

Clearinghouse Rule 22-076

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 amend s. Ins 6.17 (5) and repeal s. Ins 6.17 Appendix 2, relating to reporting of surplus lines taxes; amend related provisions in ss. Ins 6.18 (2) and 6.19 (3); and repeal related provisions in ss. Ins 6.18 Appendix 1 and Ins 6.19 Appendix 2. The order would also amend s. Ins 13.08 to align with statutory changes.

The statement of scope for this rule, SS 158-20, 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.

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

1. **Statutes interpreted:**

Wisconsin Stat. ss. 227.10, 227.11, 601.41, 601.42, 612.31, 618.42, 618.43.

2. **Statutory authority:**

Wisconsin Stat. ss. 227.10 (2), 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 (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)

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

The proposed rule changes are:

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) 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, this 2nd day of November, 2022

Rachel Cissne Carabell
Deputy Commissioner of Insurance