



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 01, 2021

TIME: 10:35 AM

WSR 21-20-093

Agency: Office of the Insurance Commissioner

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-14-075 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Captive Insurance (Chapter 48.201 RCW)

Insurance Commissioner Matter R 2021-12

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 9, 2021	9:00 AM	Virtual Format – Zoom Meeting: Detailed information for attending the Zoom Meeting Posted on the OIC Website here: https://www.insurance.wa.gov/captive-insurance-r-2021-12	Due to the COVID-19 public health emergency, this hearing will be held via Zoom. Comments can be emailed to RulesCoordinator@OIC.WA.GOV

Date of intended adoption: November 15, 2021_ (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Michael Walker

Address: PO Box 40260, Olympia, WA 98504-0260

Email: rulescoordinator@oic.wa.gov

Fax: 360-586-3109

Other:

By (date) October 27, 2021

Assistance for persons with disabilities:

Contact Melanie Watness

Phone: 360-725-7013

Fax: 360-586-2023

TTY: 360-586-0241

Email: MelanieW@oic.wa.gov

Other:

By (date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The laws for captive insurance (Chapter 48.201 RCW) authorize OIC rulemaking to incorporate the statutory framework and requirements for Captive Insurance into the Washington Administrative Code, along with implementation processes, clarifications, and regulatory guidance.

The anticipated effects of the proposal are rulemaking related to determining eligibility of captive insurers, registering and renewing eligible captive insurers, enforcement, and collecting associated taxes, registration fees, and annual renewal fees from captive insurers that are licensed by their domicile jurisdictions and insure Washington-based entities.

These rules will facilitate implementation of Captive Insurance by ensuring that all affected entities understand their rights and obligations under the new law.

Reasons supporting proposal: The Act relating to Captive Insurance (2SSB 5315) has become effective as law (Chapter 48.201 RCW). This law establishes statutory framework for Washington-based private entities and public institutions of higher education to manage their risks through captive insurers, which will require proper regulation and taxation by the Office of the Insurance Commissioner (OIC). RCW 48.201.060 authorizes OIC rulemaking to incorporate the statutory framework and requirements for Captive Insurance into the Washington Administrative Code, along with implementation processes, clarifications, and regulatory guidance.

Statutory authority for adoption: RCW 48.02.060(3)(a) and RCW 48.201.060

Statute being implemented: Chapter 48.201 RCW Captive Insurance

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Mike Kreidler, Insurance Commissioner Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Michael Walker	PO Box 40260, Olympia, WA 98504-0260	(360) 725-7036
Implementation:	Melanie Anderson	PO Box 40260, Olympia, WA 98504-0260	(360) 725-7000
Enforcement:	Melanie Anderson	PO Box 40260, Olympia, WA 98504-0260	(360) 725-7000

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:
Phone:
Fax:

TTY:

Email:

Other:

No: Please explain: This rulemaking is exempt from the cost-benefit analysis under RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(b)(v). Under RCW 34.05.328(5)(b)(iii), rulemaking is exempt from a cost-benefit analysis if the proposed rules are adopting or incorporating by reference without material change Washington state statutes, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rules. Here, the Washington State Office of the Insurance Commissioner is adopting the statutory requirements for captive insurers (Chapter 48.201 RCW) into the Washington Administrative Code, as rules that regulate the same subject matter and conduct of captive insurers, and without material change. Additionally, under RCW 34.05.328(5)(b)(v) rulemaking is exempt from a cost-benefit analysis if the content of the rules is explicitly and specifically dictated by statute. Here, the proposed captive insurance rules (Chapter 284-201 WAC) are drafted in direct alignment with Chapter 48.201 RCW, and the rules are explicitly and specifically dictated by statute.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|--|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW 34.05.310(4)(c), 34.05.310(4)(e) and 34.05.310(4)(g)(ii).

Explanation of exemptions, if necessary: Under [RCW 34.05.310\(4\)\(g\)\(ii\)](#) rulemaking is exempt from the Small Business Economic Impact Statement requirement ([Chapter 19.85 RCW](#)), if the rules adopt a filing or related process requirement for applying to an agency for a license or permit. Here, the rulemaking is adopting the process requirements for captive insurers applying to the Washington State Office of the Insurance Commissioner for registration (or permit) to do business in this jurisdiction. Therefore, this rulemaking qualifies for an exemption from the Small Business Economic Impact Statement under [RCW 34.05.310\(4\)\(g\)\(ii\)](#).

Under [RCW 34.05.310\(4\)\(e\)](#), rulemaking is exempt from the Small Business Economic Impact Statement requirement ([Chapter 19.85 RCW](#)), if the content of the rules are explicitly and specifically dictated by statute. Here, the proposed captive insurance rules (Chapter 284-201 WAC) are drafted in direct alignment with Chapter 48.201 RCW, and the rules are explicitly and specifically dictated by statute.

