

R 2020-12 Captive Insurance

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Comments due to OIC at RulesCoordinator@OIC.WA.GOV by September 10, 2020

Chapter 284-2XX Captive Insurance

WAC 284-2XX-110 Purpose.

These regulations implement Captive Insurance (chapter 281, Laws of 2021) including, but not limited to, the processes and procedures for regulation and taxation of captive insurers by the office of the insurance commissioner (commissioner).

WAC 284-2XX-120 Applicability and scope.

This chapter applies to eligible captive insurers as defined in chapter 281, Laws of 2021, except for risk retention groups that must register pursuant to chapter 48.92 RCW.

WAC 284-2XX-130 Definitions.

The definitions in section 2, chapter 281, Laws of 2021, apply in this regulation unless otherwise specified or unless the context clearly requires otherwise:

- (1) "Captive insurer" means an entity that is wholly or partially owned by a "captive owner" and it insures risks of the captive owner, the captive owner's other affiliates, or both.
- (2) "Eligible captive insurer" has the same meaning as set forth in section 2, chapter 281, Laws of 2021.
- (3) "Insurer" has the same meaning as set forth in RCW 48.01.050.
- (4) "Principal place of business" refers to the place where a business entity's management direct, control, and coordinate the corporation's activities, i.e., its "nerve center," which will typically be found at its corporate headquarters. Except where the parent corporation is the alter ego of the subsidiary, subsidiaries are analyzed separately from their parent or holding companies. For example, if a captive insurer insures a subsidiary that is headquartered in Washington, then this state would be the principal place of business for the insured subsidiary, even if the parent company was headquartered elsewhere.

(5) "Registered eligible captive insurer" means an eligible captive insurer who submitted an application that was approved by the commissioner. A registered eligible captive insurer that fails to properly renew its registration will no longer be considered registered under chapter 281, Laws of 2021.

(6) "Reinsurance" means a form of insurance issued to insurers.

(7) "Reinsurer" means an insurer that assumes all or part of an insurance or reinsurance policy written by the ceding insurer.

WAC 284-2XX-140 Computation of time.

In computing any period of time prescribed by this rule, the commissioner:

(1) Will not count the first day; and

(2) Will count the next and last day, unless either is a weekend or a state legal holiday.

WAC 284-2XX-150 Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of the chapter or its application of the provision to other persons or circumstances is not affected.

WAC 284-2XX-210 Registration.

(1) Eligible captive insurers must register with the commissioner within 120 days of May 12, 2021, or within 120 days after first issuing a policy that covers Washington risks.

(2) The registration period for captive insurers will be from the date the registration is approved by the commissioner, through June 30th.

(3) The commissioner may request and the eligible captive insurer must provide additional documentation and information to show registration requirements have been met.

(4) The registration fee is twenty-five hundred dollars.

(5) The commissioner will approve an eligible captive insurer's registration, if the commissioner determines that it meets the eligibility requirements in section 3, chapter 281, Laws of 2021, and this section.

WAC 284-2XX-220 Renewal.

(1) To maintain registration, registered eligible captive insurers must renew certificates of registration annually by June 30th. If a captive insurer fails to properly renew their certificate of registration, then its registration will expire at the end of its registration period.

(2) The renewal process will require that a registered eligible captive insurer continue to meet eligibility requirements in accordance with sections 2 and 3, chapter 281, Laws of 2021,

report the methodology and relevant analysis used to determine the previous calendar year's Washington risks premium allocation, and pay a renewal fee.

- (3) For renewal, the commissioner will charge an annual renewal fee not to exceed twenty-five hundred dollars. The amount of the renewal fee will be published on the commissioner's website and must be paid by June 30th.
- (4) The renewal period will be from July 1st through June 30th.
- (5) In order to obtain a timely annual renewal, a registered eligible captive insurer should file the renewal application no later than March 1st. Otherwise, OIC may not approve the captive insurer's renewal before the June 30th expiration date and the eligible captive insurer's registration will expire. If a captive insurer's registration expires, it will then need to complete and file a new application and pay the fee for a new registration. Also, if not registered, the captive insurer may be subject to fines and penalties as an unauthorized unlawful insurer.

WAC 284-2XX-230 Insurance limitations.

