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CLEARINGHOUSE RULE 96-192

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In SECTION 1, the title to s. Ins 2.80 should be inserted in the text of s. Ins 2.80, rather than in the treatment clause of SECTION 1. Also, “Section” should be deleted from the treatment clause.

b. In s. Ins 2.80 (1) (b), the phrase “Commissioner’s Reserve Valuation Method” should not be capitalized. [See s. 1.01 (4) (a), Manual.] Also, since the statutes refer to the “commissioners reserve valuation method,” see, e.g., s. 623.06 (2) (intro.), Stats., it appears that the apostrophe should be deleted.

c. In s. Ins 2.80 (2) (a) and (b) (intro.), the three uses of the phrase “shall not” should be changed to “does not.” [See s. 1.01 (2), Manual.]

d. In s. Ins 2.80 (2) (b), subd. 1. should begin on a new line. This error occurs in a number of places in the rule. Subunits of a rule should not be run together on the same line. For other examples, see the subdivisions in s. Ins 2.80 (3) (f) and (g).

e. In s. Ins 2.80 (2) (c), the parentheses should be eliminated and the material should be set apart with commas or placed in an explanatory note. [See s. 1.01 (6), Manual.] This comment also applies to s. Ins 2.80 (3) (b) and (k), (4) (c), (5) (title), (f), (j) 5. a. and (k) 5. a. and b. and (6) (d).

f. In s. Ins 2.80 (3) (b), the parenthetical explanation that calculations are made by using “(or any other valuation mortality table adopted by the National Association of Insurance

Commissioners (NAIC) after the effective date of this section and promulgated by regulation by the commissioner for this purpose)” should be eliminated. This statement provides no pertinent information. If, in fact, the NAIC later adopts another table and the commissioner later promulgates a rule adopting that table, that table will become a part of the Wisconsin Administrative Code. There is no more reason to state affirmatively that the Administrative Code may be changed in the future for one provision than to state that it may be changed in the future for any other provision.

This comment also applies to s. Ins 2.80 (4) (a) (intro.) and (b). It also applies to s. Ins 2.80 (4) (a) 4. and (b) 4, (5) (j) 4. and (k) 4. and (6) (a) 2., which include the statement without parentheses. Further, because s. Ins 2.80 (4) (a) 4. and (b) 4. should be eliminated, the cross-references to them in s. Ins 2.80 (6) (e) should be eliminated.

g. In s. Ins 2.80 (3) (b), the phrase “as defined in par. (e)” could be eliminated because s. Ins 2.80 (3) (intro.) provides that the definitions in that subsection apply throughout s. Ins 2.80.

h. In s. Ins 2.80 (3) (b), the reference to “para.” should be changed to “sub.” [See s. 1.03 (intro.), Manual.] This comment also applies to s. Ins 2.80 (3) (f) and (5) (c). In s. Ins 2.80 (5) (c), “para.” should be changed to “paragraph” and in s. Ins 2.80 (5) (j) 2., “para.” should be changed to “par.” In s. Ins 2.80 (4) (f), the phrase “This par. applies” should be changed to “This paragraph applies.” [See s. 1.07 (2), Manual.]

i. In the clause following the second formula in s. Ins 2.80 (3) (b), the phrase “shall not” should be changed to “may not.” [See s. 1.01 (2), Manual.] This comment also applies to s. Ins 2.80 (3) (g) 1. d. i. and (j) 2. a. and (5) (g) and (h) (intro.). In addition, in s. Ins 2.80 (5) (j) 2. and 3. and (k) 2. and 3., the phrase “shall never” should be changed to “may not.”

j. In s. Ins 2.80 (3) (d), the parenthetical explanation should be eliminated as it is unnecessary. Throughout the rule, parenthetical material should be deleted, worked into the text or placed in a note. [See s. 1.01 (6), Manual.]

k. The following comments apply to s. Ins 2.80 (3) (e):

