

**★★★ NOTICE OF RULEMAKING HEARING ★★★**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 50.01, 50.08(1), 50.10, Wis. Adm. Code, relating to annual audited financial reports, annual financial statements and examinations and affecting small business.

**HEARING INFORMATION**

**Date: May 18, 2007**

**Time: 10:00 a.m., or as soon thereafter as the matter may be reached**

**Place: OCI, Room 227, 125 South Webster St 2<sup>nd</sup> Floor, Madison, WI**

Written comments can be mailed to:

James W. Harris  
Legal Unit - OCI Rule Comment for Rule Ins 5000  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Written comments can be hand delivered to:

James W. Harris  
Legal Unit - OCI Rule Comment for Rule Ins 5000  
Office of the Commissioner of Insurance  
125 South Webster St - 2<sup>nd</sup> Floor  
Madison WI 53702

Comments can be emailed to:

James W. Harris  
James.Harris@oci.state.wi.us

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

**SUMMARY OF PROPOSED RULE & FISCAL ESTIMATE**

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

## **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Because this rule applies to all insurers doing business in the state, it may have an effect on the smallest insurers or accounting firms with respect to the engagement agreements utilized. However because the audit rule has been in effect since 1993, and this change clarifies the level of independence required of a certified public accountant or firm in its engagement with an insurer, any effect should be negligible.

## **OCI SMALL BUSINESS REGULATORY COORDINATOR**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address [Eileen.Mallow@oci.state.wi.us](mailto:Eileen.Mallow@oci.state.wi.us)

## **CONTACT PERSON**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: [Inger.Williams@oci.state.wi.us](mailto:Inger.Williams@oci.state.wi.us), (608) 264-8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

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

**To amend** Ins 50.10; and to create Ins 50.01(4m), 50.08(1)(am),

**Relating to** annual audited financial reports, annual financial statements and examinations and affecting small business.

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

**1. Statutes interpreted:**

ss. 600.01(2), 601.41(3), 601.42 and 623.02, Stats.

**2. Statutory authority:**

ss. 601.41(3), 601.42 and 623.02, Stats.

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

OCI has set standards for accounting practices related to the preparation and submission of annual audited financial reports, annual financial statements and examinations required of insurers doing business in Wisconsin. The present rule has been in existence since 1993, and this change is to clarify several aspects of the rule.

**4. Related statutes or rules:**

See the statutes interpreted in paragraph 1, above.

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

This rule clarifies the requirements for qualification of an independent certified public accountant to be retained by an insurer for the purpose of expressing an opinion on financial statements in annual audited financial reports required to be filed with the commissioner. The rule establishes that an accountant or accounting firm is not qualified if an agreement of indemnity or release from liability has been entered into with an insurer with the intent or effect to shift or limit the liability of the accountant or accounting firm for failure to adhere to applicable auditing or professional standards. The rule requires that an independent certified public accountant consider procedures illustrated in the National Association of Insurance Commissioners (NAIC) financial condition examiner's handbook as the accountant deems necessary.

**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:**

There are no federal regulations which address annual financial reports, annual financial statements and examinations to be prepared by insurers doing business in Wisconsin.

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

**Illinois:** Il. Adm. Code Title 50, Part 925, Section 925.70, requires annual audited financial reports from insurers doing business in the state that are

prepared by a qualified independent certified public accountant that has not either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer. In conducting an audit consideration should also be given to procedures illustrated in the Financial Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the accountant deems necessary.

**Iowa:** Iowa Adm. Code 191-5.25, requires annual audited financial reports from insurers doing business in the state that are prepared by a qualified independent certified public accountant that has not either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer. In conducting an audit consideration should also be given to procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

**Michigan:** Mich. Comp. Laws, Ch. 500, requires annual audited financial reports from insurers authorized to do business in the state that are prepared by an independent certified public accountant.

**Minnesota:** Minn. Stat. Ch. 60A.129, Subd. 3, requires annual audited financial reports from insurers doing business in the state that are prepared by an independent certified public accountant. In conducting an examination of an insurer's financial statements consideration should be given to other procedures illustrated in the Financial Condition Examiner's Handbook issued by the National Association of Insurance Commissioners as the independent certified public accountant considers necessary.

