

## Draft Rule (or Emergency Rule) Form & NOH

~~NOTE: Now a fiscal estimate of costs to private sector needs to be done — The attorney should have the OCI section requesting the rule prepare the fiscal analysis, private sector fiscal analysis and perhaps a summary of the adjacent states laws~~

These docs for: Robert Luck Document Name = 5 Rule Text 3.Doc on 6/4/04 8:38 四 38/P38

To Replace: Mark text & use “Replc” button & all items (except in letterheads) will be changed  
To Print, Set printer to blank paper “upper tray” — letterheads are included in this Template

**NOTE: No work on a rule can be done until 10 days after “Statement of Scope” is published in the Administrative Register.**

### Draft Rule & NOH:

**RE:** Section Ins 5, Wis. Adm. Code, relating to administrative hearing procedures for OCI

**Date of hearing:** — hhh

~~The fiscal estimate is filled out to show no fiscal effect, if there is a fiscal effect, you must edit it & change all the amounts~~

~~You must change the “version date” in the “Footer” (below the Page number) before you print each draft and the final copy of the rule~~

~~In addition, delete the “Finding of Emergency” if this is not to be done as an emergency rule~~

~~The State & Local Fiscal Estimate forms are the last 2 pages of this template. The Private Fiscal effect is the 3<sup>rd</sup> page from the end~~

~~The following is the list of contacts for the adjacent states info:~~

State	Contact Name	Phone	Email Address
Iowa	David Cunningham	(515)281-6793	David.cunningham@iid.state.ia.us
Illinois	Denise Hamilton	(217)785-8560	Denise_hamilton@ins.state.il.us
Michigan	Larry Wood	(517)373-2887	lswood@michigan.gov
Minnesota	Mary Lippert Donna Watz	(651)296-9423 (651)296-6593	Mary.lippert@state.mn.us Donna.watz@state.mn.us
Ohio	Doug Anderson	(614)719-1579	Douglas.anderson@ins.state.oh.us

\*\*\* 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 5, Wis. Adm. Code, relating to administrative hearing procedures for OCI.

HEARING INFORMATION

Date: hhh
Time: 10:00 a.m., or as soon thereafter as the matter may be reached
Place: OCI, 2nd Floor, 125 South Webster Street, Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: https://Error! Hyperlink reference not valid.adminrules.wisconsin.gov on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Robert Luck
Legal Unit OCI Rule Comment for Rule 5
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

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

This rule does not impose any additional requirements on small businesses.

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, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110, Inger.Williams@OCI.State.WI.US or at 125 South Webster Street 2nd Floor, 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 [5.17\(5\)](#), 5.21(1) & (2) and 5.27(4); and to create Ins 5.21(2)(e), (f) and (g) and 5.25 (1)(c), Wis. Admin. Code, relating to administrative hearing procedures for OCI.

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

**1. Statutes interpreted:**

ss. 227.45(7), 227.46, 600.01(2), 601.41(3), 601.42, 628.34(12), Stats.

**2. Statutory authority:**

ss. 600.01, 628.34 (12), Stats.

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

OCI has set standards for the conduct of administrative hearings it holds. The existing rule has been in existence since 1996 and this change is clarification of some specific parts of that rule.

**4. Related Statutes or rules:**

See statutes interpreted in #1 above.

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

This rule identifies specific sanctions allowed by the statutes and in circuit court and reinforces that they are available for use in administrative proceedings where a party defaults, fails to comply with a subpoena or fails to comply with discovery orders. Those additional sanctions are striking the pleadings, awarding expenses, imposing a forfeiture and any other statutory sanction allowed. Since the existing rule referenced certain penalties and not others, questions were from time to time raised regarding whether other statutory sanctions could be applied. The changes also specifically reference that the ALJ may consider and grant orders for summary judgment.

The rule sets a standard of "excusable neglect" for a Respondent to obtain relief from their default. The rule specifically lists penalties for failing to comply with discovery orders including striking the pleadings, awarding expenses, ordering a forfeiture on the Respondent, taking the allegations as true without further proof or license action hearing. Since the state of Wisconsin has sovereign immunity, monetary penalties cannot be imposed against the state. ~~The revision specifically allows for a motion for summary judgment to be filed.~~

In addition, the current address listed in the rule or OCI is corrected.

