



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 21-106

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.]

1. Statutory Authority

a. In the rule summary’s listing of statutory authority, the agency could remove the citations to ss. 227.11 (2) and 601.41, Stats., because s. 617.13 (1), Stats., specifically allows the agency to promulgate rules requiring certain insurers to report their group capital calculations and liquidity stress tests. The agency could also revise the general citation to s. 617.13, Stats., to more precisely cite to sub. (1) of that provision.

b. In the rule summary’s listings of statutes interpreted and statutory authority, it appears that the agency could remove the citations to s. 617.21 (3r), Stats., as that statute discusses determining the adequacy of surplus, which is not directly addressed in the proposed rule.

c. It appears that s. 623.02, Stats., would be more appropriately included in the agency’s listing of statutes interpreted, rather than the listing of statutory authority, because that provision requires the agency to consider NAIC recommendations when promulgating rules, and does not directly provide rulemaking authority.

2. Form, Style and Placement in Administrative Code

a. The agency should revise the caption for the proposed rule to identify the treatment of all provisions affected by the proposed rule. [s. 1.01 (1), Manual.] In addition, the proposed rule does not create ch. Ins 40; that chapter already exists.

b. The agency should consider including a brief explanation of the proposed rule in the plain language analysis rather than just an explanation of why the agency is promulgating the rule. An analysis should include sufficient detail to enable the reader to understand the content of the rulemaking order and the changes made to existing rules. [s. 1.01 (2) (b), Manual.] The agency could also cite to 2021 Wisconsin Act 114 to provide additional context.

c. The agency could include the provisions in SECTION 2 with SECTION 1 of the proposed rule. When two or more subunits of the same rule section are affected by the same treatment, and

intervening subunits are unaffected, they may be included in the same SECTION of the rulemaking order. [s. 1.03 (2) (c) 2., Manual.]

d. In SECTION 2 of the proposed rule, the agency creates a definition of “NAIC” in s. Ins 40.01 (7n). Because s. Ins 40.01 (7m) already exists, the agency may wish to use a designation for the definition of “NAIC” to provide more space for future rulemaking. For example, the definition for “NAIC” could be designated as sub. (7p), and the other two definitions created in SECTION 2 could be designated as subs. (7t) and (7x), respectively. [s. 1.10 (3) (c), Manual.]

e. In the definition of “person” in SECTION 2 of the proposed rule, the agency should revise the word “shall” to “does”. The word “shall” should be used only to denote a mandatory or absolute duty or directive. [s. 1.08 (1) (b), Manual.]

f. Likewise, in SECTION 4 of the proposed rule, amending s. Ins 40.03 (5), the word “shall” should be revised to “does”. [s. 1.08 (1) (b), Manual.]

g. In SECTION 7 of the proposed rule, creating s. Ins 40.03 (9) (d) and (e), the paragraph titles should be removed, as the existing pars. (a) to (c) do not include paragraph titles. Alternatively, the proposed rule could be revised to create titles for pars. (a) to (c). Subunit titles must be used (or not used) consistently for all subunits within a unit. [s. 1.10 (2) (a) 2., Manual.]

h. In s. Ins 40.03 (9) (d) 5. and 6., the agency should refer to “subds.” in the plural. [s. 1.15 (2) (c), Manual.] Also, in subd. 6., the word “through” should be revised to “to”. [s. 1.08 (1) (h), Manual.]

i. Throughout the proposed rule, the agency should ensure that every list is properly formatted. The current rulemaking style generally requires each subunit to result in a complete sentence when read with the introduction, and requires an introduction to specify whether *any* or *all* of the subunits apply. Generally, it is recommended that an agency achieve this format through the use of appropriate introductory material, a colon at the end of the introductory clause, and a period at the end of each subunit. [s. 1.11 (2) and (3), Manual.] For example, in s. Ins 40.21 (1), the agency should maintain parallel structure in each list subunit so that each subunit results in a complete sentence, and each subunit should end with a period.

j. In s. Ins 40.21 (1) (intro.), the agency should use the word “may” to denote an optional or permissive privilege, right, or grant of discretionary authority. [s. 1.08 (1) (b), Manual.]

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

a. In the event that CHR 21-066 does not become effective prior to the proposed rule, the agency should revise the citation in s. Ins 40.03 (9) (d) 3. to the definition of “reciprocal jurisdiction” accordingly.

b. In s. Ins 40.03 (9) (e) 4., it is unclear what is meant by the reference to “this paragraph”. As it is following a reference to “par. (d)”, it could be confusing as to whether “this paragraph” means the prior reference to par. (d) or par. (e) itself, within which the reference is made. If the agency is intending to reference par. (d), the rule text should refer again to “par. (d)”. If the agency is intending to reference par. (e) within which the reference is made, it would be more clear to refer specifically to “par. (e)”. If the agency is intending to reference subd. 4., the rule text should refer to “this subdivision”.

