

**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.

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

Address: 125 South Webster St – 2nd Floor, Madison WI 53702

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

The rule changes are:

SECTION 1. 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 2. 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 indemnification with respect to the audit of the insurer;

SECTION 3. 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.

These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this 9th day of August, 2007.

Sean Dilweg
Commissioner of Insurance

