



# PROPOSED RULE MAKING

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

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STATE OF WASHINGTON  
FILED

DATE: August 30, 2021

TIME: 5:09 PM

**WSR 21-18-092**

**Agency:** Office of the Insurance Commissioner

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR**

**Preproposal Statement of Inquiry was filed as WSR 21-14-063 ; 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) Administrative Hearings - Optimizing discovery and authorizing electronic service in all hearings.

**Insurance Commissioner Matter R 2021-09**

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
October 19, 2021	10:00 AM	<b>Virtual Format – Zoom Meeting:</b> <b>Detailed information for attending the Zoom Meeting Posted on the OIC Website here:</b> <a href="https://www.insurance.wa.gov/administrative-hearings-r-2021-09">https://www.insurance.wa.gov/administrative-hearings-r-2021-09</a>	Due to the COVID-19 public health emergency, this hearing will be held via Zoom. Comments can be emailed to <a href="mailto:RulesCoordinator@OIC.WA.GOV">RulesCoordinator@OIC.WA.GOV</a>

**Date of intended adoption:** November 5, 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](mailto:rulescoordinator@oic.wa.gov)

Fax: 360-586-3109

Other:

By (date) October 18, 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](mailto:MelanieW@oic.wa.gov)

Other:

By (date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purposes of this proposal include improving administrative hearings, discovery, and service processes. WAC 284-02-070 incorporates by reference many of the civil discovery rules for administrative hearings. Currently this creates several problems, where parties propound discovery without justifying the same with the presiding officer. This results in the Office of the Insurance Commissioner (OIC) receiving overly broad discovery requests that do not provide any commensurate benefit to the administrative hearing process and can delay proceedings or obstruct agency action. The OIC is also currently required to reach electronic service agreements on a case-by-case basis with all opposing parties. The anticipated effects of this rulemaking include optimizing discovery, such as limiting depositions, interrogatories, requests for production, and requests for admissions, and authorizing electronic service in all OIC hearings.

**Reasons supporting proposal:** Current regulations in WAC 284-02-070 incorporate by reference many of the civil discovery rules, for OIC administrative hearings. Incorporating by default the civil discovery rules causes several problems, where opposing parties engage in discovery, without requiring prior approval of the presiding officer. This results in the OIC processing excessively broad discovery requests, which do not assist the administrative hearing process and can hinder proceedings or delay agency action. The OIC is also required to reach electronic service agreements on a case-by-case basis with all opposing parties.

The reasons supporting this rulemaking proposal are to optimize discovery, such as limiting depositions, interrogatories, requests for production, and requests for admissions, and allow electronic service in all OIC hearings, in the interest of avoiding delays and achieving administrative efficiencies.

**Statutory authority for adoption:** RCW 34.05.220(1)(a), RCW 34.05.250, RCW 34.05.446(2), and RCW 48.02.060(3)(a).

**Statute being implemented:**

**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:	Charles Malone	PO Box 40260, Olympia, WA 98504-0260	(360) 725-7000
Enforcement:	Charles Malone	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: No additional costs are required to comply with the proposed regulations.

**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:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

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 -.

Explanation of exemptions, if necessary: -

**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:** August 30, 2021

**Name:** Mike Kreidler

**Title:** Insurance Commissioner

**Signature:**



**WAC 284-02-070 Hearings.** (1) (a) Hearings of the OIC are conducted according to chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act. Two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings. Adjudicative proceedings include both contested case hearings and other types of adjudicative proceedings which are required by law. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) A hearing can also be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Demands for hearings must be in writing and delivered to the Tumwater office of the OIC by mail, hand delivery, facsimile, or email. Unless a person aggrieved by an order of the commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived. A hearing is considered demanded when the demand for hearing is received by the commissioner.

(c) Accommodation will be made for persons needing assistance due to difficulty with language or disability.

(2) **Procedural and substantive requirements for adjudicative proceedings including contested cases.**

(a) Provisions applicable to adjudicative proceedings are contained in chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act, and chapter 10.08 WAC.