**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 Wisconsin administrative hearings.

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

Iowa: Section 17A.12 the presiding officer may enter a default decision or proceed to take evidence in the absence of the default party. If the defaulting party wishes to contest the default, they must show "good cause" for the default.

Illinois: Statutory section 750 ILCS 25/10 permits the administrative hearing officer to proceed to hear the case based on the testimony of the petitioner and other evidence and make a decision. The Respondent can attempt to contest the default by filing a motion within 14 days of the default order.

Minnesota: Rule sections 1400.6000 and 1400.8560 deal with default situations and both allow the ALJ to take all allegations as true without further proof and to enter an appropriate order based on those facts.

Michigan: MI Admin. Code R 28.4013 (2004) Rule 13. If a party fails to appear after proper service of notice, the department, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Indiana: Section 312 IAC 3-1-9 allows a Natural Resources Commission administrative law judge to enter a proposed order of default or proposed order of dismissal (Note: No provision could be found that specifically applied to insurance contested cases)

**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:**

This rule identifies certain motions, penalties and other administrative provisions which the statutes specifically allowed. The existing rule referenced some, but not all of these. [This rule amendment makes clear that all statutory sanctions apply.](#)

**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:**

Since the rule clarifies administrative procedures for Respondents who are in default or disobedient to orders issued by the administrative law judge, there is no significant effect on small businesses.

**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:**

**~~10. If these changes will have a significant fiscal effect on the private sector, the anticipated costs possibly incurred by private sector:~~**

Not ~~Applicable~~[applicable](#) because there is no significant effect.

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

**~~11. Effect on Small Business:~~**

None

**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 sites at: <http://oci.wi.gov/ocirules.htm>, or <https://adminrules.wisconsin.gov>

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

Mr. ~~Robert Bob~~ Luck

Legal Unit - OCI Rule Comment for Rule [Ins 5.17\(5\)](#)

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Mr. ~~Robert Bob~~ Luck

Legal Unit - OCI Rule Comment for Rule [Ins 5.17\(5\)](#)

Office of the Commissioner of Insurance

125 South Webster St – 2<sup>nd</sup> Floor

Madison WI 53702

WEB Site: <http://oci.wi.gov/ocirules.htm>

WEB Site: ~~<https://adminrules.wisconsin.gov>~~ [adminrules.wisconsin.gov](#)

The ~~proposed~~ rule changes are:

**SECTION 1. Section [Ins 5.17\(5\)](#), [Ins 5.21\(1\)](#) and [Ins 5.21\(2\)\(intro\)](#) are amended to read:**

[Ins 5.17\(5\) ADDRESS. Unless otherwise ordered by the administrative law judge, the address for serving and filing documents with the office, the PCF Board, the HIRSP board or the administrative law judge is:](#)

[Office of the Commissioner of Insurance Attn: Legal Unit](#)

[125 South Webster Street Floor 2 ~~121 East Wilson Street~~](#)

[P. O. Box 7873](#)

[Madison, WI 53707-7873](#)

[Facsimile transmission number: 608-264-6228](#)

Ins 5.21(1) FAILURE TO ANSWER OR APPEAR. [\(a\) If a party, without reasonable excuse, other than due to excusable neglect, fails to file an answer by the](#)

date specified in the notice of hearing ~~and~~ or fails to appear at the prehearing conference ~~and~~, or fails to appear at the hearing scheduled in the notice of hearing, the administrative law judge shall promptly issue and serve a final decision finding the party in default, accepting the opposing party's allegations as true and deciding the case based on those allegations. If proof of any fact is necessary for the administrative law judge to issue the decision the administrative law judge shall receive the proof.

(b) The administrative law judge may relieve a party from a default decision only if:

1. The party files a motion for relief within a reasonable time but not more than one year after the decision is mailed; and

2. The party establishes that the failure to file an answer or to appear was due to excusable neglect. For the purpose of this paragraph failure to receive a notice, pleading, decision, or other document in a proceeding is not a basis to establish excusable neglect if the notice, pleading, decision, or other document was mailed to the address of a licensee of the office at the address shown in the office records, to an address provided by the party in the course of the proceeding or to the address of an attorney representing the party. If the office does not have such an address, failure to receive the document does not establish excusable neglect if the document is mailed to an address the party represents to the public or otherwise as a business address.

