

CR 10-076

**ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING,
RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND
CREATING AND CREATING A RULE**

To repeal Ins 6.05 Appendix B;

To renumber Ins 6.05(4) (b);

To renumber and amend Ins 6.05 (3) (d), (e) and (f);

To amend Ins 6.05 (3) (b), (4) (a) (intro.), (4) (a) 1. to 5., 8. and 9., (5), (6), (7), and Appendix A;
6.07 (3) (b) (intro.) and 2., (4) (a) 5., (5) (a) and (c), (6), (8) (d), ;

To repeal and recreate Ins 6.07 (4) (a) 1. and 2.; and

To create Ins 6.05 (4) (b), 6.07 (4) (a) 8., (b) 6., (d), and (9), Wis. Adm. Code,

Relating to filing of insurance forms and insurance policy language simplification and readability.

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

1. Statutes interpreted:

ss. 600.01, 628.34 (12), Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 631.20, 631.21, 631.22, 631.61, Stats.

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

Section 631.20, Stats., requires an insurer to file forms with OCI and provide insureds with copies of their policies and applications for insurance. This proposed rule revises the requirements for the form filing submission, specifies notices and access to copies of policies and as such interprets the applicable statutes listed above and also specifies the information required to be submitted pursuant to s. 601.42, Stats. Additionally s. 631.22 (2), Stats., requires insurers to provide policies that are coherent, written in commonly understood language, legible, appropriately divided and captioned by its various sections and presented in a meaningful

sequence. This proposed rule interprets this statute and by rule establishes standards for compliance.

4. Related statutes or rules:

This proposed rule revises the current rules, ss. Ins 6.05 and 6.07, Wis. Adm. Code, governing filing submissions and readability of policy forms.

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

The proposed rule was developed with the assistance of an advisory council charged with developing the reviewing and recommending modifications to the Flesch readability score for personal lines property and casualty insurance products and disability insurance products. Additionally the council was charged with determining how to best increase consumer access to complete in force copies of their insurance policies. The advisory council after its first meeting divided along product lines into subgroups and individually each subgroup met 4 times between October 2009 and April 2010. The council then met two more times as a complete council in April and May 2010. The council members included intermediaries, public members, consumer advocates and representatives from the insurance industry.

As charged, the council recommended the proposed changes to the Flesch readability score for consumer insurance policies except for product lines that are described s. 601.58 (2) (k), Stats., the interstate insurance product regulation compact. Additionally, the council recommended providing notice to insureds instructing them on how to access a complete in force copy of their insurance policy.

Separately for the advisory council, this proposed rule also revises the current rules governing the form and content of form filing submissions. The following is a summary of the proposed changes in the proposed rule as follows:

1. It requires the insurer to submit forms using a transmittal document established by standards adopted by the National Association of Insurance Commissioners.

2. It requires an insurer to include in its form filing a final printed or electronic format copy of the form as it will be used with the public and deletes the option of filing a facsimile.

3. It makes it clear that an insurer may file a form electronically.

4. It makes it clear that an insurer must file the required transmittal document when it files a form.

5. It requires certain consumer insurance policies to increase the readability score, Flesch or equivalent, from a score of 40 to 50.

6. It requires an insurer offering consumer insurance policies or certificates to have on its' website information on how an insured may obtain an electronic or paper copy of their in force policy and the timeframe within which to provide the information. Insurers that are excepted from this requirement include town mutuals, policies or certificates in the product lines that are described in s. 601.58 (2) (k), Stats., and property and casualty products that are other than personal lines. The product lines described in s. 601.58 (2) (k), Stats., are individual or group annuity, life insurance, disability income or long-term care insurance. This exception applies regardless of whether the policy is subject to or filed with the Interstate Compact.

7. It excepts product lines that are described s. 601.58 (2) (k), Stats., property and casualty products that are other than personal lines and insurers subject to ch. 618, Stats., from the website notice requirements but retains other statutory requirements for providing copies of in force policies upon request to insureds.

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 existing or proposed federal regulations that address the topic of this proposed rule.

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

Illinois: NAIC transmittal form required as of February 1, 2006. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Illinois requires products to be readable but does not set a score. Illinois is pending legislative changes to participate in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Illinois does not have a website notice provision for insureds to access a complete copy of their policy.

Iowa: NAIC transmittal form required as of December 1, 2005. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Iowa requires products to be readable but does not set a score. Iowa participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Iowa does not have a website notice provision for insureds to access a complete copy of their policy.

