



Wisconsin Office of the
COMMISSIONER
OF INSURANCE

Tony Evers, Governor of Wisconsin
Nathan Houdek, Commissioner of Insurance

TO: Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53701-2037

FROM: Lauren Van Buren, Chief Legal Counsel
Office of the Commissioner of Insurance

DATE: March 15, 2023

SUBJECT: Section Ins 6.17 and related sections, Wis. Adm. Code, relating to the
payment and reporting of surplus lines and other taxes and to the financial
statements of town mutuals

Clearinghouse Rule No. 22-076

This rule is in final draft form and has been submitted to the chief clerk of each house of the legislature. Please publish a statement to this effect in the Wisconsin Administrative Register, pursuant to s. 227.19 (2), Wis. Stat.

For additional information or if you do not receive the e-mail, please contact Karyn Culver at karyn.culver@wisconsin.gov.

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
AMENDING, CREATING AND REPEALING A RULE**

Office of the Commissioner of Insurance

Rule No. Agency 145 – S. Ins 6.17 (5), 6.17 Appendix 2 and 13.08.

The Commissioner of Insurance proposes an order to repeal 6.17 Appendix 2, 6.18 Appendix 1, and Ins 6.19 Appendix 2; and to amend Ins 6.17 (5), Ins 6.18 (2), Ins 6.19 (3), and Ins 13.08 (3), relating to the payment and reporting of surplus lines and other taxes and to the financial statements of town mutuals.

The statement of scope for this rule, SS 159-20, was approved by the Governor on December 11, 2020, published in Register No.780A3 on December 21, 2020, and approved by the Commissioner on January 13, 2021. The proposed rule was approved by the Governor on March 2, 2023, and submitted to the legislature on March 14, 2023.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. **Statutes interpreted:**

Wisconsin Stat. ss. 601.41, 601.42, 612.31, 618.42, 618.43.

2. **Statutory authority:**

Wisconsin Stat. ss. 227.11 (2) (a), 601.41 (3), 601.42 (3), 612.31 (7), 618.42 (2), 618.43 (3).

3. **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

Section 618.43 (3), Stats., relating to the taxation of insurance written by unauthorized insurers, provides the specific statutory authority for the portion of this rule amending Wis. Admin. Code ch. INS 6. Under that statute, the Commissioner shall prescribe by rule "accounting and reporting forms and procedures for insurers, agents or brokers and policy holders for the purpose of determining the amount of the taxes owed, and the manner and time of payment." Under Section 618.42 (2), Stats., a policyholder procuring insurance subject to taxation under Section 618.43 shall report to the Commissioner in such form as the Commissioner requires and shall pay those taxes. Moreover, under Section 612.31 (7), Stats., governing town mutual insurance companies, the Commissioner "may, as a condition for transacting specified types of business, establish by rule special requirements concerning minimum surplus, the minimum number of members or insured risks, the operating territory, required reinsurance, and approval by a specified percentage of the members, so far as such requirements are necessary to protect the interests of insureds and the public." In addition, under Section 601.42 (3), Stats., the Commissioner "may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information will exist and will be available." OCI's authority is further derived from Section 227.10 (2), Stats., providing that no agency may promulgate a rule that conflicts with state law. As of the enactment of 2015 Wis. Act 90 § 19, repealing Section 612.31 (6), Stats., Wis. Admin. Code § INS 13.08 now conflicts with Section 612.31 and should therefore be amended. Additionally, the Commissioner has general rule-making authority under Sections 601.41 (3) and 227.11 (2) (a), Stats.

4. **Related statutes or rules:**

Wisconsin Stat. ss. 612.31, 618.42, 618.43

5. **The plain language analysis and summary of the proposed rule:**

The Commissioner of Insurance proposes to repeal Wis. Admin. Code § INS 6.17 Appendix 2 and amend § INS 6.17 (5) to require electronic reporting and payment of surplus lines taxes. Parallel changes would repeal Wis. Admin. Code § INS 6.18 Appendix 1 and Wis. Admin. Code § INS 6.19 Appendix 2 and amend related tax reporting requirements in § INS 6.18 (2) and § INS 6.19 (3). These proposed changes will provide uniformity and will make it easier to report and pay those taxes. Additionally, the proposed rule will align Wis. Admin. Code § INS 13.08 with Section 612.31, Stats., which—following the repeal of Section 612.31 (6) by 2015 Wis. Act 90—no longer authorizes town mutual insurers to assume business from other town mutual insurers.