**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:**

Under the existing rule, certain qualifications of independent certified public accountants have been set forth, generally in accord with the National Association of Insurance Commissioners (NAIC) annual financial reporting model regulation. Indemnification agreements may provide an auditor an unacceptably broad opportunity to avoid responsibility for failure to find or disclose erroneous or false information put forth by management of an insurer. In the event of a receivership a regulator standing in place of management may be precluded by an indemnity agreement from taking appropriate action if professional negligence has occurred. The NAIC has revised the model to provide that an independent certified public accountant is not qualified if the accountant or firm has entered into an indemnification agreement with respect to an audit of the insurer. This rule amendment brings the Wisconsin rule in conformity with the model regulation.

**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 clarifies the level of independence required of a certified public accountant or firm in its engagement with an insurer, and there is no significant effect on small business.

**10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:**

These changes will not have a significant fiscal effect on the private sector.

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

Because this rule applies to all insurers doing business in the state, it may have an effect on the smallest insurers or accounting firms with respect to the engagement agreements utilized. However because the audit rule has been in effect since 1993, any effect should be negligible.

**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:

**<http://oci.wi.gov/ocirules.htm>**

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: [Inger.Williams@oci.state.wi.us](mailto:Inger.Williams@oci.state.wi.us)

Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53702

Mail: PO Box 7873, Madison, WI 53707-7873

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

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

James W. Harris

Legal Unit - OCI Rule Comment for Rule Ins 5000

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

James W. Harris

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Email address:

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Web site: **<http://oci.wi.gov/ocirules.htm>**

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**The proposed rule changes are:**

**SECTION 1. Section Ins 50.10 is amended to read:**

Ins 50.10 SCOPE OF EXAMINATION AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. Financial statements furnished under s. Ins 50.06 shall be audited by an independent certified public accountant. The independent certified public accountant shall conduct the audit of the insurer's financial statements in accordance with generally accepted auditing standards. The independent certified public accountant ~~may also~~ shall give consideration to ~~such other~~ procedures illustrated in the financial condition examiner's handbook promulgated by the national association of insurance commissioners as the independent certified public accountant deems necessary. The commissioner may require that an independent certified public accountant conduct additional procedures or provide additional reports.

**SECTION 2. Section Ins 50.01(4m) is created to read:**

Ins 50.01(4m) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

**SECTION 3. Section Ins 50.08(1)(am) is created to read:**

Ins 50.08(1)(am) Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

Dated at Madison, Wisconsin, this 7th day of March, 2007.

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Sean Dilweg  
Commissioner of Insurance

**Office of the Commissioner of Insurance**  
**Private Sector Fiscal Analysis**

for Section Ins 50.01, 50.08(1), 50.10 relating to annual audited  
financial reports, annual financial statements and examinations

This rule change will have no significant effect on the private sector regulated by OCI, since the audit rule has been in effect since 1993. It will enhance the validity of annual audited financial reports, annual financial statements and examinations prepared by independent certified public accountants on behalf of insurers by confirming adherence to applicable auditing and professional standards.

## FISCAL ESTIMATE WORKSHEET

### Detailed Estimate of Annual Fiscal Effect

ORIGINAL       UPDATED  
  
 CORRECTED       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 5000</b>

**Subject**  
annual audited financial reports, annual financial statements and examinations

**One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
**None**

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
<b>B. State Costs by Source of Funds</b>		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
<b>C. State Revenues</b> <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

#### NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$ <u>None 0</u>

Prepared by: James W. Harris	Telephone No. (608) 267-2833	Agency Insurance
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)



### FISCAL ESTIMATE

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 5000</b>

**Subject**

annual audited financial reports, annual financial statements and examinations

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget     Yes     No  
  
 Decrease Costs

Local:  No local government costs

- |  |   |   |
|--|---|---|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:<br><input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities<br><input type="checkbox"/> Counties <input type="checkbox"/> Others _____ |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts   |

Fund Sources Affected

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

**Long-Range Fiscal Implications**

**None**

Prepared by:

James W. Harris

Telephone No.

(608) 267-2833

Agency

Insurance

Authorized Signature:

Telephone No.

Date (mm/dd/ccyy)