

## Clearinghouse Rule 18-097

### **PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING, CONSOLIDATING RENUMBERING AND AMENDING, AND AMENDING A RULE**

**Rule No.** Agency 145 – Ins 4.10 (3) (a), 4.10 (4), 4.10 (6) (b), 4.10 (7) (a) and 4.10 (8) (c), Wis. Adm. Code.

The Commissioner of Insurance proposes an order to repeal ss. Ins 4.10 (3) (a) 2. and Ins 4.10 (4) (c); to renumber s. Ins 4.10 (3) (a) 3.; to renumber and amend s. Ins 4.10 (4) (d); and to amend ss. Ins 4.10 (3) (a) (intro), Ins 4.10 (3) (a) 1., Ins 4.10 (4) (b), Ins 4.10 (6) (b), Ins 4.10 (7) (a) and Ins 4.10 (8) (c) relating to the Wisconsin Insurance Plan (“WIP”).

The statement of scope for this rule SS: 003-16, was approved by the Governor on January 7, 2016, published in Register No. 721A3, on January 19, 2016, and approved by the Commissioner on February 12, 2016.

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

**1. Statutes interpreted:**

s. 619.01 (1), Wis. Stats.

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

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 (3), Wis. Stat. Further, s. 619.01 (1) (a), Wis. Stat., specifically authorizes the Commissioner to establish procedures and requirements for a mandatory risk sharing facility for basic property insurance coverages.

**4. Related statutes or rules:**

There are no existing statutes or rules that relate to this proposed rule.

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

The Wisconsin Insurance Plan (WIP) is a residual property insurer that was created to provide basic property insurance on certain properties rejected by other insurers for coverage and is governed by s. Ins 4.10, Wis. Adm. Code. The Office of the Commissioner of Insurance (OCI) intends to update outdated provisions in the section based on recommendations from the WIP governing committee regarding obsolete coverages and insufficient maximum coverage limits. In addition, the proposed rule will make revisions to the structure of the governing board to allow WIP to operate in a more effective and efficient manner.

Under the current rule WIP provides coverages for builder’s risk under s. Ins 4.10 (3) (a) 1., Wis. Adm. Code, and crime under s. Ins. 4.10 (3) (a) 2., Wis. Adm. Code. Both of these coverages have become obsolete as the standard market has done a good job in providing for these coverages. In the past 20 years WIP has not written a policy with a builder’s risk endorsement. In

addition, WIP has only received approximately three applications for theft/burglary coverage in the past 30 years with none in the past 18 years. Accordingly, the proposed rule will delete these two coverages as they are no longer necessary.

As a point of clarification, this rule eliminates the stand alone theft/burglary coverage under s. Ins. 4.10 (3) (a) 2., Wis. Adm. Code. However, theft/burglary coverage could still be offered as part of a more comprehensive policy. For example, in a homeowners policy that covers multiple perils, theft may be one of the perils covered under the policy.

The proposed rule will also reduce the number of positions on the governing board to address changing circumstances and allow WIP to operate more effectively and efficiently. Section Ins 4.10 (6) (b), Wis. Adm. Code, currently provides for a governing board consisting of fifteen members. However, due to changing circumstances, including the amount of business WIP writes and the consolidation of associations, a fifteen member board is no longer warranted. The proposed rule will reduce the size of the board to 11 members with the following changes.

First, the proposed rule will eliminate the position reserved for a member from the Alliance of American Insurers (AAI) and two of the four positions reserved for members of the Wisconsin Insurance Alliance (WIA) under s. Ins 4.10 (6) (b) 1., Wis. Adm. Code. The AAI no longer exists and WIA has indicated to OCI that two positions is a more appropriate level of representation in light of the overall desire to reduce the size of the governing board. In addition, the National Association of Independent Insurers (NAII) is being changed to the Property and Casualty Insurers of America to reflect the association's new name after a merger with another association. The proposed rule will also eliminate one of the five consumer positions appointed by the Commissioner under s. Ins 4.10 (6) (b) 3., Wis. Adm. Code., which has remained vacant over the past year. Lastly, the proposed rule will reduce the required number for quorum from eight to six members under s. Ins 4.10 (7) (a) and (8) (c), Wis. Adm. Code., in light of the reduced board size. Accordingly, these changes will allow the governing board to operate more effectively and efficiently while still providing an adequate level of representation for the current members and their interests.