6. **Summary of, and preliminary comparison with, any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

N/A

7. **Comparison of similar rules in adjacent states as found by OCI:**

Illinois: 215 Ill. Comp. Stat. 5/445 (General section of the code governing surplus lines insurance)

Iowa: Iowa Code ch. 515I (General section of the code governing surplus lines insurance)

Michigan: Mich. Comp. Laws §§ 500.1901-1955 (General section of the code governing surplus lines insurance)

Minnesota: Minn. Stat. §§ 60A.195-2095 (General section of the code governing surplus lines insurance)

8. **A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

The basis of this rule is to amend provisions related to the surplus lines tax and analogous taxes to allow for more convenient electronic filing. It will also amend regulations affecting town mutuals so that this administrative rule aligns with governing statute.

9. **Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

This rule will have little or no effect on small businesses. This rule will make minor amendments to tax reporting and payment procedures and will not affect the tax itself. Surplus lines agents may benefit from the uniform electronic filing. This rule will also align the town mutual rules with statutory changes that have already taken effect.

10. **A description of the Effect on Small Business:**

This rule will have little or no effect on small businesses.

11. **Agency contact person:**

A copy of the full text of the proposed rule changes, analysis, and fiscal estimate may be obtained from the web site at <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting Karyn Culver at:

Phone: (608) 267-9586

Email: karyn.culver@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail: PO Box 7873, Madison, WI 53707-7873

12. **Place where comments are to be submitted and deadline for submission:**

Persons wishing to testify or provide oral or written comments regarding the proposed administrative rule may appear during the hearing. Additionally, the rule may be reviewed and comments made at <https://docs.legis.wisconsin.gov/code> or sent to the following:

The deadline for submitting comments is 4:00 p.m. on Friday, December 23, 2022.

Written comments can be mailed or hand-delivered to:

Legal Unit - OCI Rule Comment for Rule Ins 6.17
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address: sharone.assa1@wisconsin.gov

For additional information please contact: sharone.assa1@wisconsin.gov

13. **Summary of comments received:**

N/A

Text of Rule:

SECTION 1. Ins 6.17 (5) is amended to read:

(5) REPORT AND PAYMENT OF TAX-SURPLUS LINES INSURANCE. All premium tax collected by the surplus lines agent shall be reported and forwarded to the commissioner on or before March 1, for all insurance procured, renewed or continued during the preceding calendar year with unauthorized insurers. The report ~~on a form substantially the same as Appendix 2 to this rule~~ and the premium taxes owed shall be submitted through an electronic filing system, a link to which may be found on the office's website.

SECTION 2. Ins 6.17 Appendix 2 is repealed.

SECTION 3. Ins 6.18 (2) is amended to read:

(2) REPORTING AND PAYMENT OF TAX BY UNAUTHORIZED INSURERS TRANSACTING BUSINESS IN VIOLATION OF LAW. All premium tax shall be reported and forwarded to the commissioner on or before March 1, for all insurance which applies to exposures located wholly or partially within this state written, renewed or continued during the preceding calendar year by an unauthorized insurer. The report ~~shall be made on a form substantially the same as Appendix 1 to this rule~~ and the

premium taxes owed shall be submitted through an electronic filing system, a link to which may be found on the office's website.

SECTION 4. Ins 6.18 Appendix 1 is repealed.

