

Nebraska Department of Insurance
Guidance Document
IGD - - C5

Title: Use of On-Board Sensors for Automobile Rating

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Notice: This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

Onboard sensors measure aspects of driving behavior including time, location, mileage, acceleration, and braking. As these measurements can be useful in determining insurance rates and the Nebraska Department of Insurance "NDOI" receives rate filings involving these devices, this guidance document addresses questions related to those filings.

The standards outlined in this guidance document apply to both commercial and personal lines. As Nebraska is a "file-and-use" state, it is not anticipated that the NDOI will challenge insurers on the judgmental selection of reasonable rating factors, if the filing is complete.

An insurer may implement a submission on a file-and-use basis only if a filing is complete. Filings must include descriptions and definitions of the driving information used and a complete filing of the algorithms.

The use of a third-party vendor does not relieve the insurer from the requirement of clear definitions as well as complete formulae and procedures that produce the rates. If an insurer uses a score from a vendor, the insurer must provide every aspect of the variables and algorithms used by the vendor to develop these scores.

If a vendor uses specifications provided by the insurer, there will typically be no need for the vendor to correspond with the NDOI. If, however, the vendor uses a proprietary scoring system that it does not disclose to the insurer, the NDOI will accept documentation directly from the vendor. The current law does not consider vendors as "advisory organizations" and this discussion presumes that the vendor is not licensed as an advisory organization.

For the NDOI to accept a "filing" from a vendor, the insurer must authorize the filing and include a statement from the insurer that it agrees that it is not relieved of any responsibility for the vendor. The statement must also state that the insurer and vendor will not change a scoring system without a prior filing with the NDOI.

The NDOI has received requests to not disclose the filings as a trade secret. If the insurer asserts that the algorithms are a trade secret, the NDOI recommends that insurers have the algorithms and

related information shown separately from the rest of their rating manual. The publically available portion of the rating manual should show that these devices are part of the rating and should include eligibility rules to the extent applicable. The manual can include the actual calculation of the factor or tier determination in confidentiality. This is similar to the use of credit scoring, where eligibility and tier factors are shown in the publically available portion of the filing, but where the selection of the tier is contained in the section of the filing that is held confidential.

The subject of trade secrets and their relation to Nebraska's public records law is beyond the scope of this guidance document. However, the NDOI requires specific identification of the part of a filing where trade secret protection is requested and must meet the requirements.

<https://doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/Confidentiality%20Guidelines%20for%20P%26C.pdf>. Materials that do not qualify, such as materials that have been publically filed elsewhere, are of common knowledge, or are distributed to insurance producers, will not be considered a trade secret by the NDOI.

Questions concerning this guidance document may be directed to the Legal Division at 402-471-2201.