(b) Substantive provisions specifically relating to action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. The grounds for disciplinary action against insurance producers, title insurance agents and adjusters are contained in RCW 48.17.530 and 48.17.540(1); grounds for disciplinary action against surplus line brokers are contained in RCW 48.15.140; grounds for similar action against insurance companies are contained in RCW 48.05.130 and 48.05.140; grounds for actions against fraternal benefit societies are found in RCW 48.36A.310; grounds for actions against life settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; grounds for action against health maintenance organizations are contained in RCW 48.46.130; grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses; grounds for action against unauthorized individuals or entities are found generally throughout Title 48 RCW.

(c) The commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the

commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(d) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a chief presiding officer. The commissioner may appoint a chief presiding officer who will have primary responsibility for the conduct of hearings, the procedural matters preliminary thereto, and the preservation of hearing records. The position of chief presiding officer does not report to any of the major divisions of the OIC. The commissioner may also use the services of an administrative law judge in accordance with chapter 34.12 RCW and chapter 34.05 RCW, the Administrative Procedure Act. The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464) and entry of a final order.

(ii) The hearing will be recorded by any method chosen by the chief presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the chief presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court after confirmation of payment of all costs for the transcription by the appellant.

(iii) The commissioner or the chief presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry under oath.

(iv) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the chief presiding officer.

(e) Discovery is only available (~~(in adjudicative proceedings pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).~~

~~(i) Civil Rules 26 through 37 are adopted and incorporated by reference in this section, with the exception of CR 26 (j) and (3) and CR 35, which are not adopted for purposes of this section.)~~ as herein set forth:

(i) Available methods of discovery include: Interrogatories pursuant to Civil Rule 33, requests for production pursuant to Civil Rule 34, and requests for admission pursuant to Civil Rule 36. Depositions are excluded as an acceptable method of discovery, except as provided in (e) (iv) of this subsection.

(ii) The chief presiding officer or administrative law judge is authorized to make any order that a court could make under CR 37 (a) through (e), including an order awarding expenses of the motion to compel discovery or dismissal of the action.

(iii) This rule does not limit the chief presiding officer's or administrative law judge's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).

(iv) Discovery is limited in frequency to ten requests per discovery form, unless further discovery is permitted by the presiding officer or the administrative law judge in accordance with RCW 34.05.446(3). Discovery, in addition to that specifically authorized in these rules, should not be granted unless necessary to the resolution of the case and not available by the means specified in this rule. The burden for establishing such necessity and unavailability is on the party requesting additional discovery.

(f) **Limitations on discovery.** In addition to limitations on discovery set forth in any other applicable law, regulation, or rule, discovery does not include:

(i) Information or documents from the personnel file of any commissioner employee;

(ii) Information or documents relating to any investigation conducted by the commissioner against unrelated parties;

(iii) Information or documents relating to any action brought by the commissioner against unrelated parties;

(iv) Information or documents relating to any examination conducted by the commissioner of unrelated parties;

(v) Information or documents relating to any license applications or determinations made by the commissioner of unrelated parties; or

(vi) Depositions of the insurance commissioner or deputy insurance commissioner.

(g) Adjudicative proceedings are determined on the merits of the individual case and are not binding precedence for unrelated cases.

(h) Service by electronic transmission is authorized for all OIC hearings in accordance with RCW 34.05.010(19). All parties to a proceeding must provide a valid email address in that party's demand for a hearing, and if not filing a demand for hearing, by the time of the prehearing conference. The party must monitor this email address throughout the hearing process for the purposes of accepting and providing service of process. Service of pleadings and other documents is deemed complete upon transmission to the email address provided by a party under this section.

(i) The burden of proof in OIC administrative hearings is by a preponderance of the evidence.

**(3) Rule-making hearings.** Rule-making hearings are conducted based on requirements found in chapter 34.05 RCW, the Administrative Procedure Act and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, telefacsimile, or email but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site [www.insurance.wa.gov](http://www.insurance.wa.gov).