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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-070

#### 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 January 2005.]**

#### **2. Form, Style and Placement in Administrative Code**

a. In the last sentence of s. Ins 2.81 (2), a space should be inserted between the section number 623.06 and the subsection number (2).

b. In s. Ins 2.81 (3) (a), the phrase “defined below in par. (i)” should be deleted. Not only is par. (i) not the correct cross-reference (see comment 2. c.), but a term defined for purposes of a section needs no cross-reference to the definition within that section.

c. The definition of “2001 CSO preferred class structure mortality table” is created as s. Ins 2.81 (3) (i). In general, definitions should be in alphabetical order. [s. 1.01 (7) (a), Manual.] This definition begins with a number. To be consistent, this definition should be included with the other definitions in s. Ins 2.81 (3) that begin with a number (namely s. Ins 2.81 (3) (a), (b), and (c))--which have definitions relating to the “2001 CSO mortality table), instead of being separated from those definitions. It would appear to be most appropriate to create the definition of “2001 CSO preferred class structure mortality table” as s. Ins 2.81 (3) (cm).

d. In the second sentence of s. Ins 2.81 (4) (c), the phrase “No such election shall be made” should be changed to “No such election may be made.” [See s. 1.01 (2), Manual.]

e. The relationship of the subdivisions of s. Ins 2.81 (5) (e) should be made clear by use of a phrase such as “All of the following ...” in s. Ins 2.81 (5) (e) (intro.) [See s. 1.03 (8), Manual.]

A similar comment applies to the relationship of the subdivision paragraphs in s. Ins 2.81 (5) (e) 1. and 2. For example, it is not clear whether the actuary must certify both 1. a. and b. or either 1. a. or 1. b. This should be clarified by adding language to s. Ins 2.81 (5) (e) 1. (intro.) and 2. (intro.) such as: “shall certify that all of the following are true:” or “shall certify that at least one of the following is true:”.

f. In s. Ins 2.81 (5) (e) 1. a. and 2. a., “ten years” should be changed to “10 years.” [See s. 1.01 (5), Manual.]

g. Section Ins 2.81 (5) (e) 3. requires, in certain circumstances, the filing of an annual report on a form to be established by the Commissioner of Insurance (Commissioner) or on a form established by the National Association of Insurance Commissioners (NAIC) or by a statistical agent designated by NAIC and acceptable to the commissioner. A note should be included following this provision referring to the form and how it may be obtained. [See s. 1.09 (2), Manual.]

h. SECTION 3 should include the title “INITIAL APPLICABILITY.” Also, because it (appropriately) contains the phrase “first apply,” it should not include the phrase “or after.” [See s. 1.02 (3m), Manual.]

i. SECTION 5 should include the title “EFFECTIVE DATE.” [See s. 1.02 (4) (a), Manual.]

### **3. Conflict With or Duplication of Existing Rules**

SECTION 4 should not be included since the information it provides is already included in s. Ins 2.81 (8). (In addition, the reference in SECTION 4 to “This section” is ambiguous since it is not clear which section is being referred to. Also, the reference in SECTION 4 to s. 601.65, Stats. (marketing firm forfeitures), seems to be unrelated to the proposed rule.)

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

a. In item 2. of the analysis, it does not appear that s. 623.03, Stats., should be included as providing statutory authority for the proposed rule since s. 623.03 relates to valuation of assets whereas the proposed rule relates to valuation of liabilities.

b. In item 4. of the analysis, should reference to s. Ins 2.35 be included as a related rule since the proposed rule relates to mortality tables for minimum reserve liabilities that differentiate between smokers and nonsmokers, as does s. Ins 2.35? Also, should reference to s. Ins 2.35 be added to the amendment to s. Ins 2.81 (2), or is s. Ins 2.35 one step too many removed from the 2001 CSO preferred class structure mortality table?

c. The definition of “2001 CSO mortality table” in current s. Ins 2.81 (3) (a) indicates that that table may be obtained from OCI. Section Ins 2.81 (3) (a) is followed by a note providing instructions on how to obtain the table. Similar information also should be incorporated into the definition of “2001 CSO preferred class structure mortality table,” which should be followed by a note providing instructions on how to obtain this table. [See s. 601.41 (3) (b), Stats., relating to materials approved by NAIC.]

d. The first sentence of s. Ins 2.81 (4) (c) refers to satisfying the conditions “stated in this regulation.” A more specific cross-reference should be used. [See s. 1.07 (1) (a), Manual.] It appears that the cross-reference should be to “this paragraph and sub. (5) (e).”

A similar comment applies to the first sentence of s. Ins 2.81 (5) (e) 3. which refers to “the provisions of this regulation.” With regard to the latter, it appears that the cross-reference should be to “this paragraph.”

e. Section Ins 2.81 (5) (e) 3. indicates that “[u]nless exempted by the commissioner, every authorized insurer using the 2001 CSO preferred class structure [mortality] table” must file an annual report. The statutes interpreted and statutory authority provisions in the analysis do not appear to cite a statute authorizing OCI to exempt an insurer from this requirement. Will this exemption be issued as an s. 600.13, Stats., order, or does another statute apply? (The exemption-by-rule statutes do not apply unless the rule explains the circumstances under which an exemption may be granted, and this proposed rule does not do so.)

The appropriate statute should be listed in the analysis as providing statutory authority and the process and standards for granting an exemption should be stated, at least by cross-reference to the pertinent statute.