Michigan: NAIC transmittal form required as of January 1, 2006. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Michigan requires forms to achieve a Flesch score of not less than 45 under Mich. Admin. Code s. 500.2236 r. 2003 (1956). Michigan participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Michigan does not have a website notice provision for insureds to access a complete copy of their policy.

Minnesota: NAIC transmittal form required as of February 1, 2006. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Minnesota requires under Minn. Stat. Ch. 72C, a Flesch score of more than 40 for life and health forms. Minnesota participates in the interstate insurance product regulation compact and for those product lines subject to

the compact the Flesch required is 50. Minnesota does not have a website notice provision for insureds to access a complete copy of their policy.

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:

OCI proposes this rule based on its experience with administration of form filings and based on the activities of the NAIC which include development of uniform form filing submission standards. This rule is also reflective of changes in technology for both the insurers and consumers as acknowledged in the electronic access to policies. Finally the rule increases readability scores for disability consumer insurance policies not otherwise excepted to make the policies more easily readable to the general public.

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:

The effect of the proposed rule on small business is determined by the substantive changes included in the proposal. These changes will allow use of nationally uniform, electronic, transmittal documents and will not increase and are likely to decrease costs of form filings. The proposed changes to the readability scores may increase costs during implementation of the higher score but will not be a significant financial impact. There may be expense for adding information to an insurer's website for how an insured may request copies of their policy but this too should not be a significant financial impact and may be offset by the savings they may experience by being allowed to provide copies of in force policies electronically. Additionally, most small businesses regulated by the office have been excepted from these requirements to minimize the impact to small businesses.

10. See the attached Private Sector Fiscal Analysis.

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

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

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@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
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 10th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 605
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 605
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125 South Webster St – 2nd Floor
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Email address:

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

The proposed rule changes are:

SECTION 1. Ins 6.05 (3) (b) is amended to read:

Ins 6.05 (3) (b) “Certificate of compliance and readability” means a document in substantially identical format to Appendix A which is signed by an officer of the insurer.

SECTION 2. Ins 6.05 (3) (d), (e) and (f) are renumbered Ins 6.05 (3) (d), (e) and (f)

and amended to read:

(ed) "OCI" means the office of the commissioner of insurance.

(fe) "Submission" means a filing under s. 631.20, Stats., or any request received by the office of the commissioner of insurance for approval of a single form or combination of forms.

(df) ~~"Insurance policy form transmittal"~~ Transmittal document means a document substantially identical in format to the form included as ~~Appendix B, on which an insurer shall list each form submitted for approval~~ established by standards adopted by the National Association of Insurance Commissioners (NAIC), on which an insurer shall list information about each form submitted for approval.

Note: A copy of the transmittal document may be obtained at no cost from the Office of the Commissioner of Insurance, P.O. Box 7873, Madison WI 53707-7873, or at the Office's web address: oci.wi.gov.

SECTION 3. Ins 6.05 (4) (a) (intro.), 1. through 5., 8. and 9., are amended to read:

(4) (a) (intro.) Each paper submission of forms shall include all of the following:

1. A properly completed ~~insurance policy form~~ transmittal document in duplicate.

2. A properly completed certificate of compliance and readability in substantially identical format as in Appendix A.

3. A ~~properly completed certificate of readability, if the forms are consumer insurance policies subject to s. Ins 6.07~~ filing letter that contains the following information:

a. In the case of a form that alters or replaces a previously approved form, a description of the change.

4. A ~~filing letter in duplicate which contains the following information:~~

~~a. In the case of a form which alters a previously approved form, a description of the change;~~

~~b. The form number and approval date of any form superseded by the new form~~ One copy of each form in final format exactly as it will be offered for issuance or delivery in the state of Wisconsin, except for hypothetical data and other appropriate variable material.

~~5. One copy of each form in final printed format or typed facsimile exactly as it will be offered for issuance or delivery in the state of Wisconsin except for hypothetical data and other appropriate variable material~~ If a form contains variable material or language, a written description identifying the range of the variable material or language.

~~8. A self-addressed return envelope of sufficient size to return one copy of the materials in subds. 4. and 6., to the insurer~~ If the submission of forms is filed by a third-party on behalf of an insurer, a letter from the insurer, authorizing the third-party to file forms on its behalf.

9. A self-addressed return envelope of sufficient size to return one copy of the materials in subds. 1. and 6., to the insurer.

SECTION 4. Ins 6.05 (4) (b) is renumbered Ins 6.05 (4) (c).

