



Mike Kreidler- Insurance commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2021-15**

**CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS
SUMMARY; RULE DEVELOPMENT PROCESS; AND
IMPLEMENTATION PLAN**

Relating to the adoption of

FAIR (fair access to insurance requirements) plan committee members

December 3, 2021

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325 (6) requires the Office of Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the Commissioner's reasons for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences;
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

Two associations involved in the plan administration and currently named in the rules have merged and operate under a new name. The OIC needs to update the references to those associations and make technical changes that should make the rules clearer and easier to follow.

Section 3: Rule Development Process

The OIC filed a preproposal statement of inquiry (CR-101) to begin formal rulemaking on July 6, 2021. The CR-101 comment period was open until August 15, 2021.

The OIC released a stakeholder draft on July 13, 2021, and held a stakeholder meeting on August 5, 2021.

On October 4, 2021, the OIC filed a CR-102, and the public hearing was scheduled for October 28, 2021. However, based on comments received for the CR-102, the OIC released another stakeholder draft on October 11, 2021, and filed a supplemental CR-102 on October 19, 2021. The public hearing was re-scheduled for December 2, 2021.

The OIC held the public hearing on December 2, 2021. Comments on the CR-102 were also due on December 2, 2021.

Section 4: Differences Between Proposed and Final Rule

There are no differences between the proposed and adopted versions.

Section 5: Responsiveness Summary

The OIC received comments regarding this rule. The following information contains a summary of the comments, the OIC’s response to the comments, and information about whether the OIC incorporated changes based on the comments.

The OIC received comments from:

- American Property Casualty Insurance Association
- Surplus Line Association of Washington
- Washington FAIR Plan

Stakeholder Comments to the CR-101, stakeholder drafts, CR-102 and supplemental CR-102

<p>We suggest revising 284-19-140 (2)(a) to read: “The American Property Casualty Insurance Association; or its successor; shall designate or elect three representatives as members of the committee; and ...”.</p> <p>The draft language is ambiguous and would create difficulties in understanding how to implement it at the FAIR Plan as follows:</p> <ol style="list-style-type: none"> 1. The draft language would require changes to the processes in place at the FAIR Plan under the current WAC language as there are multiple industry trade associations that could be interpreted to “represent” P&C insurers. This draft language would require selection of the trade association(s) that will be represented on the governing committee but gives no instruction on how that would be done or on how the three representatives would be allocated between associations. 2. Many P&C insurers belong to more than one industry trade association and could be “doublecounted” in some way. 3. There is no guidance on who has the authority to interpret and implement the section as worded. 	<p>The Commissioner appreciates the comment but has decided to use a general reference instead of listing the association name in the rules. Doing so will help avoid future rulemaking and related expenses that would be needed in the event of any future name changes. However, the language was revised further to help clarify that the allocation of these three committee members will be made in accordance with applicable FAIR Plan operating procedures and directives.</p>
<p>We support the following proposed language for WAC 284-19-140 (2) (a): “(a) Property insurers represented by any trade association(s) shall designate or elect three members. Any such trade association not already represented on the committee may request representation by contacting the FAIR plan manager. The allocation of these three committee members will be made in accordance with applicable committee operating procedures and directives;” This update addresses the concerns raised by us by providing clear direction on implementation. We remain neutral on all other proposed changes</p>	<p>The Commissioner appreciates the comment and support of the revised language.</p>
<p>We would like to ensure that these changes will not affect consumers’ ability to obtain surplus line coverage.</p>	<p>The proposed changes will not affect consumers’ ability to obtain surplus line coverage.</p>
<p>We do not have any involvement with the FAIR Plan, however we will offer assistance and/or suggestions when we are able to review any proposed rule. As always we look forward to working with you.</p>	<p>The Commissioner appreciates the comment.</p>

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

The OIC intends to implement the rule through the Company Supervision Administration Unit, which is part of the Company Supervision Division, and enforce the rule through the Legal Affairs Division. OIC's Company Supervision administrative staff will continue to work with the administrators for the Washington FAIR Plan, carriers, and other interested parties with the requirements of the rule.

B. How the Agency intends to inform and educate affected persons about the rule.

After the agency files the permanent rule and adopts it with the Office of the Code Reviser:

- Policy and Legislative Affairs Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC's website.
- OIC staff will address questions as follows:

Type of Inquiry	Division
Consumer assistance	None
Rule content	Company Supervision
Authority for rules	Policy and Legislative Affairs
Enforcement of rule	Legal Affairs
Market Compliance	Company Supervision

C. How the Agency intends to promote and assist voluntary compliance for this rule.

- Policy and Legislative Affairs Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC's website.
- Company Supervision will serve as the contact point for any revisions or questions regarding the Washington FAIR Plan governing committee.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

The OIC's Company Supervision administrative staff will work with the administrators for the Washington FAIR Plan to help the rule achieves its purpose. Company Supervision will serve as the contact point for any revisions or requests for commissioner approval regarding the Washington FAIR Plan governing committee.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: Shari Maier
Presiding Official, Hearing on Rule-making**

Matter No. R 2021-15

Topic of Rule-making: FAIR (fair access to insurance requirements) plan committee members

This memorandum summarizes the hearing on the above-named rule making, held on December 2, 2021, in Olympia, Washington via a virtual meeting over which I presided in your stead.

The hearing began at 3:04 p.m.

The following agency personnel were also present: Ron Pastuch, Amy Teshera, Josh Martinsen, and Matthew Kamenz.

In attendance:

Amanda Stohl
Jon Hedegard
Sharon Moller

Contents of the presentations made at hearing: Sharon Moller, representing the FAIR Plan, thanked the OIC for making revisions and refinements in response to their comments. She stated that, as per their written comments, the FAIR Plan supports the changes made as per their recommendations and remains neutral on all other changes.

The hearing was adjourned.

SIGNED this 3rd day of December 2021

*s/
Shari Maier, Presiding Official*