Finally, the proposed rule will increase the maximum coverage limits for Customary Fire and Extend Coverage and Homeowner's risk under s. Ins 4.10 (4) (b) and (d), Wis. Adm. Code. The current maximum coverage limits of \$200,000 have not been revised since the late 1990's and are no longer sufficient. The proposed rule will increase the coverage limits to \$350,000. This change is necessary to ensure that WIP has the ability to provide insureds with the appropriate level of coverage for these risks.

**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:**

The office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this rule.

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

Illinois, Iowa, Michigan, and Minnesota all have residual property insurance programs similar to Wisconsin's WIP, which are also referred to as FAIR Plans (Free Access to Insurance Requirements). All were created to offer a range of "basic property insurance" coverages for insureds that are denied coverage in

the standard markets. In addition, all are generally required to offer coverages for fire dwelling, home owners, and commercial property.

However, comparing specific coverages and limits offered by each Plan is difficult as a result of varying definitions and the fact that many coverages are not specifically identified within the governing provisions, but are rather subclasses of a more comprehensive coverage (i.e. theft often falls within home owners or fire dwelling). Based on reviewing additional resources, it appears that the Plans generally provide coverage for theft and burglary through the comprehensive coverages they offer. Also, it is not clear if any of the Plans are currently offering builders risk coverage, which is consistent with the changes being made by this proposed rule.

**Illinois:** 215 ILCS 5/522 to 5/530a sets forth the Illinois FAIR Plan. The Plan is governed by a committee of eleven members. Currently, the Plan offers maximum coverage limits of \$750,000 for dwellings and \$350,000 for the contents of a dwelling. Finally, the Plan provides theft coverage through its home owners coverage.

**Iowa:** 191 IAC 20.41 to 20.60 sets forth the Iowa FAIR Plan. The plan is administered by a governing committee of seven members. Currently, the Plan provides maximum coverage limits of \$250,000 for dwelling property and contents combined and \$200,000 for home owners.

**Michigan:** MCLS § 500.2901 to § 500.2954 sets forth the Michigan FAIR Plan. The Plan is governed by a board of 13 governors. Currently, the Plan offers coverages for fire dwelling and home owners risks, however, neither the governing provisions nor additional resources specified the maximum coverage limits. Finally, the Plan provides theft coverage through its home owners and dwelling fire coverages.

**Minnesota:** Minn. Stat. § 65A.31 to § 65A.42 sets forth the Minnesota Fair Plan, which is administered by a board of nine directors. Currently, the Plan offers maximum coverage limits of \$500,000 on both fire dwelling and home owners risks. Finally, theft coverage is included in the home owners coverage.

**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 reviewed practices in the standard market and consulted with WIP in determining the changes made by this proposed rule.

**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 changes made by this proposed rule only apply to WIP, which is a not-for-profit, unincorporated mandatory risk-sharing facility that functions as a residual property insurer and does not qualify as a small business.

**10. See the attached Private Sector Fiscal Analysis.**

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

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

This rule will have 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/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting Karyn Culver:

Phone: (608) 267-9586  
Email: [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> 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:**

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 comments may be sent to the following:

Written comments can be mailed or hand-delivered to:

Timothy L. Cornelius  
Legal Unit - OCI Rule Comment for Rule Ins 4.10  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Comments can be emailed to:

Timothy L. Cornelius  
[timothy.cornelius@wisconsin.gov](mailto:timothy.cornelius@wisconsin.gov)

For additional information please contact Timothy L. Cornelius at (608) 266-0082 or email at [timothy.cornelius@wisconsin.gov](mailto:timothy.cornelius@wisconsin.gov) in the OCI Legal Unit.

The deadline for submitting comments is 4:00 pm on February 4, 2019.

