



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes **No** **If Yes, explain:**

Purpose: 1) Identify the information that title insurers and title insurance agents must submit to the statistical reporting agent designated by the Commissioner and the process for submitting the information.

2) Establish how the costs and expenses of the statistical reporting agent and any examination of the statistical reporting agent will be apportioned by and among the title insurers and title insurance agents.

3) Amend the existing rules regarding information required for the filing of rates for title insurance under RCW 48.29.147.

4) Amend the existing rules regarding the standards that title insurance rate filings must satisfy under RCW 48.29.147, and

5) Amend the existing rule establishing a date by which title insurers must file every manual of rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of these filings, under RCW 48.29.143 and RCW 48.29.147.

Insurance Commissioner Matter No. R 2013-15

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 284-29A-010, WAC 284-29A-020, WAC 284-29A-30, WAC 284-29A-050, WAC 284-29A-080, and WAC 284-29A-110

Suspended:

Statutory authority for adoption: RCW 48.02.060, RCW 48.29.005, RCW 48.29.017, and RCW 48.29.140.

Other authority: RCW 48.03.060(6), RCW 48.29.017, RCW 48.29.140, and RCW 48.29.147.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-07-105 on March 19, 2014.

Describe any changes other than editing from proposed to adopted version:

The phrase: "except where an allocation process is not needed and the alternate calculation is fully explained" was added at the end of WAC 284-29A-080(1)(b) and WAC 284-29A-110(3).

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted: May 2, 2014

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 02, 2014

TIME: 12:09 PM

WSR 14-10-056

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	3	Amended	6	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	3	Amended	6	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	3	Amended	6	Repealed	_____

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-010 Finding and purpose. Title insurance protects against financial loss from defects in insured titles of real property. Losses from title insurance policies are not the primary cost to title insurers and title insurance agents. The primary costs incurred by title insurers and title insurance agents are maintenance of tract indexes and research to find title defects before the policies are issued. Title insurance is regulated differently than property and casualty insurance because loss ratios for title insurance are relatively low and expense ratios are fairly high. To implement and administer chapter 48.29 RCW, the commissioner needs detailed information about the costs underlying title insurance policies to regulate rates and ensure consumers are offered fair and equitable premiums. The purpose of this chapter is to adopt rules that establish:

(1) Standards for determining whether a premium rate complies with RCW 48.29.143;

(2) Standards and procedures that apply to RCW 48.29.147;

(3) The date after which title insurers must use rates that have been filed and approved under RCW 48.29.147; ((and))

(4) Information and data that must be reported to the statistical reporting agent designated by the commissioner;

(5) The allocation of the costs and expenses of the statistical reporting agent among the title insurers and title insurance agents;

(6) The apportionment of the expense of the examination of the statistical reporting agent among the title insurers and title insurance agents;

(7) The duties and obligations of the statistical reporting agent;

(8) The information and manner in which the statistical reporting agent must file the information received from the title insurers and title insurance agents with the commissioner, title insurers, and title insurance agents; and

(9) Requirements for submitting all rate filings through SERFF.

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-020 Definitions. The definitions in this section apply to this chapter:

"Commitment" means the same as in RCW 48.29.010 (3)(c).

"Complete filing" means a package of information containing rates, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Date filed" means the date a complete filing has been received and accepted by the commissioner.

"Filer" means a person, organization or other entity that files title insurance rates with the commissioner for a title insurer.

"NAIC" means the National Association of Insurance Commissioners.

"Nonresidential policies" means title insurance policies on properties that are not "residential policies" as defined below.

"Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

- (a) Requests clarification, documentation or other information;
- (b) Explains errors or omissions in the filing; or
- (c) Disapproves the filing under RCW 48.29.147.

"Policy" means a title policy as defined in RCW 48.29.010 (3)(a), and includes endorsements.

"Producer" means:

(a) A "producer of title insurance" as defined in WAC 284-29-205(8); and

(b) An "associate of producers" as defined in RCW 48.29.010 (3) (f).

"Rate" or "rates" means all classification manuals, rate and rule manuals, rating plans, rating schedules, minimum rates, class rates, and rating rules that title insurers must file under RCW 48.29.147.