Under [RCW 34.05.310\(4\)\(c\)](#), rulemaking is exempt from the Small Business Economic Impact Statement requirement ([Chapter 19.85 RCW](#)), if the rules adopt or incorporate by reference without material change Washington state statutes, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule. This rulemaking is incorporating [Chapter 48.201 RCW](#) by referring to the statutory requirements for captive insurers in the proposed regulations (Chapter 284-201 WAC) without material changes, and regulates the same subject matter of captive insurance. Therefore, this rulemaking qualifies for a Small Business Economic Impact Statement exemption under [RCW 34.05.310\(4\)\(c\)](#). i

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency’s analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:

TTY:
Email:
Other:

Date: October 1, 2021

Name: Mike Kreidler

Title: Insurance Commissioner

Signature:

A handwritten signature in black ink that reads "Mike Kreidler". The signature is written in a cursive, slightly slanted style.

**Chapter 284-201 WAC
CAPTIVE INSURANCE**

NEW SECTION

WAC 284-201-110 Purpose. These regulations implement captive insurance (chapter 48.201 RCW) including, but not limited to, the processes and procedures for regulation and taxation of captive insurers by the office of the insurance commissioner (commissioner).

NEW SECTION

WAC 284-201-120 Applicability and scope. This chapter applies to eligible captive insurers as defined in chapter 48.201 RCW, except for risk retention groups that must register pursuant to chapter 48.92 RCW and captive insurers that solely place insurance through a surplus line broker pursuant to chapter 48.15 RCW.

NEW SECTION

WAC 284-201-130 Definitions. The definitions in RCW 48.201.020, apply in this regulation unless otherwise specified or unless the context clearly requires otherwise. The following definitions apply to this chapter and to chapter 48.201 RCW:

(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 chapter 48.201 RCW.

(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 48.201 RCW.

(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.

NEW SECTION

WAC 284-201-140 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.

NEW SECTION

WAC 284-201-150 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.

NEW SECTION

WAC 284-201-210 Registration. (1) Eligible captive insurers must register with the commissioner within 120 days of May 12, 2021, or if later, within 120 days after first issuing a policy that covers Washington risks.

(2) The registration period for eligible 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 \$2,500.00.

(5) The commissioner will approve an eligible captive insurer's registration, if the commissioner determines that it meets the eligibility requirements in chapter 48.201 RCW, and this section.

NEW SECTION

WAC 284-201-220 Renewal. (1) To maintain registration, a registered eligible captive insurer must renew certificates of registration annually by June 30th. If an eligible 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 RCW 48.201.020 and 48.201.030, and pay a renewal fee.

(3) For renewal, the commissioner will charge an annual renewal fee not to exceed \$2,500.00. 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 April 1st. Otherwise, OIC may not approve the eligible captive insurer's renewal before the June 30th expiration date and the eligible captive insurer's registration will expire. If an eligible captive insurer's registration expires, it will then need to complete and file a new application and pay the fee for a new registration.

NEW SECTION

WAC 284-201-230 Insurance limitations. (1) For Washington risks, a registered eligible captive insurer may provide only property and casualty insurance, and may provide such insurance to only a captive owner, to the captive owner's other affiliates, or both, unless it places the insurance through a surplus lines broker pursuant to chapter 48.15 RCW.

(a) A registered eligible captive insurer may not provide stop loss insurance as defined in RCW 48.11.030 or 48.21.015.

(b) A registered eligible captive insurer may not provide workers' compensation coverage that directly covers the worker. A registered eligible captive insurer 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 subsection (1) of this section.

NEW SECTION

WAC 284-201-240 Taxes. (1) A registered eligible captive insurer 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. A registered eligible captive insurer that fails to remit the tax 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.

(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) 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 by April

1st of each year, in a method as prescribed and furnished by the commissioner.

(5) Prior period taxes. Eligible 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, in a method as prescribed and furnished by the commissioner. Taxes due for premiums procured prior to January 1, 2021, are not subject to the penalties or interest provided in RCW 48.14.060.

(6) Eligible captive insurers must pay premium tax for Washington risks covered by all types of insurance, including premiums collected for insurance that is not property or casualty insurance, if the eligible captive insurer provided such coverage for any period after January 1, 2011.

NEW SECTION

WAC 284-201-250 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) Captive insurers that have insured risks in Washington but are not eligible to register with the commissioner, continue to be subject to RCW 48.15.020, 48.15.023, 48.14.020, 48.14.060, and 48.14.095.

(c) 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.

(d) 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 RCW 48.201.020 and 48.201.030, and this chapter.

NEW SECTION

WAC 284-201-300 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, chapters 48.04 and 34.05 RCW.