- (1) The phrases “Commissioners’ 1980 Standard Mortality Table” and “Standard Valuation Law” and the word “Table” in the phrase “CSO Table” should not be capitalized. [See s. 1.01 (4), Manual.] This comment also applies to s. Ins 2.80 (3) (i) and (4) (a) 1. and (b) 1. and to the references to the various CSO tables in the material following the asterisk in the tables in Appendix 1.
- (2) The phrase “1980 CSO Table” should be eliminated in s. Ins 2.80 (3) (e) and throughout the rule unless it is defined. In the context of a rule, a term may not be defined simply by enclosing it in parentheses as is attempted in s. Ins 2.80 (3) (e). In addition, the reference in the fourth paragraph of Appendix 1 refers to the “1980 CS0-B Table.” Is that a different table? If so, it should be defined separately.

- (3) The acronym “NAIC” should not be used unless it is defined. [See s. 1.01 (8), Manual.]
- (4) The phrase “ten-year” should be changed to “10-year” as numbers other than one should be written in numerals unless they begin a sentence. [See s. 1.01 (5), Manual.] This comment regarding numbers also applies to s. Ins 2.80 (3) (g) 1. i. and (j) 2. a., (4) (f), (5) (k) 4. and (L) 2. and (6) (title) and (a) 2. and the fourth paragraph in Appendix 1.
- (5) The use of brackets to provide cross-references is inappropriate. The information should either be eliminated, set off by commas or included in a note. This comment applies to s. Ins 2.80 (3) (f) 1. b. and (4) (b) 1.

l. In s. Ins 2.80 (3) (f), the second use of the term “scheduled gross premium” should be set off in quotation marks as this paragraph is defining that term.

m. The further division of s. Ins 2.80 (3) (g) 1. d. into items i. and ii. is inappropriate because subdivision paragraphs may not be further divided. [See s. 1.03 (6), Manual.]

n. The relationship of s. Ins 2.80 (3) (g) 1. to 4. to s. Ins 2.80 (3) (g) (intro.) should be explained. For example, if all of the provisions in s. Ins 2.80 (3) (g) 1. to 4. apply, then s. Ins 2.80 (3) (g) (intro.) should include lead-in language indicating this. Introductory material always ends in a colon and leads into subunits, each of which should end in a period. [See s. 1.03 (intro.), Manual.] It often contains words like “all of the following” or “any of the following.” [See s. 1.03 (8), Manual.] This comment also applies to s. Ins 2.80 (4) (e) 1. and 2., (5) (h) 1. to 3., (i) 1. to 3., (j) 5. a. and b., (k) 5. a. and b., (L) 1. to 3. and (m) 1. to 3. and (6) (a) 1. to 3.

There is a similar problem in s. Ins 2.80 (3) (j), which does not explain the relationship of all of its subdivisions. In particular, s. Ins 2.80 (3) (j) 1. ends with “; and” and s. Ins 2.80 (3) (j) 2. ends with a period. This leaves unresolved the relationship of these provisions to s. Ins 2.80 (3) (j) 3. This problem should be corrected. Perhaps “; and” could be deleted from subd. 1. and “all of the following occur” could be inserted before the colon in the (intro.).

A related problem occurs in s. Ins 2.80 (5) (b), which uses appropriate lead-in language in s. Ins 2.80 (5) (b) (intro.) but uses semicolons, with no conjunction, to separate the subdivisions. Each of the subdivisions should end with a period.

o. The definition of “segmented reserves” in s. Ins 2.80 (3) (g) appears to involve substantive provisions. Substantive provisions may not be incorporated as part of a definition. [See s. 1.01 (7) (b), Manual.]

p. In s. Ins 2.80 (3) (g) 2., the phrase “‘contract segmentation method,’ as defined in this section” should be changed to the defined term “contract segmentation method.” It is unnecessary to enclose defined terms in quotation marks. Further, it is unnecessary to specify where the term is defined since s. Ins 2.80 (3) (intro.) provides that the definitions in that subsection apply throughout s. Ins 2.80.