SECTION 5. Ins 6.05 (4) (b) is created to read:

Ins 6.05 (4) (b) Each electronic submission of forms shall include all of the following:

1. All of the data elements on the transmittal document.
2. A properly completed certificate of compliance and readability in substantially identical format as in Appendix A.
3. A filing letter that contains all of the following information:
 - a. In the case of a form that alters or replaces a previously filed form, a description of the changes.
 - b. The form number and approval or filing date of any form superseded by the new form.

4. One copy of each form in final electronic format exactly as it will be offered for issuance or delivery in the state of Wisconsin, except for hypothetical data and other appropriate variable material.

5. If a form contains variable material or language, a written description identifying the range of the variable material or language.

6. A copy of the previously approved or filed form clearly marked "for reference only" if the current form is to supersede the previously approved or filed form.

7. If the submission of forms is filed by a third-party on behalf of an insurer, a letter from the insurer authorizing the third-party to file forms on its behalf.

SECTION 6. Ins 6.05 (5), (6) and (7) are amended to read:

Ins 6.05 (5) INSURER RECORDS. Each insurer shall maintain a file of all forms approved or filed under s. 631.20, Stats., for use in Wisconsin until all exposure on the risks insured against has terminated. The file is subject to examination and the commissioner may request that any portion of the file be available for review within ten days of a written request.

(6) ~~DISAPPROVAL~~ INCOMPLETE FILING. The commissioner shall ~~disapprove~~ reject without further review any filing which does not include all of the items in sub. (4) (a) and (b).

(7) PENALTY. Insurers violating the provision of this rule by using unapproved or unfiled forms shall be subject to the penalties in s. 60.164, Stats. Each form issued to an individual policyholder shall constitute a separate violation.

SECTION 7. Ins 6.05 Appendix A is amended to read:

Ins 6.05 Appendix A.

CERTIFICATE OF COMPLIANCE AND READABILITY

I _____, (name), an officer of _____
(company name), hereby certify that I have authority to bind and obligate the company by filing this (these) form(s). I further certify that, to the best of my information, knowledge and belief:

1. The accompanying form(s) as identified by the attached listing comply(ies) with all applicable provisions of the Wisconsin Statutes and with all applicable administrative rules of the Commissioner of Insurance.

2. The form(s) does(do) not contain any inconsistent, ambiguous, or misleading clauses.

3. The form(s) does(do) not contain specification or conditions that unreasonably or deceptively limit the risk purported to be assumed in the general coverage of the policy form(s).

4. The only variations from a form currently on file with the commissioner of insurance and the only unconventional policy provisions are clearly marked or otherwise indicated pages _____ of the attached form(s) or in an attachment.

5. The attached form(s) is(are) in final format exactly as will be offered for issuance or delivery in Wisconsin, except for hypothetical data and other appropriate variable material.

6. If this form is a consumer insurance policy, the text of the form(s) meet(s) the minimum reading ease score or, if authorized by the commissioner, the score is lower than the minimum required by s. Ins 6.07 (4) (a) 1., Wis. Adm. Code. Product used to determine the Flesch score: _____.

I understand that the commissioner of insurance will rely on this certification regarding the forms filed, and should it be determined that the policy form(s) does(do) not comply with the applicable laws, regulations, filing requirements and product standards or that this certification is materially false or incorrect, appropriate corrective and disciplinary action, including retroactive disapproval, as authorized by law, may be taken by the commissioner against the company and the officer completing this certification.

(Signature)

(Title)

(Date)

Individual responsible for this filing:

Name: _____ Title: _____

Address: _____

Phone Number: _____ Date: _____

SECTION 8. Ins 6.05 Appendix B is repealed.

SECTION 9. Ins 6.07 (3) (b) (intro.) and 2. are amended to read:

Ins 6.07 (b) (intro.) The term “text” as used in this section shall include all printed or electronic matter except for the following:

(3) (b) 2. Any such form language ~~which~~ that is drafted to conform to the requirements of any federal law, regulation or agency interpretation; any form language required by any collectively bargained agreement; any medical terminology; any words that are defined in the form; and any form language required by state law or regulation; provided, however, the insurer identifies the language or terminology excepted by this subdivision and certifies, in writing to the commissioner, that the language or terminology is entitled to be excepted by this subdivision.