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

a. The agency could review and revise the rule summary's explanation of statutory authority for grammar and punctuation. For example, it appears that in the first sentence of the second paragraph, the word "provides" should precede "that".

b. 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.

c. The agency uses the term "lead state commissioner" throughout the proposed rule, but that term is not defined in the rule or in ch. Ins 40. The agency should define that term to provide clarity. [s. 1.07 (1), Manual.]

d. The agency should consistently use the Oxford comma. [s. 1.06 (1) (b), Manual.]

e. The agency should review each instance of the word "such", and consider revising the word to an article such as "the", or adding a specific cross-reference to identify the source of the item. [s. 1.08 (1) (g), Manual.] For example, in s. Ins 40.01 (7r), the phrase "such scope criteria" could be revised to "the scope criteria".

f. In s. Ins 40.01 (5g) and (7r), both instances of the phrase "from time to time" are superfluous and should be removed.

g. In s. Ins 40.01 (7r), it appears the word "being" should be removed. Also, what does it mean that the framework is a "separate" NAIC publication?

h. In SECTION 3 of the proposed rule, creating s. Ins 40.01 (8m), the word "criteria" should not be capitalized. [s. 1.06 (2), Manual.] The definition could also be revised for clarity as follows:

...specified data year, that is used to establish a preliminary list of insurers that are considered scoped into the NAIC liquidity stress test framework for that data year, as detailed in the NAIC liquidity stress test framework.

i. In SECTION 6 of the proposed rule, amending s. Ins 40.03 (9) (b), the first reference to "s. 617.13 (2),Stats." should be revised to use a period after the "s" and to insert a space before "Stats."

j. The agency should revise s. Ins 40.03 (9) (e) for clarity. In s. Ins 40.03 (9) (e) (intro.), it appears that "also" should be removed from the first sentence. To improve readability, the two sentences could be combined and "The filing shall be made to" could be replaced by "with". Additionally, the agency should make clear how the second sentence of that provision is completed by subs. 1. to 4., by specifying whether *any* or *all* of the subunits apply.

k. It is also unclear how s. Ins 40.03 (9) (e) 1. to 4. relate to par. (e) (intro.). Those provisions do not complete the sentence begun in s. Ins 40.03 (9) (e) (intro.) and it is unclear how some of the provisions relate to the requirement to file a liquidity stress test result according to the procedures determined by NAIC. For example, it appears that s. Ins 40.03 (9) (e) 1. is explanatory and should be included in a note rather than a rule text. [s. 1.12, Manual.]

l. Similarly, why are s. Ins 40.03 (9) (e) 1. a. and b. placed after subd. 1.? If subdpar. a. is intended to explain how insurers are considered scoped into the NAIC liquidity stress test

framework, that should be clarified. Also, it appears that the sentence that begins with “Similarly” should be separated into its own subunit.

m. Additionally, the agency should consider whether s. Ins 40.03 (9) (e) 1. b. should be included in a note, as it appears to be explanatory. Alternatively, if that provision is meant to require the lead state insurance commissioner to assess the concern of having insurers scoped in and out of the NAIC liquidity stress test framework, the word “will” should be replaced by “shall”. [ss. 1.08 (1) (b) and 1.12, Manual.]

n. The agency should use active voice in s. Ins 40.03 (9) (e) 2. to clarify that the *insurer* must comply with the requirements. [s. 1.05 (1) (d), Manual.]

o. The agency should consider improving the readability of s. Ins 40.03 (9) (e) 4. That subdivision could be split into multiple provisions, such as one provision that discusses the general prohibition on misleading statements and one provision that discusses the insurer’s ability to publish certain announcements in a written publication. It also appears that some of the material is explanatory and would be better placed in a note. [s. 1.12, Manual.]

p. Also in s. Ins 40.03 (9) (e) 4., the phrase “as the case may be” is superfluous and should be removed.

q. In s. Ins 40.21, created in SECTION 8 of the proposed rule, consider including subsection titles, for easier navigability of the section.

r. Section Ins 40.21 (1) (intro.) should be revised for readability as follows:

...has the discretion to accept a limited group capital filing in lieu of the group capital calculation ~~a limited group capital filing~~ if the insurance holding company system...

s. In s. Ins 40.21 (2) (intro.), the phrase “of less than \$1,000,000,000” should follow “unaffiliated assumed premium” to improve the clarity of the proposed rule. As the proposed rule is currently drafted, the phrase “annual direct written and unaffiliated assumed premium” should be followed by a comma and “\$1,000,000,000” should be followed by a comma instead of a semicolon.

t. The clarity of s. Ins 40.21 (3) would be improved if the phrase “the ultimate controlling person to file an annual group capital calculation” followed “may require” so that the verb is directly followed by the noun to which it applies.

u. It appears that the final sentence of s. Ins 40.21 (4) (a) 2. is superfluous and may be deleted.

v. The agency should revise s. Ins 40.21 (4) (b) to delete the phrase “but not limited to”. [s. 1.07 (3) (b), Manual.] Alternatively, if it is necessary to keep that phrase for consistency with NAIC style, consider revising the punctuation to appear as follows: “...and such jurisdiction₂, including, but not limited to, the International Association...”

w. In s. Ins 40.21 (5) (intro.), why is the phrase “recognize and accept” written with quotation marks? If this phrase has a specific meaning under the NAIC standards, the phrase should be defined or a specific standard should be cross-referenced. [s. 1.07, Manual.]

x. The meaning of s. Ins 40.21 (5) is unclear. Paragraphs (a) to (d) do not complete the sentence begun in sub. (5) (intro.). Additionally, the agency should consider including pars. (a)

and (b) in a note rather than in the rule text. Those paragraphs explain the list of jurisdictions created by the NAIC committee process and do not contain substantive requirements. [s. 1.12, Manual.]

y. In s. Ins 40.21 (5) (c), the comma after “4.” is not necessary.