q. In s. Ins 2.80 (4) (a) 1., the use of parentheses to provide information about cross-references is inappropriate. Also, the reference to the Wisconsin statutes should be capitalized, and a comma should be inserted following the statutory cite. Thus, the phrase “Law; (see s. 623.06 (2) (am) stats.)” should be changed to “law, as provided in s. 623.06 (2) (am), Stats.”

r. In the note to s. Ins 2.80 (4) (a) 2., the phrase “fifty percent (50%)” is inappropriate. Numbers other than one should be written in numerals unless they begin a sentence. [See s. 1.01 (5), Manual.] Moreover, it is unnecessary to provide a parenthetical explanation of a number. This comment also applies to s. Ins 2.80 (4) (b) 2. (note), (f) (note), (5) (m) 1. and 2. and (6) (a) 1. and to the fourth paragraph in Appendix 1.

s. In s. Ins 2.80 (4) (c), (d) and (e) (intro.) and (5) (a) (intro.) and in many other provisions, the word “must” should be changed to “shall.” [See s. 1.01 (2), Manual.] The entire rule should be reviewed for this problem. In addition, in s. Ins 2.80 (6) (f), the phrase “will be determined” should be changed to “shall be determined.”

t. In s. Ins 2.80 (5) (a) (intro.), the phrase “either of the adjustments described in subd. 1 or subd. 2 below” should be changed to “either of the following adjustments.”

u. In s. Ins 2.80 (5) (c), was this reference to “This para.” intended to be to “This subsection”?

v. A title should not be included for s. Ins 2.80 (5) (f) inasmuch as titles are not provided for the other paragraphs in s. Ins 2.80 (5). [See s. 1.05 (1), Manual.]

w. In s. Ins 2.80 (5) (j) (intro.), the phrase “Yearly Renewal Term” should not be capitalized. [See s. 1.01 (4) (a), Manual.] In addition, it is inappropriate to use the parenthetical phrase “YRT” to define an acronym. If an acronym is used, it must be defined. [See s. 1.01 (8), Manual.] Also, s. Ins 2.80 (5) (j) (note) refers to “yearly renewable term” rather than “yearly renewal term.” One term should be selected and used consistently.

x. In s. Ins 2.80 (5) (k) 6. c., the reference to “subdivision 5 above” should be changed to “subd. 5.” [See ss. 1.01 (9) (c) and 1.07 (2), Manual.] Note that subdivision numerals are followed by a period. Similarly, in s. Ins 2.80 (6) (b), the reference to “paragraphs (f) and (g) below” should be changed to “pars. (f) and (g).”

y. In s. Ins 2.80 (6) (a) 3., it appears that, as a matter of form, the reference to “any combination of 1 and 2” should be changed to “any combination of the features described in subd. 1. or 2.” However, it is unclear that this was intended because, as discussed in comment o, above, s. Ins 2.80 (6) (a) (intro.) does not have an appropriate lead-in clause that explains the relationship of s. Ins 2.80 (6) (a) 1., 2. and 3. If it was intended that any of the three subdivisions describe a policy with a secondary guarantee, then s. Ins 2.80 (6) (a) 3. should be eliminated as it provides no additional information. This should be clarified.

z. In s. Ins 2.80 (6) (e), “sub. (4) (a) 2., 3. and 4. and (b) 2., 3. and 4.” should replace the provisions cited.

aa. In s. Ins 2.80 (6) (f), the phrase “contract segmentation method as defined in subd. (3) (b)” should be changed to “contract segmentation method.” It is not necessary to provide a cross-reference to a definition that is contained in the same section. Moreover, if a reference had been necessary, it would have been to “sub. (3) (b).” [See s. 1.07 (2), Manual.]

ab. In s. Ins 2.80 (6) (g), the reference to “subd. (5) (b)” should be changed to “sub. (5) (b).” [See s. 1.07 (2), Manual.] This comment also applies to the first paragraph in Appendix 1.

ac. In the second paragraph of Appendix 1, the phrase “contained herein” should be eliminated. [See s. 1.01 (9) (c), Manual.]

ad. The effective date provision in SECTION 2 of the rule apparently provides two alternative effective dates without clarifying their relationship. The rule should specify if it is the later or earlier of the two dates that is the effective date.

