

Rules coordinator (policy)

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Rule number/topic	Draft ch. 284-201 WAC/Captive Insurance

Comment(s) or question(s)

1. Self-references: WAC 284-201-110 refers to “[t]hese regulations”; WAC 284-201-120, WAC 284-201-150, and WAC 284-201-250(2)(a) refer to “this chapter”; WAC 285-201-130 says “this regulation”; and WAC 284-201-140 says “this rule.” All four terms are intended to capture the same thing—namely, the substance of ch. 284-201. Using a single term will promote consistency and avoid potential confusion.

2. Purpose: WAC 284-201-110 says that the regulations in ch. 284-201 “implement captive insurance (chapter 48.201 RCW).” It would be more accurate to say that the regulations “implement chapter 48.201 RCW, concerning captive insurance.”

WAC 284-201-110 also refers to “the processes and procedures for regulation and taxation of captive insurers.” Washington is not a captive domicile state. Rather, Washington relies on the jurisdictions where captives are domiciled to oversee and regulate them. “Regulation and taxation” should, therefore, read “registration and taxation.” See RCW 48.201.010 (“The legislature does not intend . . . to make Washington a captive domicile state. Rather, the legislature is establishing a framework for registration by captive insurers that insure Washington-based entities and are licensed by the jurisdictions in which they are domiciled.”).

3. Definitions: The first two sentences in WAC 284-201-130 contradict each other. If the first sentence applies, everything that comes after it is unnecessary. If, on the other hand, it is desirable to have definitions in the rule, the first sentence should be eliminated.

Irrespective of whether the first sentence remains, the...

... definitions in WAC 284-201-130 should be consistent with those in the statute and not leave the reader at sea. For example, the definition of “captive insurer” in subsection (1) refers to “a ‘captive owner,’” but “captive owner” is not defined. WAC 284-201-130 should be amended to add this: “‘Captive owner’ has the same meaning as set forth in RCW 48.201.020.” Also, the word “it” in WAC 284-201-130(1) should be replaced with “that.”

The definition of “captive insurer” in WAC 284-201-130 also refers to “affiliates,” but the latter term is not defined. WAC 284-201-130 should be amended to add this: “‘Affiliate’ has the same meaning as set forth in RCW 48.201.020.”

In many places (WAC 284-201-210(1), WAC 284-201-230(1), WAC 284-201-240(1), WAC 284-201-240(4), WAC 284-201-240(5), WAC 284-201-240(6)), the draft regulations refer to “Washington risks,” but there is no definition of “Washington risks.” WAC 284-201-130 should be amended to add this: “‘Washington risks’ has the same meaning as set forth in RCW 48.201.040.”

The definition of “principal place of business” in WAC 284-201-130(4) starts out by referring to “a business entity,” but then it uses terminology appropriate to just a single type of business entity: a corporation. The first sentence should be revised to read as follows: “‘Principal place of business’ refers to the place where a business entity’s managers direct, control, and coordinate the entity’s activities—i.e., its ‘nerve center,’ which will typically be found at its headquarters.” In the next sentence, “the parent corporation” should read “a parent corporation.”

4....

... Severability: The language of WAC 284-201-150 is a little garbled. It should read as follows: "If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons and circumstances is not affected." See Section 13 of Second Substitute Senate Bill 5315.

5. Duration of registration: WAC 284-201-210(2) should be revised by adding, at the end, "of the following year." Otherwise, a registration approved on June 28 will be valid for just two days. There should not be any disincentive for an early application or penalty for a prompt approval.

The words ", and this section" at the end of WAC 284-201-210(5) should be deleted. There are no eligibility requirements in this section. (Compare the language in WAC 284-201-220(2).) A reader should not be distracted from examining ch. 48.201 RCW to learn what the eligibility requirements are.

6. Renewal: Using "its" consistently in WAC 284-201-220(1) will promote clarity: "To maintain its registration with the commissioner, a registered eligible captive insurer must renew its certificate of registration annually by June 30th. If an eligible captive insurer fails to properly renew its certificate"

In WAC 284-201-220(4), as in WAC 284-201-210(2), the phrase "of the following year" should be added at the end.

7. Limitations: The limitations in WAC 284-201-230(1) apply only in this state. These limitations are meant to avoid conflict with other provisions of Washington law; they do not (and may not) override federal law. Subsection...

... (1)(a) should be clarified by adding, at the end, “in Washington.” In subsection (1)(b), the current text should be replaced with the following: “A registered eligible captive insurer may not provide direct coverage to workers for Washington risks that are governed by Title 51 RCW, but it may indemnify a self-insured employer for the employer’s liability to such workers. A registered eligible insurer may provide direct coverage to workers for risks governed by federal law if the registered eligible insurer is authorized by federal law to provide such coverage.”

8. Taxes: In WAC 284-201-240(4) and (5), “form” should replace “method.”

The first sentence of WAC 284-201-240(5) does not provide an end date and does not address captives consistently. It should be rewritten as follows: “Eligible captive insurers that insured Washington risk for any period between January 1, 2011, and January 1, 2021, must remit a two percent tax on premiums for insurance directly procured by and provided to their parents or other affiliates for Washington risks, if not previously remitted to the commissioner.”

9. Administration: WAC 284-201-250(2)(d) should be streamlined and clarified as follows: “The commissioner may deny the registration or renewal of registration of a captive insurer that fails to meet the requirements in RCW 48.201.020 and 48.201.030 and this chapter.”

10. Adjudicative proceedings. WAC 284-201-300(2) should be clarified by restating the concluding words as follows: “. . . are contained in WAC 284-02-270 and in chapters 48.04 and 34.05 RCW.”

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