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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 21-066

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

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

a. In the rule summary’s listing of related statutes or rules, it appears that s. Ins 2.80 should be cited, as it is cited at various points in the text of the proposed rule.

b. In the rule summary’s comparison of similar rules in adjacent states, the agency should provide a brief description and comparison to the other states’ laws that are cited. For example, are the states that have laws or regulations in place, or have proposed regulations, consistent with the NAIC model law and regulation? [s. 1.01 (2) (a) 8., Manual.]

c. Also, in the rule summary’s heading for federal regulations, the entry specifies that there are no federal regulations that address these activities. However, the plain language analysis refers to the Nonadmitted and Reinsurance Reform Act, and preemption by the Federal Insurance Office under Dodd-Frank. The agency could consider listing these laws and any associated regulations in this section.

d. In the treatment clause for SECTION 1 of the proposed rule, the reference to “52.005” should be revised to “52.01”. It appears that the new subchapter title is intended to precede the existing rule sections that begin with s. Ins 52.01.

e. Throughout the proposed rule, each instance of a phrase placed within parentheses should be revised to remove the parentheses. If needed to set apart the material, use commas or move the material to an explanatory note. [s. 1.06 (1) (c), Manual.]

f. In the definition of “reciprocal jurisdiction” in s. Ins 52.01 (4) (intro.), the agency should use “means” instead of “is”. A definition is generally drafted using the term “means” and must be written as a complete sentence. [s. 1.07 (2) (c) and (3) (a), Manual.]

g. In s. Ins 52.02 (4m) (a) 3. c. (Note) and 5. b. (Note), both instances of the reference to “D – H” should be revised to “D to H”. [s. 1.08 (1) (h), Manual.]

h. The agency should consider including the first sentence in s. Ins 52.02 (4r) (b) 1. in a note rather than in the rule text. That sentence explains a source for locating a list of reciprocal jurisdictions and is not a substantive requirement. [s. 1.12, Manual.]

i. In s. Ins 52.02 (4r), the introduction should be revised to include an introductory statement, and the paragraphs should be reviewed and reorganized to provide a consistent topic and required actions that fit with the introduction.

j. Throughout the proposed rule, the agency should ensure that every list is properly formatted. The introduction for each list should include an introductory statement to make clear whether *any* or *all* or *at least one* of the following subunits apply, and the introduction should end in a semicolon. All subunits should end with a period and each provision should complete the sentence that begins the list. [s. 1.11 (2) and (3), Manual.] For example, s. Ins 52.02 (4r) (a) (intro.) could be revised as follows:

Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer ~~meeting each of the conditions set forth below.~~ that meets all of the following conditions:

k. Also in s. Ins 52.02 (4r) (a) 1. to 8., the agency should consider whether it is appropriate to use each instance of the phrase “the assuming insurer shall...”. “Shall” is used to denote a mandatory or absolute duty or directive. [s. 1.08 (1) (b), Manual.] This provision discusses when an insurer may claim credit for reinsurance that is ceded to an assuming insurer; it does not impose requirements on the assuming insurer. For example, in s. Ins 52.02 (4r) (a) 1., the agency could revise the rule as follows:

The assuming insurer ~~shall be~~ is licensed to transact reinsurance by, and ~~have~~ has its head office or ~~be~~ is domiciled in, a reciprocal jurisdiction.

l. In s. Ins 52.02 (4r) (h) (intro.), the designations “(i)” and “(ii)” should be removed. Also, should the word “and” before “(ii)” be revised to “or”?

m. SECTION 13 of the proposed rule should be divided into two separate SECTIONS, first for the amendment of s. Ins 52.05 (2) (k) (intro.), and then for the amendments in s. Ins 52.07. Only subunits *of the same rule section* that are affected by the same treatment may be included in the same SECTION of the proposed rule, when any intervening subunits are unaffected. Treatment of subunits may not be combined with the treatment of subunits from other rule sections. [s. 1.03 (2) (c) 2., Manual.]

n. In the treatment clause for SECTION 14 of the proposed rule, it may be helpful to insert a notation that the new subchapter follows s. Ins 52.07.

o. In s. Ins 52.20 (1), the list following the colon should be formatted as a series of designated subunits. [s. 1.11 (2) and (3), Manual.]

p. The agency should ensure that all subunits within a list complete the list. For example, in s. Ins 52.21 (6), pars. (a) to (c) are the subunits of a list, while par. (d) is separate from the list and imposes a requirement on the commissioner. The agency should make the same revision to s. Ins 52.23 (1) (d), and should review the proposed rule for similar instances.

q. The agency should consider defining the terms that are used in proposed s. Ins 52.21 instead of citing the source of the definitions within the rule text. Defining those terms in ch. Ins 52 would improve the readability of the rule and simplify future rulemaking because terms need not be defined with each use. For example, the agency could include “company action level event”, “regulatory action level event”, “authorized control level event”, “mandatory control level event”, and “authorized control level risk based capital”, which are all found in proposed s. Ins 52.21, with the appropriate references to s. Ins 51.01, in a list of definitions at the beginning of subch. II of ch. Ins 52.

r. In s. Ins 52.22 (intro.), if the agency wishes to use the definitions of the defined terms found in s. Ins 2.80 (3), it must reincorporate those definitions by reference in ch. Ins 52. Those terms are only defined for the purpose of s. Ins 2.80.

s. The agency should avoid using “and/or”. [s. 1.08 (1) (d), Manual.] After revising s. Ins 52.22 (2) (a) to conform with proper list format, that paragraph could be revised as follows:

Life insurance policies with guaranteed nonlevel gross premiums ~~and/or~~ guaranteed nonlevel benefits, or both, except for flexible premium universal life insurance policies; ~~or~~.