SECTION 10. Ins 6.07 (4) (a) 1. and 2. are repealed and recreated to read:

Ins 6.07 (4) (a) 1. The text achieves a minimum score on the Flesch reading ease test as described in par. (b) or an equivalent score on any other comparable test as provided in par. (c) unless a lower score is authorized under sub. (7) as follows:

a. For consumer insurance policies except consumer insurance policies that are described in s. 601.58 (2) (k), Stats., or property and casualty insurance policies, a minimum Flesch score of 50.

b. For all other policies included under this rule a minimum Flesch score of 40.

2. The form to be delivered to the consumer is an electronic form or printed form. The form shall comply with either of the following:

a. If the form is printed, it shall be in not less than 10-point type, one point leaded, except for specification pages, schedule and tables.

b. If the form is in electronic form, it shall appear as it will in final form and in not less than a 10-point font, except for specification pages, schedules and tables.

SECTION 11. Ins 6.07 (4) (a) 5. is amended to read:

Ins 6.07 (4) (a) 5. It contains a ~~single~~ section listing exclusions and limitations, ~~or~~ and if the exclusions and limitations also appear within the form the exclusions and limitations are given at least equal prominence;

SECTION 12. Ins 6.07 (4) (a) 8., (b) 6. and (d), are created to read:

Ins 6.07 (4) (a) 8. It contains words and phrases written in active voice.

(b) 6. The title or name of a state or federal government organization or regulatory entity that is required to be used within the policy form may be excluded from the Flesch readability score.

(d) Subsections (4) (a) 5. and 8., do not apply to any policy otherwise excepted under sub. (5) or to a policy described in s. 601.58 (2) (k), Stats., or a property and casualty insurance policy as described in par. (3) (a).

SECTION 13. Ins 6.07 (5) (a) and (c) are amended to read:

Ins 6.07 (5) (a) Any policy ~~which~~that is a security subject to federal jurisdiction;

(c) Any group annuity contract ~~which~~that serves as a funding vehicle for pension, profit-sharing or deferred compensation plans.

SECTION 14. Ins 6.07 (6) and (8) (d) are amended to read:

Ins 6.07 (6) Filings subject to this section shall be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score or stating that the score is lower than the minimum required but should be approved in accordance with sub. (7). The actual readability score for each form shall be stated in the cover letter or as a data

element in an electronic filing and the insurer shall fully identify the method or computer program used to determine the readability score. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

(8) (d) Any consumer insurance policy ~~which~~that has been approved prior to the effective date of this rule and meets the standards set by this rule need not be refiled for approval but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms and accompanied by a certificate for each form in the manner provided in sub. (6).

SECTION 15. Ins 6.07 (9) is created to read:

Ins 6.07 (9) POLICY ISSUANCE AND RENEWAL. (a) Website information. Insurers authorized to offer consumer insurance policies shall provide information on its' website describing how an insured may request or access a paper or an electronic copy of their in force consumer insurance policy. Upon request, an insurer shall provide a complete copy of the in force consumer insurance policy and with all modifications, amendments, riders and amendatory endorsements attached as filed with the commissioner since the issuance of the policy in the format requested by the insured.

(b) Printed or electronic copy access. Unless otherwise excepted under sub. (5) or par. (c), insurers subject to this section on each renewal shall advise each policyholder that a printed or electronic copy of the complete in force consumer insurance policy with all modifications, amendments, riders and amendatory endorsements attached as filed with the commissioner since the issuance of the policy will be provided to the policyholder either in an electronic format within 5 business days upon receipt of the request or for a paper copy to be mailed within 10 business days upon receipt of the request.

(c) Exception. This subsection does not apply to a consumer insurance policy that is also described in s. 601.58 (2) (k), Stats., a property and casualty insurance policy other than as described in par. (3) (a), or products offered by an insurer authorized to do business pursuant to

ch. 612, Stats. This par. does not relieve insurers excepted by this par. from complying with s. 631.11 (4m), Stats.

(d) Penalty. Consistent with s. 601.64 (3)(c), Stats., for purposes of this section each day the requested copy of a policy is not sent to the insured as requested may be considered a separate violation of this subsection.

SECTION 16. This rule may be enforced under ss. 601.41, 601.64, 601.65, 628.10, 631.20 (4m), Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 17. Changes to s. Ins 6.07 contained in Section 9 through 15, first apply to policies issued or renewed eight months following the effective date of this rule.

SECTION 18. These changes will take effect on the first day of the month commencing after the date of publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this _____ day of October, 2010.

Sean Dilweg
Commissioner of Insurance

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

for s. Ins 6.05 and 6.07 relating to filing of insurance forms and insurance
policy language simplification and readability

This rule change will have no significant effect on the private sector regulated by OCI.