

Clearinghouse Rule 21-089

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE AMENDING AND CREATING A RULE

Office of the Commissioner of Insurance

Rule No. Agency 145 – Ins 6.785 (1), 6.785 (3), 6.785 (4), 6.785 (6g), 6.785 (6m), 6.785 (7) and 6.785 (8), Wis. Adm. Code.

The Commissioner of Insurance proposes an order to amend ss. Ins 6.785 (1), Ins 6.785 (3), Ins 6.785 (4) (e) and Ins 6.785 (7); and to create ss. Ins 6.785 (4) (i), Ins 6.785 (6g), 6.785 (6m) and 6.785 (8) relating to commercial lines modernization.

The statement of scope for this rule SS 056-20, was approved by the Governor on May 7, 2020, published in Register No. 774A1, on June 1, 2020, and approved by the Commissioner on February 9, 2021.

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

1. Statutes interpreted:

ss. 625.13 and 625.15, Wis. Stats.

2. Statutory authority:

ss. 601.41 (3), 625.04 and 631.20 (1) (b), 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. 625.04, Wis. Stat., specifically authorizes the commissioner to promulgate rules exempting any person, class or market segment from rating filing requirements if the commissioner finds their application unnecessary to achieve the purposes of ch. 625, Wis. Stat. Similarly, s. 631.20 (1) (b), Wis. Stat., specifically authorizes the Commissioner to promulgate rules exempting certain policy forms from prior filing and approval.

4. Related statutes or rules:

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

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

The current version of s. Ins 6.785, Wis. Adm. Code, was originally promulgated in 1993 with the intent of exempting certain classes of property and casualty rates from the rate filing requirements set forth in s. 625.13, Wis. Stat. At the time it was determined that it was unnecessary for certain rates to be filed in accordance with ch. 625, Wis. Stats., due to the unique or unusual nature of the risk, which included large commercial risks, risks in volatile areas, and risks with insufficient data to calculate credible rates. The 1993

proposed rulemaking order found that subjecting these kinds of risks to rate filing requirements was not necessary to protect policyholders or the public.

OCI intends to update this provision by creating additional exemptions for certain property and casualty risks from the rate filing requirements of ch. 625, Wis. Stat., while also exempting certain property and casualty policy forms from the form filing requirements of s. 631.20, Wis. Stat. Similar to the rationale behind the original rule, it is no longer necessary to impose rate and form filing requirements to the updated risks and classes in order to meet the purposes of the respective filing provisions referenced above. Alternatively, the exemptions will likely create quicker access to new and innovative products by decreasing an unnecessary regulatory burden.

The proposed rule will make two primary changes to s. Ins 6.785 (4), Wis. Adm. Code, in order to achieve the purpose as outlined above. First, the proposed rule will reduce the premium threshold for the rate filing exemption under s. Ins 6.785 (4) (e), Wis. Adm. Code, from \$100,000 to \$50,000, which addresses coverages for general liability, commercial automobile, crime and glass. In addition, the proposed rule will create a provision exempting most commercial property and casualty risks developing \$50,000 or more in annual premium from rate filing requirements with an exception for certain coverages.

The proposed rule will also create an exemption for certain commercial property and casualty insurance policy forms from the form filing requirements of s. 631.20 (1) (a), Wis. Stat. The exempt coverages will also be subject to premium thresholds of \$50,000 or \$75,000 based on the specific coverage.

Finally, the proposed rule will also make a few smaller changes in order to effectuate the two primary changes and ensure that the exempt rates and forms will remain subject to an appropriate level of oversight. These changes include adding additional bases for the new exemptions, subjecting exempt forms to subsequent disapproval by the Commissioner and record-keeping standards, and requiring notice to insureds for exempt forms that have not been reviewed by the Commissioner.

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:

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

7. Summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136, Stat., and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.

The Office received one written comment which was submitted jointly by the Wisconsin Insurance Alliance and the American Property Casualty Insurance Association supporting the proposed rule change. The comment did not address specific changes, but rather outlined reasons why the proposed rule would be beneficial for the insurance industry and consumers.

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

Illinois: 215 ILCS 5/143 (3) and 50 IL Adm. Code 754 exempt most commercial property forms and rates from filing requirements.

Iowa: 191 IAC 20.11 provides rate and form filing exemptions for certain property and casualty coverages including Aircraft hull and liability, Kidnap-ransom, and Political risk.

Michigan: MCLA §§ 500.2236 and 500.2401 provide exemptions for many commercial policy forms and ratings.

Minnesota: MN ADC. 2700.2470 provides a broad exemption for commercial policy form and rate filing requirements.

9. 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, standards, and input from the insurance industry.

10. 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 the proposed rule eliminate existing regulatory requirements. Accordingly, OCI does not believe the proposed rule would create additional compliance or operating costs for insurers or agents.

11. See the attached Private Sector Fiscal Analysis.

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

12. A description of the Effect on Small Business:

OCI does not believe the proposed rule will affect small businesses.