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**The proposed rule changes are:**

**SECTION 1. Ins 4.10 (3) (a) (intro) and 1. are amended to read:**

(a) "Basic property insurance" means the insurance coverages described in subds. 1., ~~and 2., and 3.~~ against direct loss to real and tangible property at a fixed location. The Plan may use customary policy forms and endorsements to effect coverage contemplated by this paragraph. Other coverage may be added to the Plan by endorsement or policy provision upon approval by the commissioner.

1. Coverage provided in the customary fire policy and in the customary extended coverage ~~and builders risk endorsements~~ as authorized by s. 6.75 (2) (a).

**SECTION 2. Ins 4.10 (3) (a) 2. is repealed.**

**SECTION 3. Ins 4.10 (3) (a) 3. is renumbered Ins 4.10 (3) (a) 2.**

**SECTION 4. Ins 4.10 (4) (b) is amended to read:**

(b) The maximum limits of coverage for the type of basic property insurance defined in sub. (3) (a) 1. which may be placed under the Plan are ~~\$200,000~~ \$350,000 on the

dwelling and \$100,000 on personal property for any habitational risk at one location and \$500,000 on any other eligible risk.

**SECTION 5. Ins 4.10 (4) (c) is repealed.**

**SECTION 6. Ins 4.10 (4) (d) is renumbered Ins 4.10 (4) (c) and amended to read:**

(c) The maximum limits of coverage for the type of basic property insurance defined in sub. ~~(3) (a) 3-3~~ (a) 2, which may be placed under the Plan are ~~\$200,000~~ \$350,000 on the dwelling with the customary percentage limits for other structures, personal property and loss of use and \$100,000 on personal liability and \$1,000 medical payments to others for any risk at one location.

**SECTION 7. Ins 4.10 (6) (b) is amended to read:**

The governing committee shall consist of ~~15~~ 11 members, each of whom shall serve for a period of one year or until a successor is elected or designated. Each shall have one vote.

1. The following associations shall appoint or elect members as follows:

American Insurance Association—one member

~~Alliance of American Insurers—one member~~

~~National Association of Independent Insurers~~ Property and Casualty Insurers of America—one member

Wisconsin Insurance Alliance—4 members

2. All other insurers not members of the associations in subd. 1 shall elect one member by weighted votes based on each insurer's weighted premiums written.

3. The commissioner shall appoint members to represent:

stock agents—one member

mutual agents—one member

consumers and other persons not affiliated in any way with the insurance industry—5 members

4. Not more than one insurer in a group under the same management or ownership shall serve on the governing committee at the same time. Nominees for individuals to serve as consumer members and as representatives of other persons not affiliated in any way with the insurance industry shall be sought from community groups, local agencies, and from other members of the governing committee.

**SECTION 8. Ins 4.10 (7) (a) is amended to read:**

DUTIES OF THE GOVERNING COMMITTEE. (a) The governing committee shall meet as often as may be required to perform the general duties of the administration of the Plan or on the call of the commissioner. ~~Eight~~ Six members of the committee present or by proxy shall constitute a quorum. Members of the committee who choose to appoint a proxy shall give a written proxy to the person elected to act as proxy. The written proxy shall then be filed with the governing committee, thus ensuring the validity of the proxy's actions as the governing committee performs its duties.

**SECTION 9. Ins 4.10 (8) (c) is amended to read:**

(c) The time and place of all meetings shall be reasonable. Twenty days' notice of an annual or special meeting shall be given in writing by the governing committee to all insurers as defined by sub. (3) (d). ~~Eight~~ Six members present in person or by proxy shall constitute a quorum. Voting by proxy shall be permitted.

**SECTION 10. INITIAL APPLICABILITY.** This rule first applies to contracts issued on October 1, 2019.

**SECTION 11. EFFECTIVE DATE.** 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 13 day of December, 2018.

/s/ J.P. Wieske  
J.P. Wieske  
Deputy Commissioner of Insurance

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

for Section Ins 4.10 relating to the Wisconsin Insurance Plan ("WIP")

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