SECTION 5. Ins 6.19 (3) is amended to read:

(3) REPORTING AND PAYMENT OF TAX FOR DIRECTLY PLACED UNAUTHORIZED INSURANCE. All premium tax shall be reported and forwarded to the commissioner on or before March 1, for all insurance which applies to exposures located wholly or partially within this state procured, renewed or continued during the preceding calendar year in an unauthorized insurer. The report ~~shall be made on a form substantially the same as Appendix 2 to this rule~~ and the premium taxes owed shall be submitted through an electronic filing system, a link to which may be found on the office's website.

SECTION 6. Ins 6.19 Appendix 2 is repealed.

SECTION 7. Ins 13.08 (3) (intro.) is amended to read:

(3) UNEARNED PREMIUM RESERVE. The financial statements of town mutuals which charge advance premiums shall show as a liability an unearned premium reserve. The unearned premium reserve must be calculated on all advance premiums, on the original or full-term premium basis; ~~plus all advance premiums on reinsurance assumed from other town mutual insurers,~~ less advance premiums on risks assumed by other insurers under reinsurance contract. The minimum unearned premium reserves shall be calculated on the premiums in force as follows:

SECTION 8. EFFECTIVE DATE. The rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in Section 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin

DocuSigned by:
Rachel Cissne Carabell
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3/9/2023 | 9:52 AM CST

Rachel Cissne Carabell
Deputy Commissioner of Insurance

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

Ins. 6.17 (5), 6.17 Appendix 2, and 13.08

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

Ins. 6.17 (5), 6.17 Appendix 2, 6.18 (2), 6.18 Appendix 2, 6.19 (3), 6.19 Appendix 2 - 1/1/74; Ins. 13.08 (3) - 1/1/02

4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The Commissioner of Insurance proposes to repeal Wis. Admin. Code § INS 6.17 Appendix 2 and amend § INS 6.17 (5) to require electronic reporting and payment of surplus lines taxes. Parallel changes would repeal Wis. Admin. Code § INS 6.18 Appendix 1 and Wis. Admin. Code § INS 6.19 Appendix 2 and amend related tax reporting requirements in § INS 6.18 (2) and § INS 6.19 (3). These proposed changes will provide uniformity and will make it easier to report and pay those taxes. Additionally, the proposed rule will align Wis. Admin. Code § INS 13.08 with Section 612.31, Stats., which—following the repeal of Section 612.31 (6) by 2015 Wis. Act 90—no longer authorizes town mutual insurers to assume business from other town mutual insurers.

5. Describe the Rule's Enforcement Provisions and Mechanisms

This rule shall be enforced through OCI's general enforcement authority under s. 601.64, Stats.

6. Repealing or Modifying the Rule Will Impact the Following
(Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Small Businesses

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

It is anticipated that there will be no impact on small businesses.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

None

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

Less Stringent Compliance or Reporting Requirements

Less Stringent Schedules or Deadlines for Compliance or Reporting

Consolidation or Simplification of Reporting Requirements

Establishment of performance standards in lieu of Design or Operational Standards

Exemption of Small Businesses from some or all requirements

Other, describe:

10. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

11. Chapter 20, Stats. Appropriations Affected

12. Fiscal Effect of Repealing or Modifying the Rule

No Fiscal Effect

Increase Existing Revenues

Increase Costs

Indeterminate

Decrease Existing Revenues

Could Absorb Within Agency's Budget

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Decrease Cost

13. Summary of Costs and Benefits of Repealing or Modifying the Rule
There are no anticipated costs to small businesses, affected insurers, or OCI.

14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)
 Yes No

15. Long Range Implications of Repealing or Modifying the Rule
There are no significant long-range implications for OCI, regulated entities, or other stakeholders.

16. Compare With Approaches Being Used by Federal Government
N/A

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
See:

- Illinois: 215 Ill. Comp. Stat. 5/445 (Surplus Lines)
- Iowa: Iowa Code ch. 515I (Surplus Lines)
- Michigan: Mich. Comp. Laws §§ 500.1901-1955 (Surplus Lines)
- Minnesota: Minn. Stat. §§ 60a.195-2095 (Surplus Lines)

18. Contact Name

Sharone Assa

19. Contact Phone Number

(608) 264-8129

This document can be made available in alternate formats to individuals with disabilities upon request.



