

WSR 24-19-094
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2024-04—Filed September 17, 2024, 1:57 p.m., effective October 18, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of the insurance commissioner (commissioner) is adopting rules to add a new section to chapter 284-18 WAC. The new rules will fully implement SB 6027 (chapter 42, Laws of 2024) by clarifying: (1) When a holding company system may be exempt from filing the annual group capital calculation or allowed to make a limited filing; (2) the circumstances under which the commissioner can require a previously exempted holding company system to file an annual group capital calculation; and (3) which non-U.S. jurisdictions are considered to accept the group capital calculation.

Citation of Rules Affected by this Order: New WAC 284-18-447.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a), 48.31B.025 (2)(h), (4), (10), and (13)(c), and 48.31B.040.

Adopted under notice filed as WSR 24-16-117 on August 5, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 17, 2024.

Mike Kreidler
Insurance Commissioner

OTS-5429.3

NEW SECTION

WAC 284-18-447 Group capital calculation. (1) Group capital calculation. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(a) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;

(b) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

(d) The holding company system attests that there are no material changes in the transactions between insurers and noninsurers in the group that have occurred since the last filing of the annual group capital; and

(e) The noninsurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if: The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and all of the following additional criteria are met:

(a) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(b) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

(c) The holding company system attests that there are no material changes in transactions between insurers and noninsurers in the group that have occurred since the last filing of the report to the lead state commissioner and the noninsurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subsection (1) or (2) of this regulation, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

(a) Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in RCW 48.05.430 through 48.05.455, or 48.43.300 through 48.43.325 or a similar standard for a non-U.S. insurer; or

(b) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in WAC 284-16-300 through 284-16-320; or

(c) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if it satisfies the following criteria:

(a) With respect to RCW 48.31B.025 (13) (a) (iv):

(i) The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(ii) Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subsection (4)(a)(i) of this regulation.

(b) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(5) A list of non-U.S. jurisdictions that recognize and accept the group capital calculation will be published through the NAIC Committee Process:

(a) A list of jurisdictions that recognize and accept the group capital calculation pursuant to RCW 48.31B.025 (13)(a)(iv), is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under RCW 48.31B.025 (13)(a)(iv). To assist with a determination under RCW 48.31B.025 (13)(b), the list will also identify whether a jurisdiction that is exempted under either RCW 48.31B.025 (13)(a)(iii) or (iv) requires a group capital filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.

(b) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subsection (4)(a)(ii) of this regulation will serve as support for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.

(c) If the lead state commissioner makes a determination pursuant to RCW 48.31B.025 (13)(a)(iv) that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(d) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that recognizes and accepts the group capital calculation.