- (1) A registered eligible captive insurer may provide only property and casualty insurance, and may provide such insurance to a captive owner, to the captive owner's other affiliates, or both.
 - (a) Captive insurers may not provide medical stop loss insurance as defined in RCW 48.11.030.
 - (b) Captive insurers may not provide workers' compensation coverage that directly covers the worker. They may indemnify a self-insured employer for their workers' compensation liability.
- (2) A registered eligible captive insurer may assume risks from other insurers as a reinsurer without regard to the limitations in the preceding subsection.

WAC 284-2XX-240 Taxes.

- (1) Registered eligible captive insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a two percent tax on premiums for insurance directly procured by and provided to its parent or another affiliate for Washington risks during the previous calendar year.
- (2) A registered eligible captive insurer shall file with the commissioner a statement of premiums on a tax form furnished by the commissioner. For tax purposes, the reporting of premiums shall be on a written basis.
- (3) Instructions for accessing the online tax forms will be sent out to the registered eligible captive insurer's tax contact in January of each year. Tax contact information is provided to the commissioner as part of the registration process.

- (4) During the renewal process, the registered eligible captive insurer must share its methodology and relevant analysis in determining its Washington risks allocation by submitting this information to the commissioner, in a method as prescribed and furnished by the commissioner.
- (5) Prior Period Taxes. Captive insurers who insured Washington risk for any period after January 1, 2011, must remit a two percent tax on premiums for insurance directly procured by and provided to its parent or another affiliate for Washington risks, if not previously remitted to the commissioner. The reporting of premiums under this section shall be on a written basis. Taxes due for periods before July 1, 2021, are not subject to the penalties or interest provided in RCW 48.14.060. Captive insurers not currently covering Washington risk, but who covered Washington risk any time after January 1, 2011, and before June 30, 2021, must report premiums and pay premium taxes, if not previously remitted to the commissioner, but do not need to register with the commissioner.

WAC 284-2XX-250 Administration.

- (1) The commissioner is authorized to make use of any of the powers established under Title 48 RCW to enforce the laws of this state. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. Regarding any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural laws and regulations of the state.
- (2) Fines and Penalties.
 - (a) An eligible captive insurer that fails to register or maintain registration under this chapter or chapter 48.92 RCW is acting as an unlawful, unauthorized insurer, as set forth in RCW 48.15.020 and is subject to the fines and penalties under RCW 48.15.023, taxation under RCW 48.14.095 and penalties and interest under RCW 48.14.060.
 - (b) A captive insurer that is not eligible to register under this chapter or chapter 48.92 RCW may not cover Washington risk, unless it is acting as a reinsurer. If the ineligible captive insurer does cover Washington risk after June 30, 2021, and not as a reinsurer, then it is acting as an unlawful, unauthorized insurer, as set forth in RCW 48.15.023 and is subject to taxation under RCW 48.14.095 and penalties and interest under RCW 48.14.060.
 - (c) The commissioner will not subject captive insurers who fail to report premiums and pay taxes for Washington risk from January 1, 2011, to December 31, 2020, by March 1, 2022, to penalties and interest under RCW 48.14.060. However, such captives continue to be subject to fines and penalties as unauthorized insurers as set forth in RCW 48.15.023.

- (d) A registered eligible captive insurer that fails to remit the tax under section 4, chapter 281, Laws of 2021, by the last day of the month in which the tax becomes due, will be subject to the tax, penalties, and interest provided in RCW 48.14.060.
- (e) A registered eligible captive insurer that violates any provision of this chapter will be subject to the fines and penalties applicable to authorized insurers generally, as set forth in chapter 48.05 RCW, including revocation of its registration, suspension of registration, and refusal to renew registration.
- (f) The commissioner may deny the registration or renewal of a captive insurer who the commissioner has determined failed to sufficiently demonstrate the requirements outlined in sections 2, 3, chapter 281, Laws of 2021 and this chapter.

WAC 284-2XX-300 Adjudicative proceedings.

- (1) Captive insurers may demand a hearing with the commissioner by submitting a request for an adjudicative proceeding in accordance with WAC 284-02-070 and RCW 48.04.010.
- (2) General procedural and substantive requirements for adjudicative proceedings are contained in WAC 284-02-070, chapter 48.04 RCW and chapter 34.05 RCW.