t. In s. Ins 52.23 (1) (d) 5., (e) and (f), the agency should consider whether to replace “will” with “may”. [s. 1.08 (1) (b), Manual.]

u. Following s. Ins 52.23 (1) (d) 5., and prior to par. (e), there is an undesignated paragraph beginning with the phrase “The adjustments for other reinsurance will be made only...”. A designation should be inserted for this provision. [s. 1.10 (1) (c), Manual.]

v. In s. Ins 52.24 (2) (a), if the agency intends to specify that the rule applies to covered policies that are ceded after the effective date, it may do so by incorporating the rule’s effective date using the format identified in s. 1.08 (1) (e) of the Manual. This comment also applies to the other instances in the proposed rule for each reference to “the effective date” of the proposed rule.

w. In s. Ins 52.24 (2), the agency should replace each instance of “subs. (1) (c) or (d)” with “sub. (1) (c) or (d)”. [s. 1.15 (2) (d), Manual.]

x. In s. Ins 52.26, the agency should replace “shall” with “may”. Also, “(as set forth in s. Ins. 52.20 (2))” is a parenthetical, which should be avoided; the cross-reference is also superfluous and could simply be removed to improve readability. [s. 1.06 (1) (c), Manual.]

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

Should a cross-reference to s. Ins 52.20 and the related provisions be added to s. Ins 2.80, such as “Subject to subch. II of ch. Ins 52, ...”?

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

a. In the rule summary’s comparison of similar rules in adjacent states, in the first listing for Illinois, should the phrase “legislation instructed” be revised to “legislation introduced”? If not, an explanation for the “instruction” should be provided.

b. The proposed rule uses several terms that are not defined or already used in ch. Ins 52, including: deterministic reserve, exempt arrangement, net premium reserve, non-proportional

reinsurance treaties, and stochastic reserve exclusion test. The agency should consider whether defining these terms would be appropriate or helpful to a reader.

c. In s. Ins 52.01 (1g) (a) and (c) (intro.), the agency refers to “in-force covered agreements”. It appears that the inclusion of “in-force” is superfluous, as the definition of “covered agreements” requires that the agreement be currently in effect or in a period of provisional application.

d. In s. Ins 52.01 (4) (a), the phrase “each within its legal authority” appears to be superfluous. If it is not necessary to include that phrase, removing it would improve the readability of the rule. Likewise, it is not clear in s. Ins 52.01 (4) (c) what is added by “consistent with the terms and conditions of in-force covered agreements”.

e. In s. Ins 52.02 (4m) (a) 3. g., it appears that the comma after the first instance of the word “basis” should be retained, and should not be shown with a strike-through.

f. In s. Ins 52.02 (4r) (a) 2. b., the meaning of the semicolon is not clear. Should that be revised to a comma? Or is the phrase following the semicolon intended to modify or provide an alternative to both subpars. a. and b.?

g. In s. Ins 52.02 (4r) (a) 7., the agency should consider whether to include a more specific time frame, such as a date, for the assuming insurer’s supervisory authority to confirm compliance with the capital and solvency requirements.

h. It appears that in s. Ins 52.20 (1) the comma after “primary security and other security” could be removed. Also, the word “that” should be inserted after “In general, reinsurance”.

i. In s. Ins 52.20 (2), the meaning of the semicolon is not clear. Should the semicolon be revised to a comma, and the word “provided” revised to “except”?

j. In s. Ins 52.21 (5) (b), the phrase “\$250 million” should be revised to “\$250,000,000”.

k. In s. Ins 52.22 (1) and (7), the definitions of “actuarial method” and “required level of primary security” are circular. The rule defines “actuarial method” as the methodology used to determine the required level of primary security and “required level of primary security” as a dollar amount determined by the actuarial method.

l. Throughout the proposed rule, the agency should determine whether the plural or singular form of nouns is appropriate. General drafting style uses the singular form of a word, with the plural used only when specifically referring to multiples of the word used. [s. 1.05 (1) (c), Manual.] For example, in s. Ins 52.22 (2), the agency should define “covered policy” as opposed to “covered policies” because the rule uses the term in both singular and plural form.

m. The agency should also revise the definition of “covered policy” for grammar. For example, the introduction for that definition could be revised as follows:

“Covered policy” means the following: subject to the exemptions described in s. Ins 52.21 covered policies are those policies, other than grandfathered policies, of the following policy types any of the following policy types, other than a grandfathered policy or a policy that is exempted under s. Ins 52.21:

n. In s. Ins 52.22 (3), the agency should consider whether it is appropriate to define “grandfathered policies” in plural form. The agency should also revise the definition for clarity

because the current definition is circular: a covered policy is a policy, other than a grandfathered policy, that meets certain characteristics, while a grandfathered policy is a covered policy issued and ceded prior to certain dates. In other words, the rule says that a grandfathered policy is a certain type of covered policy, but that covered policies do not include grandfathered policies.

o. In s. Ins 52.22 (9), why does the agency include quotation marks for the phrase “requirements for principle-based reserves for life products,” within the definition of VM-20?

p. In s. Ins 52.23 (2) (intro.), the phrases should not be capitalized.

q. In s. Ins 52.24 (2) (b), the agency should consider replacing “within the scope of s. Ins 52.20 (2)” with “that is subject to this subchapter”. Including citations only when necessary for clarity improves the readability of the rule.

r. Likewise, in s. Ins 52.26, the agency could replace “or to circumvent its purpose and intent, as set forth in s. Ins 52.20 (1)” with “or to circumvent the purpose and intent of this subchapter”.