

STATEMENT OF SCOPE

Office of the Commissioner of Insurance

Rule No.: s. Ins 25.13

Relating to: Changes to the Annual Privacy Notice Requirement

Rule Type: Emergency & Permanent

1. Finding/nature of emergency (Emergency Rule only):

The Office of the Commissioner of Insurance finds that because of recent amendments to federal privacy laws, s. Ins 25.13 is now inconsistent with the federal law on which it was modeled and therefore needs to be amended. As a consequence, if s. Ins 25.13 is not amended soon, insurers will have to bear the administrative cost of sending privacy notices that federal law does not require.

2. Detailed description of the objective of the proposed rule:

In December of 2015, President Obama signed into law the Fixing America's Surface Transportation Act (FAST Act), Public Law 114-94 § 75001, which amended Section 503, 12 U.S.C. § 6803, of the Gramm-Leach-Bliley Act (GLBA) privacy notice requirements. The Fast Act added new GLBA section 503(f) and provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. As such, the Office of the Commissioner of Insurance is seeking to amend Ins 25.13 Wis. Adm. Code to better align it with the changes to federal law. The new section 503(f)(1) requires that for a financial institution to qualify for this exception from providing annual privacy notices, it must not share nonpublic personal information about a customer except described in certain statutory exceptions. Additionally, new section 503(f)(2) requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the financial institution disclosed in the most recent privacy notice it sent.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Before GLBA was amended by the Section 75001 of the Fixing America's Surface Transportation Act, covered financial institutions had to send annual privacy statements to their customers after an initial disclosure as required by Ins 25.13 Wis. Adm. Code. This proved to be burdensome to many smaller financial institutions and flooded consumers with redundant mailings that were often ignored. The amended regulation requires annual notices only when certain conditions are triggered.

As mandated in GLBA's section granting certain federal agencies rulemaking authority, 15 U.S.C. § 6804(2),

Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

Accordingly, on April 5, 2016, the National Association of Insurance Commissioners Market Regulation and Consumer Affairs (D) Committee adopted a Model Bulletin that implemented the key provisions of

the FAST Act's GLBA amendments. Thus, amending Ins 25.13 Wis. Adm. Code would achieve regulatory uniformity.

Alternative policies include ignoring the shift in federal privacy law, but that would lead to market participant confusion and conflict between Wisconsin Insurance regulations and federal privacy law.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Commissioner has the general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Wis. Stat., and as provided under ss. 227.11 (2) (a) and 601.41, Wis. Stat. Further, Ins. 25 is promulgated pursuant to the authority granted by ss. 601.41(3) ((a) "The commissioner shall have rule-making authority under s. 227.11 (2)."), 610.70, 628.34 (12), and 633.17 ("The commissioner shall promulgate rules necessary for the implementation of this chapter, in addition to the rules permitted under s. 633.13 (2) and required under ss. 633.14 (3) and 633.15 (1) (b)."), Wis. Stats. *See* Ins 25.01 Wis. Adm. Code, "Authority" ("This chapter is promulgated pursuant to the authority granted by ss. 601.41 (3), 610.70, 628.34 (12), and 633.17, Stats.").

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

60 hours and no other resources are necessary to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will affect insurance intermediaries, intermediary firms, insurance companies, surplus lines agents, life settlement brokers, reinsurance intermediaries, firms and managers, and individual navigators and navigator entities.

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

In December of 2015, President Obama signed into law the Fixing America's Surface Transportation Act (FAST Act) which amended Section 503, 12 U.S.C. § 6803, of the Gramm-Leach-Bliley Act (GLBA) privacy notice requirements by adding section 503(f). Section 503(f) reads:

- (f) Exception to annual notice requirement A financial institution that—
- (1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 6802 of this title or regulations prescribed under section 6804(b) of this title, and
 - (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section, shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

The proposed change to Ins 25.13 Wis. Admin. Code would mirror this language.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

This proposed rule will have a moderately positive economic impact as it will eliminate the need for financial institutions to send their customers redundant privacy notices. Therefore, the revision in the

proposed rule is simply to make s. Ins 25.13, Wis. Adm. Code, consistent with current federal privacy laws and regulations.

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