Ins 5.21(2) SANCTIONS AGAINST DISOBEDIENT PARTY. If a party fails to disclose witnesses or evidence under s. Ins 5.35, fails to comply with a subpoena, fails to make a required appearance, fails to respond to discovery or fails to comply with an order issued by the administrative law judge, the administrative law judge, on his or her own motion or on a motion by an opposing party, may by order do any of the following which the administrative law judge considers just in relation to the disobedient party's failure:

**SECTION 2. Sections Ins 5.21(2)(e), (f) & (g) and Ins 5.25(1)(c) -are created to read:**

Ins 5.21(2)(e) Strike the pleadings of the disobedient party or render a decision accepting the opposing party's allegations as true and decide the case based on the allegations, or both.

(f) Award expenses as provided under s. 804.12 (1) (c), (2) (b) or (3), Stats., against a party subject to an action brought by the office. Under this section, expenses cannot be awarded against the state or its agencies.

(g) Impose a forfeiture under s. 601.64, Stats., against a respondent subject to an action brought by the office for any violation of an order of the administrative law judge compelling discovery. An order compelling discovery issued by the administrative law judge to a respondent is an order under s. 601.41 (4), Stats. Under this section, a forfeiture cannot be imposed against the state or its agencies.

**~~SECTION 3. Sections Ins 5.25(1)(e) is created to read:~~**

Ins 5.25(1)(c) An order granting summary judgment as to any issue or the entire matter under consideration. A motion for summary judgment shall be brought and decided in accordance with s. 802.08, Stats.

**SECTION 3. Section Ins 5.27(4) is amended to read:**

~~**SECTION 4. Section Ins 5.27(4) is amended to read:**~~

Ins 5.27(4) COMPLIANCE. In addition to the sanctions provided under s. Ins 5.21, a person who fails to comply with a subpoena issued under this section may be compelled as provided under s. 885.12, Stats., and may be subject to administrative sanctions including, but not limited to, sanctions for a violation of an order issued under ss. 601.41(4) and s. 601.42(4), Stats.

**SECTION 45.** These changes first apply to the remainder of any hearing, prehearing, motion hearing or administrative proceeding in process or any hearing or administrative proceeding commencing on or after the effective date.

**SECTION 56.** 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~~ this 21st day of April, 2005.

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~~Jorge Gomez~~ Jorge Gomez  
Commissioner of Insurance

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

for Rule Ins 5 relating to administrative hearing procedures for OCI

This rule will have no significant effect on the private sector regulated by OCI. If anything, this rule should slightly reduce OCI costs by securing compliance with discovery rulings by the ALJ. These sanctions should reduce slightly the time and effort it takes OCI to bring administrative matters to a conclusion. The only effect on private sector, regulated entities would be penalties for~~that~~ those entities that do not comply with valid discovery orders, default in a hearing being held involving that entity or not complying with other orders after an administrative proceeding has been commenced. The private sector entity may have sanctions imposed on them, including monetary penalties.




**NET ANNUALIZED FISCAL IMPACT**

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

<b>Prepared by:</b>	Robert _____	Telephone No. _____	Agency _____
<b>Authorized Signature:</b>		Telephone No. _____	Date (mm/dd/yyyy) _____

**FISCAL ESTIMATE**

<input checked="" type="checkbox"/> ORIGINAL  <input type="checkbox"/> CORRECTED	Bill Number  Bill Number	Amendment No. if applicable  Administrative Rule Number S-5
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Subject  
~~administrative hearing procedures for OCI~~

**Fiscal Effect**

State: \_\_\_\_\_

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

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	Increase Costs – May be possible to absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  Decrease Costs
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Total:  -

		Types of Localities

Additional Sources Affected:  GPR  FED  PRO  PRS  SEG  Other

Selected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

~~If anything, this rule should slightly reduce agency costs by securing compliance with discovery sanctions by the ALJ. These sanctions should reduce the time and effort it takes OCI to bring hearings to conclusion where a party refuses to participate in the action or comply with orders issued in the execution of that action.~~

Wig-Range Fiscal Implications

None

Prepared by: _____	Telephone No. _____	Agency (Insurance)
Authorized Signature: _____	Telephone No. _____	Date (mm/dd/yyyy)

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