"Residential policies" means title insurance policies that insure the title to real property having a house, individual condominium unit, mobile home permanently affixed to real estate, or other dwelling unit intended principally for the occupancy of from one to four families, but does not include multifamily structures intended for the use of five plus families, undeveloped lots, or real estate intended principally for business, commercial, industrial, religious, educational, or agricultural purposes even if some portion of the real estate is used for residential purposes.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

"Title Company Statistical Report" means the data filing forms and instructions published on the commissioner's web site at www.insurance.wa.gov and incorporated into this chapter by reference. The data form and instructions are based upon the Title Agent Statistical Data Plan adopted by the NAIC.

"Title insurance agent" or "agent" has the same meaning as in RCW 48.17.010(15).

"Title insurance" has the same meaning as in RCW 48.11.100.

"Title insurer" means a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW.

AMENDATORY SECTION (Amending WSR 12-15-049, filed 7/16/12, effective 8/16/12)

WAC 284-29A-030 Transition to prior approval system. (1) On and after ((January 1, 2014)) July 1, 2016, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by ((September 1, 2013)) March 1, 2016, for rates to be effective on ((January 1, 2014)) July 1, 2016. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of ((January 1, 2014)) July 1, 2016.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after ((January 1, 2014)) July 1, 2016.

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-050 Unfairly discriminatory rates. Situations in which the rates are unfairly discriminatory under RCW 48.29.143(1) include, but are not limited to:

~~(1) ((Rating rules that provide for a waiver of the cancellation fee or reduction of the cancellation fee, after a commitment has been issued, to an amount that is less than the expected average cost for the title insurer and its agents to issue a commitment in the defined geographical area covered by the rating rules;~~

~~(2))~~ Negotiation or bidding of price;

~~((3))~~ (2) Rating rules that do not have a definite charge for every bracket of coverage;

~~((4))~~ (3) Discounts not provided to all qualifying risks; ~~((and~~

~~(5))~~ (4) Rating plans in which policies:

(a) Generating higher premiums subsidize smaller policies; or

(b) From one geographical area subsidize those from another geographical area.

~~((6))~~ (5) A title insurer's application of more than one rate schedule to similarly situated risks in a county or other defined geographical area. For example, it is unfairly discriminatory for a title insurer to use different rate schedules for business produced by different title insurance agents in a specific rating territory.

NEW SECTION

WAC 284-29A-055 Cancellation fees. (1) In many instances title insurers and title insurance agents issue title insurance commitments prior to issuing title insurance policies. Sometimes the transaction for which the title insurance commitment was issued does not close, the title insurance policy is issued by another title insurer, or the title insurance commitment is canceled. However, since no policy is issued, no title insurance premium is collected by the title insurer or title insurance agent. Therefore, any cancellation fee that title insurers and title insurance agents may collect must not be considered to be premium and thus must not be included in a title insurance rate filing.

(2) However, this shall not be construed in any manner to prohibit title insurers and title insurance agents from charging and collecting a cancellation fee or that title insurers and title insurance agents are required to provide free title commitments.

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-080 Expense component of rates. (1) In support of the expense component of the rates, the title insurer must:

(a) Include estimates of expected expenses to issue title insurance policies and commitments;

(b) Exclude the expected expenses related to escrow and other activities not directly related to title insurance using an allocation based upon the income received from title insurance premiums and escrow income, except where an allocation process is not needed and the alternate calculation is fully explained;

(c) Exclude the expected expenses described in WAC 284-29A-070(2); and

(d) Show how those estimates were calculated and demonstrate how those estimates are connected to the proposed rates.

(2) The expense categories that must be considered when making rates include:

(a) Employees' (~~salaries and wages~~) compensation;

(b) (~~Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners~~) Payroll taxes;

(c) Employee benefits;

(d) Contract labor;

(e) Rent, utilities, and repair;

~~((e) Insurance;~~

~~(f) Legal expense;~~

~~(g))~~ (f) Title plant expenses and maintenance;

(g) Abstract and search expenses;

(h) Computer and software;

(i) Business insurance;

(j) Business legal;

(k) Accounting;

(l) Licenses, taxes, and fees;

~~((h) Title plant expense and maintenance;~~

~~(i) Office supplies;~~

~~(j) Depreciation;~~

~~(k) Automobile expense;~~

~~(l) Communication expense;~~

~~(m) Education expense;~~

~~(n) Bad debts;~~

~~(o) Interest expense;~~

~~(p) Employee))~~ (m) Marketing and sales;

(n) Travel and lodging;

~~((g))~~ (o) Employee education;

(p) Bank charges;

(q) Charge offs;

(r) Depreciation;

(s) Miscellaneous expenses;

(t) Loss and loss adjustment expense;

~~((r) Accounting and auditing expense;~~

~~(s) Public relations expense; and~~

~~(t))~~ (u) Federal income taxes; and

(v) Other specifically identified expenses.

