



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: January 18, 2023

SUBJECT: Section Ins 50.01 & 50.155, Wis. Adm. Code, relating to the office's access to
CPA financial compilations and to the exemption from internal audit function
requirements

Clearinghouse Rule No. 22-075

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 50.01 and 50.155

The Commissioner of Insurance proposes an order to amend Ins 50.01 (9) and Ins 50.155 (1), relating to the office’s access to CPA financial compilations and to the exemption from internal audit function requirements.

The statement of scope for this rule SS: 157-20 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 January 12, 2023, to submit to the legislature, and submitted to the legislature on January 18, 2023.

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

1. Statutes interpreted:

Wisconsin Statutes ss. 601.42, 601.43, 623.02.

2. Statutory authority:

Wisconsin Statutes ss. 601.42 (1g) (a), 601.43 (1) (a), 623.03 and 623.04.

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

Section 601.42 (1g), Stats., authorizes the commissioner to request statements, reports, and other information from regulated persons. Section 601.42 (2), Stats., authorizes the commissioner to prescribe forms for these reports. Section 601.43, Stats., authorizes the commissioner to examine regulated persons. Sections 623.03 and 623.04, Stats., authorize the commissioner to promulgate rules regarding the valuation of assets and liabilities, respectively. Section 623.02, Stats., recognizes the commissioner’s authority to promulgate standards for accounting rules.

4. Related statutes or rules:

Wis. Admin. Code ch. INS 50 Subchapter I

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

The definition of work papers in Wis. Admin. Code § INS 50.01 (9) will be amended to clarify that work papers includes financial compilations. Additionally, the proposed rule will allow smaller insurers that are not part of a group to be eligible for the small-size exemption from the internal audit function requirements of Wis. Admin. Code § INS 50.155.

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. Summary of comments received during preliminary comment period:

N/A

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

- Illinois:** Ill. Admin. Code tit. 50, § 925.130 (CPA work papers)
Ill. Admin. Code tit. 50, § 925.141 (Internal audit function requirements)
- Iowa:** Iowa Admin Code r. 191-98.12 (CPA work papers)
Iowa Admin Code rr. 191-98.2(1), 191.98.16 (Internal audit function requirements)
- Michigan:** Mich. Comp. Laws § 500.1021 (CPA work papers)
Mich. Comp. Laws § 500.1028 (Internal audit function requirements)
- Minnesota:** Minn. Stat. § 60a.1291, subd. 14. (CPA work papers)
Minn. Stat. § 60a.1291, subd. 15a.. (Internal audit function requirements)

9. **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:**

Access to CPA work papers reduces the amount of information that OCI is required to obtain from insurers and aids in the efficient oversight of insurers. This small clarification to the definition of work papers will further aid OCI in efficiently regulating insurers. The small change to the internal audit function requirements will make clear that small insurers that are not part of group of insurers are eligible for an exemption from those requirements, which OCI believes is appropriate for smaller insurers.

10. **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. Insurers will not be affected by the clarification of what constitutes CPA work papers. It will also be clearer that small insurers that are not part of a group of insurers are exempt from the internal audit function requirements and those associated costs.

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

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

12. **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

13. **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 9, 2022.

Written comments can be mailed or hand-delivered to:

Legal Unit - OCI Rule Comment for Rule Ins 50.01 and 50.155
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.

Rule Text:

SECTION 1. Ins 50.01 (9) is amended to read:

(9) “Work papers” means records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant’s examination of the financial statements of an insurer. “Work papers” include, but are not limited to, audit planning documentation; audit guides; work programs; analyses; memoranda; letters of confirmation and representation; abstracts of company documents; financial compilations, even if not produced during a full audit; and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of examination of the financial statements of an insurer or which support the opinion of the independent certified public accountant regarding the financial statements.

SECTION 2. Ins 50.155 (1) is amended to read:

(1) An insurer is exempt from the requirements of this section if ~~both of the following conditions are true:~~

(a) The insurer has total annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; ~~and-~~

(b) ~~The~~ If the insurer is a member of a group of insurers, ~~and~~ the group has total annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

SECTION 3. EFFECTIVE DATE. The rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

1/17/2023 | 2:47 PM CST

Dated at Madison, Wisconsin _____.

DocuSigned by:
Rachel Cissne Carabell
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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. 50.01 (9) and 50.155 (1)

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

Ins. 50.01 (9) - 8/1/93; Ins. 50.155 - 1/1/18

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 definition of work papers in Ins. 50.01 (9) will be amended to clarify that work papers includes financial compilations. Additionally, the proposed rule will allow smaller insurers that are not part of a group to be eligible for the small-size exemption from the internal audit function requirements of Ins. 50.155.

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 significant impact on small businesses. Small insurers may realize some reduced costs if they are exempt from certain internal audit functions.

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.

By October 12, 2022 email, Medica/Dean Health Plan stated that it did not expect the proposed rule to have a financial impact on the organization and that it therefore took no position on the proposed regulatory change. OCI has received no other comments.

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

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. Small insurers may realize some reduced

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

costs.

