



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 13-059

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. The proposed order should include an introductory clause in the format prescribed by s. 1.02 of the Manual.

b. The heading “Analysis Prepared by the Office of the Commissioner of Insurance” should be changed to “Rule Summary”. [s. 1.02 (2) (a), Manual.] Throughout the rule summary, the agency should use the headings listed in s. 1.02 (2) (a), Manual. The agency should also correct the heading for the text of the rule (“The proposed rule changes are” should be “Text of Rule”). [s. 1.02 (3), Manual.]

c. In the section pertaining to the explanation of the agency’s authority, the agency should paraphrase or explain its authority rather than restating the text of s. 623.11 (1) and (2), Stats., verbatim. The third paragraph in this section appears to be an explanation of the rule, not an explanation of the agency’s authority. It might be more appropriate to include this information within the plain language analysis.

d. Under the heading referring to factual data and analytical methodologies, the only item that appears to relate to the agency’s methodologies is the statement that the rule change adopts NAIC recommendations. The agency should explain what the initials NAIC mean.

e. Item 10 in the rule summary states, in the same form as the section headings, “See the attached Private Sector Fiscal Analysis”. Section 227.14 (4) (b) 3., Stats., requires an agency to include in the fiscal estimate the anticipated costs that will be incurred by the private sector in

complying with the rule if the agency determines the rule may have a significant fiscal effect on the private sector, but the statute does not require that this estimate be included as a separate component of the rule summary. If the agency wishes to include this information in the rule summary, it could do so under the section describing the rule's effect on small business.

f. SECTION 2 of the proposed rule raises a number of questions. That SECTION provides that "these changes first apply January 1, 2014". What is it to which these changes first apply? The definition of company action level event that this rule alters refers to "the filing of a risk based capital report by an insurer". Is the agency's intent, then, that the rule first apply to reports filed on a certain date? Or does the agency intend that insurers comply with the rule prior to filing a report? Additionally, why does the rule not initially apply on its effective date? (SECTION 3 provides that the changes will take effect on the first day of the month after publication.) If the agency's intent is to provide insurers sufficient time to comply, it might consider using a delayed effective date, and then linking the initial applicability to that date. If there is a reason to retain the January 1, 2014 initial applicability date, the agency should include a contingency date in the event the rule is not enacted by that date; for example: "January 1, 2014 or the effective date, whichever is later". [See, generally, s. 1.02 (3m) and (4), Manual.]

g. In the rule text, the agency should include the headings "INITIAL APPLICABILITY" and "EFFECTIVE DATE", following the rule SECTION number. [See the examples in s. 1.02 (3m) and (4), Manual.]

h. As currently drafted, SECTION 4 of the rule is unnecessary and should be deleted. The agency may wish to consider whether the material is suitable for placement in the rule summary or in the administrative code.

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

a. The plain language analysis section should be written in plain, simple language. [s. 1.02 (1), Manual.] However, the agency's plain language analysis often employs technical terms with little explanation about what those terms mean. Further, it is difficult to discern from the agency's analysis that the rule modifies the definition of "company action level event", which at its most elemental level is what the rule does. The plain language analysis would be clearer if the agency stated that and then explained the effect of modifying this definition.

b. In the plain language analysis section, the agency should refer to "rules" not "regulations". Further, it would be clearer and more direct to say that "OCI, by rule, establishes risk-based requirements" rather than "existing regulation establishes risk based requirements".

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Why does the heading for the section pertaining to existing or proposed federal statutes and regulations state that it is a preliminary comparison?