(3) To support the agent commission component of rates, it is not sufficient to state the commission rate and perform calculations based on that percentage. The title insurer's rate filing must include data that supports the expense component that applies to its title insurance agents.

(4) The supporting information required under this section may (~~aggregate~~) include the data from:

(a) Agent reports received by the title insurer in one or more years under ((the provisions of WAC 284-29A-110)) previous regulatory requirements;

- (b) The information received by the title insurer from the statistical reporting agent; and
- (c) Any other relevant information.

AMENDATORY SECTION (Amending WSR 12-15-049, filed 7/16/12, effective 8/16/12)

WAC 284-29A-110 Title insurers and title insurance agents must report data to ((title insurers)) the statistical reporting agent.

(1) Each title insurer and title insurance agent must report premium, policy count, and expense data by county annually to ((each title insurer for which it produces business in the state of Washington by April 1st)) the statistical reporting agent designated by the commissioner for the preceding calendar year by May 31st of each year, except as provided in subsection ((4)) (5) of this section. Every title insurer must file a Title Company Statistical Report with the statistical reporting agent even if the title insurer had no written premium from a direct branch operation during the report year. These data must be reported using the Title Company Statistical Report and following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These forms and instructions((, called the Title Insurance Agent Annual Report,)) are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

(a) The following title order count data:

(i) Number of title orders opened;

(ii) Completed title orders in which a policy was issued; and

(iii) Number of title orders canceled as determined using WAC 284-29-260(10).

(b) Number of noninsurance title products produced:

(i) Number of searches billed to third parties; and

(ii) Number of searches purchased from third parties.

(c)(i) Total settlement, escrow, or closing transactions conducted;

(ii) Number of settlement, escrow, or closing transaction in which a title policy was not issued.

(d) The following premium and policy count data:

((i) Title insurance premiums for all of the agent's business; and

(ii) Title insurance premiums produced for the title insurer to which the report is sent.

(iii) Number of policies issued by all of the title insurers with which the agent does business; and

(iv) Number of policies issued by the title insurer to which the report is sent.

(b)) (i) Total number of title policies issued;

(ii) Number of residential policies issued;

(iii) Number of nonresidential policies issued;

(iv) Number of (d)(ii) and (iii) of this subsection in which the title insurer or title insurance agent conducted the settlement, escrow, or closing of the transaction.

(e) The following income data:

(i) Total written premium of the title insurer;

(ii) Total written premium of the title insurance agent;

(iii) Total written premium of the title insurance agent segregated by each title insurer for which the title insurance agent is appointed;

(iv) Total written premium remitted to the title insurers by the title insurance agent segregated by each title insurer for which the title insurance agent is appointed;

(v) Other written premium of the title insurance agent not included in (e)(iii) of this subsection;

(vi) Settlement, escrow, and closing income;

(vii) Title examination income;

(viii) Abstract and search income;

(ix) Income from canceled orders;

(x) Investment income; and

(xi) All other income.

(f) The following expense data related to issuing title insurance policies and commitments for all of the title insurer's or title insurance agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance:

(i) Employees' (~~salaries and wages~~) compensation;

(ii) (~~Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners~~) Payroll taxes;

(iii) Employee benefits;

(iv) Contract labor;

(v) Rent, utilities, and repair;

~~(v) Insurance;~~

~~(vi) Legal expense;~~

~~(vii) Licenses, taxes, and fees;~~

~~(viii)) (vi) Title plant expense and maintenance;~~

~~((ix) Office supplies;~~

~~(x) Depreciation;~~

~~(xi) Automobile expense;~~

~~(xii) Communication expense;~~

~~(xiii) Education expense;~~

~~(xiv) Bad debts;~~

~~(xv) Interest expense;~~

~~(xvi) Employee)) (vii) Abstract and search expenditures;~~

(viii) Computer and software;

(ix) Business insurance;

(x) Business legal;

(xi) Accounting;

(xii) Licenses, taxes, and fees;

(xiii) Marketing and sales;

(xiv) Travel and lodging;

~~((xvii)) (xv) Employee education;~~

(xvi) Bank charges;

(xvii) Charge offs;

(xviii) Depreciation;

(xix) Miscellaneous expenses;

(xx) Loss (and), loss adjustment expense(

~~(xviii) Accounting and auditing expense;~~

~~(xix) Public relations expense; and~~

~~(xx))~~, loss mitigation, and underwriting expenses;

(xxi) Federal income tax incurred;

(xxii) Other specifically identified expenses(

~~(e))~~; and

(xxiii) Other information required by the commissioner as specified in the Title Company Statistical Report under WAC 284-29A-110.

