This is understandable as insurers would be left in limbo while the appeals proceed. They would not have approval for their proposed filings pending those appeals. To date, disputes between insurers and the regulator are resolved through negotiation.

Without appeal decisions, there is no body of law that addresses the multitude of ambiguities in the regulatory scheme. This makes it difficult to provide advice when consulted by insurers.

Second, by and large, lawyers are not involved in the process. Many would argue that this is a good thing. Insurers usually have a single underwriter or team of underwriters who work with the insurer's actuary and the insurer's rate analyst at FSCO to ensure compliance with the regulatory scheme. Lawyers tend to get consulted when FSCO finds that an insurer is not in compliance with the regulatory scheme or an insurer suspects that it may be offside.

## THE BASIC SCHEME

To fully understand the regulatory scheme, one needs to be familiar with Sections 236 through 238.1 and Sections 410 through 418 of the *Insurance Act*, Ontario Regulations 664 and 7/00, the various filing guidelines and the superintendent's auto property and casualty bulletins.

It is also useful to monitor the cease and desist orders and the enforcement actions to gain an understanding of the practices that are getting insurers into difficulty with the regulator.



The basic scheme has not changed since 1990. Policies that insure personal lines vehicles are subject to the so-called file-and-approve provisions of the scheme. Insurers must file proposed rates and any changes to their risk classification scheme with FSCO and cannot utilize the filed rates or changes until they are approved by FSCO.

The rules stipulate that the rates and risk classification system changes are deemed to be approved 30 days after filing unless the superintendent advises the insurer “orally or otherwise” that it has not been approved. This scheme applies to Ontario’s standard owner’s policy (Ontario Auto Policy 1) and O.P.F. 2 (the driver’s policy) and their endorsements only.

Commercial line OAP 1 and O.P.F. 2 policies are subject to the so-called file-and-use provisions. In this case, the insurer may utilize the new rates and changes to the risk classification scheme 30 days after they are filed unless the superintendent advises the insurer orally or otherwise that they are not approved.

There is an exemption for policies covering vehicle fleets. The regulation indicates that a fleet consists of a group of at least five vehicles that are under common ownership or management and that are used for business, commercial or public purposes. There have been two superintendent’s bulletins published on what constitutes a fleet.

Sections 236 through 239 of Ontario’s *Insurance Act* impose obligations upon insurers when giving notice of the expiry of, or variation of, contracts of automobile insurance, and impose limits on an insurer’s ability to terminate, decline to issue or to renew such contracts.

In a nutshell, automobile insurers must follow their own approved and filed rules when declining to issue, refusing to renew or terminating a contract of automobile insurance. There is no latitude to terminate a contract for *ad hoc* reasons.

By way of example, a number of years ago, a claimant assaulted an adjuster because the claimant was unhappy about the manner in which the collision loss claim was handled. An attempt was made to file a new rule allowing the insurer to terminate contracts for such conduct. However, FSCO insisted that “assault” be defined narrowly to ensure that it did not provide the insurer with

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the right to terminate simply because of a heated argument. If this had been a homeowner’s policy, the insurer could have just cancelled the contract pursuant to the statutory conditions.

#### **FLEETS**

The so-called “fleet” exemption has been and continues to be a source of great confusion and is misunderstood by a number of insurers. Some insurers assume that a fleet can consist of five vehicles located anywhere in the country.

That, however, is not the view of FSCO. It takes the position that all five vehicles

must be licensed in Ontario and insured under an OAP 1 for the fleet exemption to apply. This can create problems if an insured is insuring 25 vehicles in one province, but only has three in Ontario.

The Ontario vehicles should be insured under a commercial lines policy using regulated rates. For an insurer insuring a multi-national corporation worldwide, but with less than five vehicles in Ontario, this creates some practical problems. This can usually be addressed in a manner that is compliant with Ontario law, but these solutions are inconvenient and can create their own additional problems.

The obligation to provide notice of an intention to refuse to renew a policy or to renew it on varied terms, which is imposed by Section 236 of the *Insurance Act*, does not apply to fleets. The requirement to only use filed rules to decline a risk, terminate a risk or refuse to renew a risk — which is imposed by Section 238 of the act — does apply to fleets.

However, if one reviews the Section 238 Underwriting Rule Filing Guidelines, one will discover that there does not appear to be an obligation to file rules for fleet risks with FSCO. Some may find the guidelines confusing in this respect.

Accordingly, FSCO has confirmed that it is not regulating fleet underwriting rules. However, fleet underwriting rules still cannot offend the requirements of Ontario Regulations 664 and 7/00.

Rate, risk classification and underwriting rule regulation for automobile insurance is a complex topic and requires a good understanding of proper interpretation of the legislation, regulation, bulletins and FSCO’s guidelines. ≡