Also, SECTION 2 is confusing as it indicates that the rule “will take effect on” a certain date and then indicates that “or the applicability date shall be January 1 of the calendar year immediately following” Is the applicability date intended to be different from the effective date? This should be clarified.

Further, SECTION 2 is not a part of the Administrative Code. None of its provisions should be underlined as they are not amendments to the Administrative Code. Also, a period should be inserted following the word “Census.” In addition, the date of the order is not a part of SECTION 2 and should be separated from it.

Finally, how will a determination be made of whether states with 51% of the U.S. population have adopted requirements and whether those requirements are “substantially similar”? Who will make this determination?

ae. It would be helpful if the six tables in Appendix 1 were given table numbers.

af. The material following the asterisk in the tables in Appendix 1 refers to the “83-86 SOA intercompany experience.” The acronym SOA should be defined or spelled out. [See s. 1.01 (8), Manual.] Also, is this intended to be 1983 to 1986? This should be clarified.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section 623.04, Stats., provides that the Commissioner of Insurance must promulgate rules specifying the liabilities to be reported and the methods of valuing them. It further provides that, with respect to life insurance, the methods of valuing reserve liabilities must be “consistent with” s. 623.06, Stats. Section 623.06, Stats., provides several methods of valuing life insurance reserves, depending on the type of life insurance policy and the date of issue. Neither the analysis of the rule nor the rule states that the methods of valuing reserves in the rule are consistent with s. 623.06, Stats. Are the methods consistent with s. 623.06, Stats.? It would be helpful if the analysis or the rule explained how the methods of valuing reserves in the rule are consistent with s. 623.06, Stats.

b. The analysis indicates that s. 601.41, Stats., is interpreted by the rule. While s. 601.41, Stats., provides statutory authority to promulgate the rule, the rule does not interpret that

section. Thus, reference to s. 601.41, Stats., should be deleted from the statutes interpreted listing. Also, in the list of statutes that authorize promulgation, “(3)” should be inserted after “601.41.”

c. In the note to s. Ins 2.80 (3) (e), it appears that the reference to “This section” should be changed to “This paragraph.”

d. In s. Ins 2.80 (3) (f) and (4) (d), the reference to par. “(6) @” is incorrect. The appropriate paragraph in s. Ins 2.80 (6) should be specified.

e. In s. Ins 2.80 (3) (j) (note), the reference to “this subsection” should be changed to “this paragraph.”

f. In s. Ins 2.80 (4) (b) 3., the reference to “this regulation” should be changed to “this section.”

g. In s. Ins 2.80 (4) (c), the phrase “[n]otwithstanding the above” is inappropriate. [See s. 1.01 (9) (c), Manual.] The cross-reference to the provisions which are overridden by s. Ins 2.80 (4) (c) must be specified.

h. The analysis of the rule indicates, in pertinent part, that the rule interprets s. 623.06, Stats. Section 623.06 (1m), Stats., as created by 1995 Wisconsin Act 396, provides that every life insurance company doing business in Wisconsin must annually submit to the commissioner an opinion by a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule satisfy various requirements. Section Ins 2.80 (4) (d) requires that if a life insurance company uses a certain method to calculate reserves, the life insurance company must demonstrate annually to the commissioner, by submitting a statement of actuarial opinion signed by the appointed actuary, that the reserves held for the policies are adequate.