(g) An explanation that

~~(i) Describes how expenses are allocated between the title operations and escrow or other operations of the title insurance agent; and~~
~~(ii)) demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.~~

~~((d) The estimated average cost to issue a title insurance commitment.))~~

(3) The expense allocation between title insurance related expenses and escrow expenses shall be based upon the income received from title insurance premiums and related income and escrow income, except where an allocation process is not needed and the alternate calculation is fully explained.

(4) If ((a title insurer)) the statistical reporting agent does not receive a report required under this section by ((April 1st)) May 31st of each year, the ((title insurer)) statistical reporting agent must notify the commissioner by ((April)) June 15th. This notice must include the name of the title insurer or title insurance agent that did not send the report on time.

~~((4))~~ (5) For the ((2011)) 2013 calendar year report, each title insurer and title insurance agent must submit the report to the ((title insurer(s))) statistical reporting agent designated by the commissioner on or before ((April 1, 2013)) September 1, 2014.

NEW SECTION

WAC 284-29A-170 Duties of the statistical reporting agent. The duties of the statistical reporting agent designated by the commissioner shall include, but not be limited to, the following:

(1) If any title insurer, title insurance agent, or both, do not file their annual report required by RCW 48.29.017 and WAC 284-29A-110 by May 31st of each year, the statistical reporting agent must notify the commissioner by June 15th of any title insurers or title insurance agents, or both, that failed to file their report;

(2) Review the reports received for quality and accuracy;

(3) Ensure that title insurers and title insurance agents are reporting data similarly and consistently;

(4) In consultation with the commissioner, aggregate data to a level that would not permit any user of the aggregate data to identify data associated with any particular title insurer, title insurance agent, or title insurance transaction;

(5) In consultation with the commissioner, produce the reports of the aggregated data by areas that are similar in expenses;

(6) Prepare and submit a report of the aggregated data to the title insurers, title insurance agents, and the commissioner;

(7) File the individual reports received from the title insurers and title insurance agents with the commissioner; and

(8) Other duties as agreed to between the commissioner and the statistical reporting agent consistent with RCW 48.29.017 and this chapter.

NEW SECTION

WAC 284-29A-180 Allocation of costs and expenses, including any examination costs, of the statistical reporting agent. RCW 48.29.017(1) provides that the costs and expenses of the statistical reporting agent must be borne by all the authorized title insurers and licensed title insurance agents. RCW 48.03.060(6) provides that the expense of any examination of the statistical reporting agent must be borne by all the authorized title insurers and licensed title insurance agents.

(1) The criteria for determining the annual cost and expenses, including any examination costs, of the statistical reporting agent shall be determined by contract between the statistical reporting agent and the commissioner. A pro rata share of the costs and expenses of the statistical reporting agent shall be charged to all authorized title insurers and licensed title insurance agents. The allocation of the costs and expenses, including any examination costs, of the statistical reporting agent among the title insurers and title insurance agents shall be based upon written premium in this state by the title insurer or title insurance agent as compared to the entire written premium for all title insurance business written in this state. The written premium shall be determined as follows:

(a) The title insurer's premium volume for this state will be the amount of written premiums for the title insurer's direct operations as reported on schedule T of the title insurer's annual financial statement for the preceding calendar year. This amount should be the same as the total of direct written premiums by the title insurer in this state as filed with the statistical reporting agent.

(b) The title insurance agent's premium volume for this state will be the amount of direct written premiums for the preceding calendar year for all underwriters from the agents report filed with the statistical reporting agent.

(2) Every title insurer and title insurance agent must pay its portion of the costs and expenses, including any examination costs, of the statistical reporting agent within thirty days of receiving the billing for the costs and expenses, including an examination of the statistical reporting agent.

(3) Failure by a title insurer or title insurance agent to pay timely its portion of the costs and expenses, including any examination costs, of the statistical reporting agent is a violation of RCW 48.29.017 or 48.03.060(6) and will subject a title insurer to disciplinary action under chapter 48.05 RCW and a title insurance agent to disciplinary action under chapter 48.17 RCW.