



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: October 19, 2021
TIME: 5:52 PM

WSR 21-21-102

Agency: Office of the Insurance Commissioner

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR** 21-16-097 ; 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) Out of State Title Records Storage.

Insurance Commissioner Matter R 2021-20

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 29, 2021	10.00 AM	Detailed information for attending the Zoom meeting posted on the OIC website here: https://www.insurance.wa.gov/actuarial-designations-r-202111	Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform

Date of intended adoption: 12/1/2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Tabba Alam
 Address: PO Box 40260, Olympia, WA 98504-0260
 Email: rulescoordinator@oic.wa.gov
 Fax: 360-586-3109
 Other:
 By (date) 11/29/2021

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) 11/24/2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The current state law on out of state title records storage requires title insurance companies and agents, who are conducting business of an escrow agent, to keep adequate records of all transactions, and these records must be maintained in Washington, unless otherwise approved by the Commissioner (RCW 48.29.190(1)(a)).

Rulemaking is required to outline the process for title insurance companies and agents to request approval under RCW 48.29.190(1)(a) and detail the requirements for title insurance companies and agents to store title records outside of Washington

Reasons supporting proposal: Rulemaking is required to outline the process for title insurance companies and agents to request approval under RCW 48.29.190(1)(a) and detail the requirements for title insurance companies and agents to store title records outside of Washington.

Statutory authority for adoption: RCW 48.02.060(3)(a), RCW 48.29.005, and RCW 48.29.190(1)(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:	Tabba Alam	PO Box 40260, Olympia, WA 98504-0260	360-725-7170
Implementation:	Molly Nollette	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:

Legal obligations

The Washington Administrative Procedure Act (APA)¹ requires that “significant legislative rules” be evaluated to determine if the probable benefits of a proposed rulemaking exceed its probable costs. Taking into account both quantitative and qualitative information and analysis². A draft of this determination must be available at the time the filing for the rule’s preproposal or CR-102. The final version of this document must be completed prior to final rule adoption and included in the rulemaking file.

Determination of exemption

The Office of the Insurance commissioner has determined that under RCW 34.05.328(5)(b)(iv), this rulemaking will only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect and is exempt from RCW 34.05.328(1)(c).

¹ Chapter 34.05 RCW

² RCW 34.05.328(1)(c)

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 type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input 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 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 .

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.

There are no costs associated with the proposed rule to small business. The OIC has applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3).

Below are calculations for minor cost thresholds across stakeholders that classify as a small business based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the Title insurance companies.

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	Average number of employees / business	Minor Cost Estimate – 0.3% of Avg Annual Gross Business Income
524127	\$ 100.00	Direct Title Insurance Carriers	44	\$21,078.90

Source: Washington State Auditor Minor Cost Threshold Calculator July 2019.xlsx.

Further, OIC has determined that implementation of the proposed rule will not result in significant administrative, intrinsic or actual costs to small Title insurance offices as they at present have pre-existing record storage requirements, this rule essentially allows them to store their records in a cloud storage out of state and outlines the process to do so.

In contrast, OIC had determined that the proposed rule will offer increased benefit to the Title insurance carriers as this rule gives them the potential to securely store records in the cloud out of the State.

For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

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 19, 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.

WAC 284-29-160 Recordkeeping. (1) A title insurance agent must keep and maintain complete and accurate records of the names and business addresses of those persons who have had a financial interest in the title insurance agent who are reasonably known or reasonably believed by the title insurance agent to be producers.

(2) A title insurance agent must keep and maintain records of its title orders sufficient to identify the source of the title orders.

(3) The records required by WAC 284-29-100 through 284-29-160 must be kept by the title insurance agent for a period of three years after the end of the year being reported upon.

(4) All records of a title insurance agent kept pursuant to WAC 284-29-100 through 284-29-160 must be available to the commissioner or the commissioner's representative during regular business hours.

(5) Title insurance companies and agents shall store these records in this state, unless otherwise approved by the commissioner in accordance with RCW 48.29.190.

(a) Title insurance companies and agents must request approval from the commissioner prior to storing their records outside of the state. Requests shall be emailed to prodcomp@oic.wa.gov.

(b) The commissioner will review and consider approval of the out-of-state title records storage if the records are readily accessible, securely stored, and maintained by the required statutory terms.

(c) If the title insurance company or agent plans to change the approved location of the out-of-state record storage, notification to the commissioner is required and reapproval must be granted prior to the change.

(d) Out-of-state record storage must comply with the security and data breach reporting requirements in WAC 284-04-625.