Is s. Ins 2.80 (4) (d) intended to be a specification of policies and contracts by the commissioner under s. 623.06 (1m), Stats.? If so, either the rule should require additional information as set forth in s. 623.06 (1m) (a) 1., Stats., or it should cross-reference the requirements in that statute. If not, it would be helpful to include a note following s. Ins 2.80 (4) (d) indicating that that paragraph is not intended to be a specification under s. 623.06 (1m), Stats.

i. Is s. Ins 2.80 (5) (e) intended to be an exception to s. Ins 2.80 (5) (d)? If so, s. Ins 2.80 (5) (e) should contain introductory language such as “Except as provided in par. (e)”

j. In s. Ins 2.80 (5) (f), the phrase “referred to above” should be changed to specify which provisions are referred to. [See s. 1.01 (9) (c), Manual.]

k. In s. Ins 2.80 (5) (j) 3., is the reference to “this subdivision” correct? Also, in s. Ins 2.80 (5) (j) 4., is the reference to “this subsection” correct, or should the reference be to “this paragraph”?

l. Section Ins 2.80 (6) (h) 2. refers to “other rules or regulations governing universal life plans.” It would be helpful to include a cross-reference to these rules. Also, it is unclear that a difference is intended between rules and regulations; the preferred term is “rules.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis indicates that the rule creates “guidelines” for insurers. This implies that the rule has no mandatory effect. It is recommended that a different word, such as “requirements,” be substituted for “guidelines.”

b. The analysis indicates that the rule creates tables of select mortality factors and rules for their use by insurers in the valuation of *all* types of life insurance policies. However, s. Ins 2.80 (2) (a) and (b) specify the types of life insurance policies with respect to which s. Ins 2.80 does not apply. The analysis and rule should be made consistent on this point.

c. In the last sentence of the analysis, a comma should be inserted following the word “paragraphs.”

d. In the last sentence of the analysis, the reference to “or XXX” appears to be inappropriate. Was it intended?

e. In s. Ins 2.80 (1) (a), the period following “ch. 623” should be changed to a comma. Also, the space between the word “factors” and the comma which follows it should be eliminated.

f. In s. Ins 2.80 (1) (b), the statement that the method in s. Ins 2.80 “will constitute” the commissioners reserve valuation method should be changed from future tense to present tense.

g. Section Ins 2.80 (2) (intro.) indicates that s. Ins 2.80 “applies to any insurer . . . issuing life insurance policies . . . issued on or after the effective date of this section . . .” According to this statement, the rule applies to the insurer, and not to the policies issued by the insurer. This means that the rule applies to the insurer with respect to all policies issued by the insurer that are not exempted under s. Ins 2.80 (2) (a) or (b), regardless of when the policies were issued. Was this result intended?

h. In s. Ins 2.80 (2) (a), the readability of the first sentence would be improved if the sentence were changed as follows: “. . . greater face amount *that was* issued before the effective date of this section . . . [revisor inserts date] *and* that guarantees . . .” (emphasis added).

i. In s. Ins 2.80 (2) (b) 3., a comma should be inserted following the first “certificates.”

j. Given the typical meaning in the legal context of the word “stipulated,” the use of that word in s. Ins 2.80 (3) (b) in the phrase “reserves stipulated in para. [sic] (4) (b)” is unusual. It could be eliminated.

k. In the first formula in s. Ins 2.80 (3) (b), the definition of “t” is inappropriate. Is it intended to be a number of the segment, e.g., 1, 2, . . . ? This should be clarified.

l. In the second formula in s. Ins 2.80 (3) (b), an explanation should be provided as to the meaning of “q”. Also, in the dividend in that formula, was the letter “q” intended to be in superscript? Also, the placement of the phrase regarding increasing or decreasing R_t which occurs in the middle of the formula is inappropriate and confusing.

m. Section Ins 2.80 (3) (e) refers to 10-year “selection factors” whereas s. Ins 2.80 (3) (e) (note) and other provisions refer to 10-year “select mortality factors.” Any ambiguity regarding whether those phrases are intended to have the same meaning should be eliminated by selecting one term and using it consistently.

