



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 14-008

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.]

1. Statutory Authority

a. According to the rule analysis, this rule-making interprets s. 623.11, Stats., which authorizes the agency to take certain actions with respect to determining the amount of compulsory surplus an insurer is required to have. Should s. 623.11, Stats., instead be cited as statutory authority for this rule-making?

b. In its explanation of agency authority, the agency wrote “ss. 601.42 (2)[] and 623.04, Wis. Stats., authorize the commissioner to ‘promulgate rules specifying the liabilities required to be reported by insurers...’” That statement is true for s. 623.04, Stats., but s. 601.42 (2), Stats., authorizes the agency to prescribe forms for required reports. If the agency is drawing a connection between these provisions, it should be more explicit. Further, in the statutory authority section, the agency cites generally to s. 601.42, Stats., but in its explanation of agency authority, the agency references s. 601.42 (1g) and (2), Stats. Is the agency relying on the whole statute for authority, or just the subsections cited in the explanation? If the latter, the citation in the statutory authority section should indicate this.

c. While it is clear that the rules promulgated under s. 623.04, Stats., must be consistent with s. 623.06, Stats., it is not clear how s. 623.06, Stats., provides authority for this rule-making. Would it be more accurate to instead list s. 623.06, Stats., in the statutes interpreted section?

2. Form, Style and Placement in Administrative Code

a. The introductory clause should be replaced with the following: “To repeal Ins 2.80 (4) (b) 3. b. and c. and ch. Ins 2 (table); to amend Ins 2.80 (4) (b) 3. g. and i. and 50.79 (3) (a) 4.; and to create Ins 50.79 (1) (f).” [s. 1.02 (1), Manual.]

b. In SECTION 2, the semicolon between “50.78” and “the” should be underscored. [s. 1.06 (1), Manual.]

c. In SECTION 3, the treatment clause should be replaced with the following: “Chapter Ins 2 (table) is repealed.”

d. In SECTION 4, the text of the paragraph should not be underscored. When a SECTION creates a new provision, the text of the provision is shown as it will appear after promulgation, without strike-throughs and underscores. [s. 1.055, Manual.]

e. In SECTION 5, the examples could be placed in a note following the subdivision. [s. 1.09 (1), Manual.] Alternatively, “for example,” could be replaced with “including”. In the same SECTION, should “the insufficiency” be replaced with “any insufficiency”? The use of “the” implies that there is always an insufficiency of assets; “any” indicates an obligation when there is an insufficiency of assets. This comment also applies to parallel language in SECTION 2.

f. In SECTION 5, the stricken period should be deleted and the period at the end of the subdivision should not be underscored. [s. 1.06 (4), Manual.]

g. SECTION 7 is unnecessary. The agency might consider eliminating this SECTION.

h. The agency might consider including an initial applicability provision. [s. 1.02 (3m), Manual.]

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

In the related statutes or rules section, the references to ss. 623.04 and 623.06, Stats., should be removed because those statutes are cited as either statutory authority or as interpreted statutes. [See also comment 1. c.]

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

a. In the comparison of similar rules in adjacent states, there is an incomplete sentence in the paragraph describing Michigan’s laws.

b. In SECTION 1, the comma after “c.” in the treatment clause should be deleted. Likewise, the comma after “i.” in the treatment clause of SECTION 2 should also be deleted.

c. In SECTION 2, “Regulatory Asset Adequacy Issues Summary” should not be capitalized. [s. 1.01 (4), Manual.]