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:

Ill. Admin. Code tit. 50, § 925.130 (CPA work papers)

Ill. Admin. Code tit. 50, § 925.141 (Internal audit function requirements)

Iowa:

Iowa Admin Code r. 191-98.12 (CPA work papers)

Iowa Admin Code rr. 191-98.2(1), 191.98.16 (Internal audit function requirements)

Michigan:

Mich. Comp. Laws § 500.1021 (CPA work papers)

Mich. Comp. Laws § 500.1028 (Internal audit function requirements)

Minnesota:

Minn. Stat. § 60a.1291, subd. 14. (CPA work papers)

Minn. Stat. § 60a.1291, subd. 15a.. (Internal audit function requirements)

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

January 12, 2023

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Veterans Affairs, submitted December 13, 2022, relating to veterans housing and recovery program (Wis. Admin. Code ch. VA 13); and
- A statement of scope by the Pharmacy Examining Board, submitted December 15, 2022, relating to compounding pharmaceuticals (Wis. Admin. Code ch. Phar 15); and
- A statement of scope by the Cosmetology Examining Board, submitted December 12, 2022, relating to scope of practice and education (Wis. Admin. Code chs. COS 1, 2, 5 and 6).

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

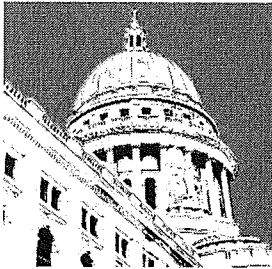
- A proposed rule by the Hearing and Speech Examining Board, submitted December 15, 2022, relating to telehealth (Wis. Admin. Code chs. HAS 5 and 6); and
- A proposed rule by the Office of Commissioner of Insurance, submitted January 3, 2023, relating to the office's access to CPA financial compilations and to the exemption from internal audit function requirements (Wis. Admin. Code ch. Ins. 50).

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

Sincerely,

Tony Evers
Governor

cc: Mel Barnes, chief legal counsel (mel.barnes@wisconsin.gov)
Katie Domina, deputy policy director (katherine.dominal@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Nathan Houdek, OCI (nathan.houdek@wisconsin.gov)
DVA (DVAAdminRules@dva.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 **22-075**

AN ORDER to amend Ins 50.01 and 50.155, relating to the office's access to financial compilations produced by independent certified public accountants in the course of examining the financial statements of insurers.

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

11-02-2022 RECEIVED BY LEGISLATIVE COUNCIL.

11-22-2022 REPORT SENT TO AGENCY.

SG:TK

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



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CLEARINGHOUSE RULE 22-075

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

It appears that the agency’s explanation of statutory authority could more specifically cite to ss. 601.42 (1g) (a) and 601.43 (1) (a), Stats. Additionally, it appears that ss. 623.03 and 623.04, Stats., would be more appropriately referenced under “statutory authority” than “statutes interpreted”, while s. 623.02, Stats., would be more appropriately referenced under “statutes interpreted”.

2. Form, Style and Placement in Administrative Code

a. The proposed rule should include an introductory clause prepared in the style described by 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. [s. 1.01 (1), Manual.] For example, “The Commissioner of Insurance proposes an order to amend Ins 50.01 (9) and 50.155 (1), relating to the office’s access to financial compilations produced by independent certified public accountants in the course of examining the financial statements of insurers.”. Note that this relating clause was provided for the hearing notices associated with the proposed rule, though it does not appear to address the treatment relating to the exemption from internal audit function requirements. Also, note that the bold text beginning “Proposed order...” does not accurately reflect the treatments described in the rule text. It should be clarified to state that the agency is amending a rule, not creating or repealing a rule.

b. 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), Manual.]

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

d. In SECTION 2, the proposed rule revises existing text in a manner that deviates from several recommendations prescribed by the Manual. Specifically, the introduction to the list should contain “all of the following:”, or equivalent text, to indicate that each of the items in the list are applicable, and the two paragraphs should be separated by a period, not “; and”. [s. 1.11 (2) and (3), Manual.] However, it is somewhat awkward and uncommon to create a list of two items where one item applies to one set of insurers but both items apply to another set of insurers. The agency could restructure s. Ins 50.155 (1) by amending par. (a) to state that an insurer that is not a member of a group of insurers is exempt from the requirements if the insurer has total annual direct written and unaffiliated assumed premiums of less than \$500,000,000. Paragraph (b) could then specify that an insurer that is a member of a group of insurers is exempt from the requirements if the insurer has total annual direct written and unaffiliated assumed premiums of less than \$500,000,000 and the group has total annual direct unaffiliated assumed premiums of less than \$1,000,000,000. Under this structure, s. Ins 50.155 (1) (intro.) could reflect that an insurer is exempt if either of the following conditions are satisfied.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 1, if the agency wishes to clarify that financial compilations are included even if not produced during a full audit, it should use semicolons instead of commas through the existing series of items included in the definition of “work papers”. When a single item of a series is modified by a comma-separated clause, use of semicolons to separate other items enhances the clarity of the series.

b. Also, in SECTION 1, with respect to further revision to s. Ins 50.01 (9), note that the existing phrase “but are not limited to” is unnecessary. [s. 1.07 (3) (b) 2., Manual.]