Tony Evers

Office of the Governor | State of Wisconsin

March 2, 2023

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Office of the Commissioner of Insurance, submitted January 4, 2023, relating to the payment and reporting of surplus lines and other taxes and to the financial statements of town mutuals (Wis. Admin. Code chs. Ins. 6 & 13); and
- A proposed rule by the Physician Assistant Affiliated Credentialing Board, submitted January 26, 2023, relating to physician assistants (Wis. Admin. Code chs. PA 1 to 4).

Please direct any questions about this letter to my deputy policy director, Katie Domina.

Sincerely,

A handwritten signature in black ink that reads 'Tony Evers'.

Tony Evers
Governor

cc: Mel Barnes, chief legal counsel (mel.barnes@wisconsin.gov)
Katie Domina, deputy policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Nathan Houdek, OCI (nathan.houdek@wisconsin.gov)



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **22-076**

AN ORDER to amend Ins 6.17 (5), 6.18 (2), 6.19 (3), and 13.08; and to repeal Ins 6.17 Appendix 2, 6.18 Appendix 1, and 6.19 Appendix 2, relating to the reporting of surplus lines taxes and related provisions.

Submitted by **OFFICE OF THE COMMISSIONER OF INSURANCE**

11-02-2022 RECEIVED BY LEGISLATIVE COUNCIL.

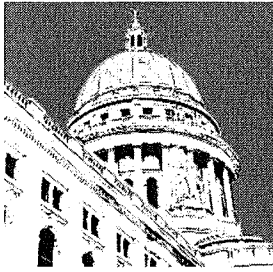
11-29-2022 REPORT SENT TO AGENCY.

MSK:KAM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-076

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In the analysis for the proposed rule, it appears that the listing of statutes interpreted should be revised to remove ss. 227.10 and 227.11, Stats., as those provisions are not statutes that are enforced or administered by the agency. It also appears that the listing of statutory authority should be revised to remove s. 227.10 (2), Stats., as that provision does not provide rulemaking authority. [s. 1.01 (2) (c) 1. and 2., Manual.]

2. Form, Style and Placement in Administrative Code

a. The introductory clause for the proposed rule should be revised to conform to the style prescribed by s. 1.01 (1) of the Manual. An introductory clause begins with an enumeration of all of the rule provisions treated by the proposed order and the nature of the treatment and is followed by a relating clause that concisely states the subject matter of the proposed order.

b. It appears that the citation in the rule caption to the statement of scope affiliated with the proposed rule should be corrected to reference SS 159-20, as noted by the agency in communication subsequent to submission of the proposed rule to the Clearinghouse.

c. In the analysis for the proposed rule, the agency should insert a heading and summary for any comments received during a preliminary comment period or public hearing on the statement of scope. [s. 1.01 (2) (a) 7., Manual.]

d. In the rule analysis’ comparison of similar rules in adjacent states, the agency should provide a narrative discussion of the substance of the other states’ rules.

e. Following the analysis for the proposed rule, consider removing the phrase “The proposed changes are:” and instead inserting a heading for “Text of Rule”.

f. In SECTION 1 of the proposed rule, amending s. Ins 6.17 (5), the period following the stricken material that is shown with a strike-through should be removed. The final period following the underscored material should be shown without underscoring. [s. 1.04 (4) (d), Manual.] The

same comment applies to SECTIONS 3 and 5 of the proposed rule, amending ss. Ins 6.18 (2) and 6.19 (3), respectively.

g. In SECTION 7 of the proposed rule, the treatment clause should be revised to insert “(intro.)” following “Ins 13.08 (3)”. [s. 1.11 (1), Manual.]

h. Also, in SECTION 7 of the proposed rule, amending s. Ins 13.08 (3) (intro.), to accurately reflect the current text of the rule, the double comma that is shown with a strike-through of the second comma should be revised to show only the second comma with its strike-through. In other words, the first comma in the double comma that is shown without a strike-through or underscoring should be removed. In addition, the comma following “insurers” that is shown with a strike-through should be shown without a strike-through.