13. 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:

<https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting Karyn Culver at:

Phone: (608) 267-9586

Email: karyn.culver@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

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

14. 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 sent to the following:

The deadline for submitting comments is 4:30 p.m. on April 30, 2021.

Written comments can be mailed or hand-delivered to:

Timothy L. Cornelius,
Legal Unit - OCI Rule Comment for Rule Ins 6.785
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:

Timothy L. Cornelius: timothy.cornelius@wisconsin.gov

For additional information please contact Timothy L. Cornelius by email at
timothy.cornelius@wisconsin.gov.

The proposed rule changes are:

SECTION 1. Ins 6.785 (1) is amended to read:

Ins 6.785 (1) PURPOSE. This section is intended to exempt certain classes of property and casualty rates and commercial property and casualty forms from the rate and form filing requirements. This section implements and interprets ss. 625.04, 625.13₁, ~~and 625.15~~ and 631.20, Stats.

SECTION 2. Ins 6.785 (3) is amended to read:

Ins 6.785 (3) FINDINGS. The commissioner of insurance finds that for certain classes of business certain risks within other classes of business and certain situations, the rate filing requirements set forth in s. 625.13, Stats., are unnecessary to achieve the purposes of ch. 625, Stats., and the policy form filing requirements set forth in s. 631.20 are unnecessary to achieve the purposes of ch. 631. The commissioner bases this finding on the following reasons:

- (a) The manual rate, classification or form is inappropriate because it does not adequately reflect the exposure represented by the risk;
- (b) The risk is so different from other risks that no single manual rate or classification could be representative of all such risks;
- (c) The risk belongs to a classification that does not develop enough experience to warrant sufficient credibility for rate-making purposes; or
- (d) The risk involves a new product or coverage as to which there are no appropriate analogous exposures for rate-making purposes;
- (e) The risk is a specialty type of insurance where enhanced speed to market for such insurance products will enhance competition and provide commercial policyholders with quicker access to new and innovative products; or
- (f) The risk constitutes a business-to-business transaction of a sufficient size or specialized nature as to not warrant filings in order to accomplish the purposes of the statute.

SECTION 3. Ins 6.785 (4) (e) is amended to read:

Ins 6.785 (4) (e) Rates for risks developing ~~\$100,000~~\$50,000 or more annual manual basic limit premium individually or in any combination of general liability insurance, commercial automobile, crime or glass.

SECTION 4. Ins 6.785 (4) (i) is created to read:

Ins 6.785 (4) (i) Rates for commercial property and casualty risks developing \$50,000 or more in annual premium, except for the following:

1. Workers' compensation insurance.
2. Medical malpractice liability insurance.
3. Commercial automobile liability insurance.
4. Any coverage issued under an assigned risk plan or through a residual market pool or residual market facility.
5. Any insurance that provides coverage for primary personal, family, or household purposes.

SECTION 5. Ins 6.785 (6g) is created to read:

Ins 6.785 (6g) FORM FILING EXEMPTION. The commercial property and casualty insurance policy forms identified in pars. (a) and (b) are exempt from the filing requirements set forth in s. 631.20(1)(a), Stats., provided the insurer complies with any requirements of ch. 600-655, Stats., and the Wisconsin Administrative Code that govern the content of such policy forms.

(a) The following commercial property and casualty forms developing \$50,000 or more in annual premiums are exempt:

1. Aircraft hull and liability;
2. Surety;
3. Fidelity;
4. Boiler and machinery;
5. Environmental impairment/pollution liability;
6. Kidnap and ransom;
7. Political risk or expropriations; and
8. Employment practices liability.

(b) The following commercial property and casualty forms developing \$75,000 or more in annual premium are exempt:

1. Commercial inland marine;
2. Highly protected commercial property;
3. Product Liability;
4. Cybersecurity; and
5. Fiduciary liability.

SECTION 6. Ins 6.785 (6m) is created to read:

Ins 6.785 (6m) DISAPPROVAL OF EXEMPT FORMS. If the commissioner determines that a policy form subject to the filing exemption granted by sub. (6g) does not meet the standards set forth in s. 631.20(2), the commissioner may disapprove the use of a form.

SECTION 7. Ins 6.785 (7) is amended to read:

Ins 6.785 (7) INSURER RECORDS. An insurer using a rate subject to the exemption granted by sub. (4) or a form subject to the filing exemption granted by sub. (6g) shall maintain separate records and documentation for a period of 3 years after the rate or form is no longer used. This documentation shall include all details of the factors used in determining the rate or classification for a particular risk, including conditions used to qualify a rate for an exemption under sub. (4). The insurer shall provide these records to the commissioner upon request.

SECTION 8. Ins 6.785 (8) is created to read:

Ins 6.785 (8) POLICYHOLDER NOTICE. Any policy exempt from filing under sub. (6g) shall include, at the time of issuance, a notice advising the policyholder that the policy includes forms and policy terms that have not been filed with or reviewed by the commissioner of insurance.

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 ____ day of _____, _____.

Mark V. Afable
Commissioner