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

a. In the last sentence of item 5. of the analysis, the reference to “management and regulators” is unclear. It appears that “insurers” or “insurance companies” should be substituted for “management.” It appears that “the commissioner” should be substituted for “regulators.”

b. In item 8. of the analysis, the reference to “(Third Quarter 2206)” should be changed to “(Third Quarter 2006).”

c. In the last sentence of item 8. of the analysis, a comma should be inserted following “being.”

d. Section Ins 2.81 (2) would be easier to follow if semicolons were used to separate the three main series of terms (each of which includes a subsidiary series of items). Also, since each of the three main series begins with the phrase “recognize, permit and prescribe the use of,” it would be preferable to use that term only once (followed by a colon) followed by the main series of three.

e. Language is added to the definition of “2001 CSO mortality table” in s. Ins 2.81 (3) (a) to state that it “is supplemented by the 2001 CSO preferred class structure mortality table.” The additional language implies that the 2001 CSO preferred class structure mortality table is somehow part of the definition of 2001 CSO mortality table.

However, the rule separately defines “2001 CSO preferred class structure mortality table” and separately explains when the 2001 CSO preferred class structure mortality table may be substituted for the 2001 CSO mortality table. These separate provisions imply that the additional language in the definition of 2001 CSO mortality table was not intended to substantively change

that definition. If no substantive change was intended, then the additional language should not be included in the definition as the language is superfluous and creates ambiguity.

On the other hand, if a substantive change was intended, then the new definition creates ambiguity. For example, subject to certain conditions, s. Ins 2.81 (4) (a) indicates that the 2001 CSO mortality table may be used in determining minimum standards (and for valuation and nonforfeiture purposes) for policies issued on or after January 1, 2005 and before January 1, 2009, and s. Ins 2.81 (4) (b) indicates that the 2001 CSO mortality table must be used in determining minimum standards for policies issued on or after January 1, 2009, to which s. 623.06 (2) (am) 3. or 623.43 (6m) (e) 3. f., Stats., or s. Ins 2.20, 2.35, or 2.80 applies. Section Ins 2.81 (4) (c) would provide that the 2001 CSO preferred class structure mortality table may be substituted for certain tables to establish minimum reserves for certain policies issued on or after January 1, 2007 under certain conditions. Since minimum standards and minimum reserves are not the same, this would appear to mean that the 2001 CSO mortality table (not the 2001 CSO preferred class structure mortality table) must be used to establish minimum standards for these policies issued on or after January 1, 2009. However, a substantive change in the definition of 2001 CSO mortality table indicating that it is supplemented by the 2001 CSO preferred class structure mortality table implies that the 2001 CSO preferred class structure mortality table can be used instead.

f. The definition of “statistical agent” in s. Ins 2.81 (3) (j) refers to an entity with “proven” systems for protecting confidentiality, “demonstrated” resources for and history of ongoing electronic communications and data transfer, and a history of and means for aggregating data and accurately promulgating experience modifications in a “timely” manner. The definition does not make clear to whom the proof or demonstration must be made or who evaluates what is “timely.” Moreover, substantive provisions should not be incorporated in a definition. [See s. 1.01 (7) (b), Manual.]

g. In the first sentence of s. Ins 2.81 (4) (c), it appears that the phrase “smoker or nonsmoker mortality table” should be changed to the term “smoker and nonsmoker mortality tables,” which is defined in s. Ins 2.81 (3) (h).

h. Section Ins 2.81 (4) (c) refers to the “company” electing to substitute tables and the “company” making certain demonstrations. In contrast, s. Ins 2.81 (5) (e) refers to the “insurer” doing so. It would be preferable to select one term and use it consistently.

i. Section Ins 2.81 (4) (c) provides that an election cannot be made to substitute the 2001 CSO preferred class structure mortality table until the company “demonstrates” “at least 20% of the business to be valued on this table is in one or more of the preferred classes. What is the process for making the demonstration, and to whom is the demonstration made?”

j. In s. Ins 2.81 (5) (e) 3., the meaning of “authorized” is not clear in the phrase “every authorized insurer.” Is there an authorization process? If not, then the word “authorized” could be eliminated as superfluous as the provision would then apply to all insurers using the 2001 CSO preferred class structure mortality table, unless exempted by OCI.

k. In the first sentence of s. Ins 2.81 (5) (e) 3., the phrase “2001 CSO preferred class structure table” should be changed to the defined term “ 2001 CSO preferred class structure mortality table.”

l. Unless exempted by the commissioner, the first sentence of s. Ins 2.81 (5) (e) 3. requires annual filing of statistical reports with the commissioner, with NAIC, *or* with “a statistical agent designated by the NAIC and acceptable to the commissioner.” As worded (the only conjunction being one “or”), the annual reports need to be filed with only one of these three entities, and the insurer has latitude for each annual filing to decide with which of the three designated entities the report will be filed in a given year. Is that the intention? If so, it may be useful if the analysis explained how OCI intends to monitor whether a report has been filed for a particular year. If not, this should be revised.

Also, how will OCI provide information about which statistical agents designated by NAIC have been deemed to be acceptable to OCI?

m. The last sentence of s. Ins 2.81 (5) (e) 3. requires the filing of an annual report on a form to be established by the commissioner or on a form established by the NAIC or by a statistical agent designated by NAIC and acceptable to the commissioner. In this sentence, it is not clear if it is the statistical agent that must be acceptable to the commissioner (as it clearly is in the first sentence of s. Ins 2.81 (5) (e) 3.) or if it is the form that must be acceptable to the commissioner. This should be clarified.