



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

August 11, 2008

Legal Unit
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REPORT ON Section Ins 50.01, 50.02, 50.05, 50.08, 50.11,
50.12, 50.13, 50.14, 50.15, 50.16, 50.17, 50.18, 50.19,
Wis. Adm. Code, relating to audit, control and financial
reporting requirements

Clearinghouse Rule No. 08-053

Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:

The provisions of subch. I of ch. 50, Wis. Adm. Code, establish standards for accounting practices related to the preparation and submission of annual audited financial reports, annual financial statements and examinations required of insurers doing business in Wisconsin. The proposed rule updates and adds certain general requirements including those related to auditor independence, the scope of the audit and reports, communication of internal control matters noted in the audit, an audit committee, and management's report of internal control over financial reporting. The proposed rule is based upon a model regulation adopted by the National Association of Insurance Commissioners (NAIC) at the June, 2006 national meeting. The proposed rule will increase the ability of insurers and the commissioner to monitor financial status and will provide control documentation contemplated in the enhanced financial surveillance procedures adopted by the NAIC and required as an accreditation standard for statutory examinations conducted after January 1, 2010.

(b) Summary of the public comments and the agency's responses to those comments:

Comment: Adopt a table of contents.

Response: The revisor may publish a table, but it is not part of the rule text.

Comment: Change the dollar threshold in s. Ins 50.02(1) to match that in the model regulation.

Response: The dollar provisions of s. Ins 50.02(1) continue to be appropriate for application to insurers doing business in Wisconsin.

Comment: Create a title for s. Ins 50.15 "Requirements for audit committees."

Response: A title has been created.

Comment: Include drafting notes A to C from s. 14 of the model regulation in the text of s. Ins 50.15(7).

Response: The title to the table included in s. Ins 50.15(7) specifies prior calendar year direct written and non-affiliated assumed premium thresholds, which meets the objective of drafting note C. Licensed insurers are expected to exercise judgment and prudence in achieving compliance and drafting note B is superfluous. The powers and authority of the commissioner are set forth in ch. 601, Stats. and drafting note A is unnecessary.

Comment: Include general exemption language from s. 17 of the model regulation.

Response: General exemption language is included in s. Ins 50.18.

Comment: Include specific effective dates for phase-in of rule compliance.

Response: Specific effective dates for phase-in of rule compliance are contained in s. Ins 50.18.

Comment: Adopt safe harbor language in text of s. Ins 50.01(g) similar to that contained in SEC Release number 33-8220 "Standards Relating To Listed Company Audit Committee."

Response: Section 14 of the model regulation contains a drafting note referring the commissioner to SEC Final Rule number 33-8820 for guidance in determining independence of audit committee members. The commissioner may utilize various sources for guidance including the plain language of the rule concerning requirements for audit committees, the definitions contained in the rule, s. 600.03(13), Stats. and the individual facts and circumstances. The agency interpretation of the language in the model regulation referring to audit committee independence, which has been affirmed by the NAIC is that an independent audit committee member of an insurer does not lose the member's independent status solely by reason of serving on the board of directors and audit committee of a subsidiary of the insurer.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

Modifications made in the proposed rule as a result of public comments are set forth in paragraph (b). There was no testimony offered at the public hearing.

(d) Persons who appeared or registered regarding the proposed rule:

Appearances for:

None

Appearances against:

None

Appearances for information:

None

Registrations for:

Vaughn Vance representing WEA Trust.

Registrations against:

None

Registrations neither for nor against:

None

Letters received:

John Gerni, American Council of Life Insurers
Lauri Kuiper, America's Health Insurance Plans
Connie L. O'Connell, Wisconsin Council of Life Insurers
Lon E. Sprecher, Dean Health Plan
David Diercks, Unity Health Insurance

(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.

None

(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:

All comments were complied with and corrected except the following:

2e. The acronyms NAIC and AICPA should be defined. Response: The acronyms are believed to be universally familiar to insurers and accountants who are the subject of the rule.

2g. Move definition of independent board member out of definitions subsection. Response: It is believed the definition is more appropriately located in the definitions subsection as a logical reference site.

2l. In s. Ins 50.08(2), refer to (2) (intro) in treatment clause and (a) to (c) need not be included. Response: To avoid confusion the entire s. Ins 50.08(2) is set forth in the rule as it is brief.

2o. Replace “shall only apply” with “applies” in s. 50.08(9)(a). Response: The wording is in accord with the model regulation and is believed to provide greater clarity.

2p. In s. Ins 50.10 replace the word “should” with the word “shall.” Response: Section Ins 50.10 incorporates language from AU Section 319 of the Professional Standards of the AICPA wherein the word “should” is used. To maintain consistence between the rule and the AICPA document the word “should” should be used.

2t. The title “SAS 61, Communication with Audit Committees” should be defined. Response: The title is believed to be universally familiar to insurers and accountants who are the subject of the rule as a reference.

5b. In s. Ins 50.01(lr) what is meaning of controlling person. Response: The term control and variations of the term is defined in s. 600.03(13), Stats.

5e. Clarity of phrase “shall file with its annual statement filing the approval for relief from Ins 50.08(2) with the states...” Response: The language is in conformity with the model regulation.

5i. What is reference to “statutory accounting principles.” Response: the term is a generic reference that is believed to be universally familiar to insurers and accountants who are the subject of the rule, and is in conformity with the model regulation.

(g) The response to the report prepared by the small business regulatory review board:

The small business regulatory review board did not prepare a report.

(h) Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations

June 23, 2008