n. In s. Ins 2.80 (3) (g) 4., the use of the term “segmented method” is confusing inasmuch as “contract segmentation method” is a defined term. If the term “segmented method” has a different meaning, this should be explained. If it has the same meaning as “contract segmentation method,” ambiguity should be eliminated by using the defined term.

o. In s. Ins 2.80 (3) (i), the reference to “s. 632.06 (2) (am) stats.” should be to “s. 632.06 (2) (am), Stats.”

p. In s. Ins 2.80 (3) (j) 3., is the phrase “guarantee duration” intended to be “guaranteed duration”?

q. Section Ins 2.80 (4) (a) and other provisions refer to the “company,” whereas s. Ins 2.80 (2) (intro.) and other provisions refer to the “insurer.” In order to avoid ambiguity, it would be preferable if one term were selected and used consistently.

r. Section Ins 2.80 (4) (a) 2. and other provisions refer to the “base select mortality factors” in Appendix 1. However, the title to Appendix 1 is “base valuation selection factors.” In order to avoid ambiguity, it would be preferable if one term were selected and used consistently.

Also, in s. Ins 2.80 (5) (a) (intro.), is the phrase “valuation mortality table and selection factors” intended to be the same as either of the phrases described in the preceding paragraph? If not, the difference should be explained. If so, again, one term should be selected and used consistently in order to avoid ambiguity.

s. In s. Ins 2.80 (4) (a) 3., the space preceding the period should be eliminated.

t. In s. Ins 2.80 (4) (b) 1., the reference to “s. 623.06 (2) (am)] stats.” should be to “s. 623.06 (2) (am), Stats.”

u. In s. Ins 2.80 (4) (d), the term “the commissioner” is used. It should be defined.

v. Section Ins 2.80 (5) (b) 2. refers to “a segmented basis,” whereas s. Ins 2.80 (5) (b) 3. refers to “the segmented basis.” They should be made consistent.

Also, is a “segmented basis” different than the defined term “contract segmentation method”? If they are not, then the defined term should be used in order to avoid ambiguity.

w. In s. Ins 2.80 (5) (d), it appears that the phrase “if greater than zero” should be preceded by a comma.

x. In s. Ins 2.80 (5) (f), the phrases “current modal period” and “the paid-to-date” are used without definition. If there could be any confusion as to their meaning, they should be defined.

y. In s. Ins 2.80 (5) (j) 3., the space between the word “premium” and the comma which follows it should be deleted.

z. Section Ins 2.80 (5) (j) 4. refers to “1980 CSO mortality tables.” However, according to s. Ins 2.80 (3) (e), the defined term is “1980 CSO valuation tables.” If s. Ins 2.80 (5) (j) 4. is referring to tables other than those defined in s. Ins 2.80 (3) (e), those additional tables should be defined. If s. Ins 2.80 (5) (j) 4. is referring to the tables defined in s. Ins 2.80 (3) (e), then the defined term should be used.

aa. The meaning of s. Ins 2.80 (5) (k) 6. is unclear because it could be interpreted as requiring: (1) that the conditions of either subd. 6. a. or b. be met and that the conditions of subd. 6. c. be met; or (2) that either the conditions of subd. 6. a. be met or that the conditions of subd. 6. b. and c. be met. This should be clarified.

ab. Section Ins 2.80 (5) (k) 7. refers to “this election.” To what election is reference made?

ac. In s. Ins 2.80 (5) (L) 3., “are” should be changed to “is.”

ad. In s. Ins 2.80 (6) (a) (intro.), the space following the word “include” and preceding the colon should be eliminated.

ae. The first sentence in Appendix 1 is incomplete.

af. In the second sentence of Appendix 1, the phrase “male nonsmokers” should be changed to “male nonsmoker” in order to be consistent with the rest of the items in that list and in order to be consistent with the title of the applicable table in Appendix 1.