



Mike Kreidler- Insurance Commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2021-10**

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

Relating to the adoption of

County Agent Title Declarations in WAC 284-29-130

November 19, 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; and
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

Title agents are required by RCW 48.29.160 to own or lease rights to a complete set of applicable tract indexes in the counties in which such agent will do business. Title agents submit a declaration to the Office of the Insurance Commissioner, which identifies their insurance business as operating in certain counties and provides an attestation to the ownership or leasing rights for the applicable complete sets of tract indexes, as required by RCW 48.29.160. An entity applying for a title agent license is required to submit this Declaration of Title Insurance Agent form as part of the application and licensing process. The purposes of the form are for the title agent to identify which counties will they be doing business in and verify that the title agent either owns or leases a complete set of tract indexes for those counties, as required per RCW 48.29.160.

Unfortunately, the licensing records do not reflect the original documents which define what counties these title agents own or lease the required tract indexes in, nor is there a regulation or statute which requires them to report any expansion of business into additional counties. Currently title agents only provide an attestation to the ownership or leasing rights of tract indexes, which has resulted in noncompliance and title agents operating in unreported counties or without proper rights to the complete set of tract indexes. There likewise is no current rule for title agents to verify that they own or lease the proper complete sets of tract indexes for their counties of operations, as required per RCW 48.29.160. This also results in title agents operating in unreported counties and without ownership or leasing rights to a complete set of tract indexes. The proposed regulations will require title agents to submit a declaration to the Office of the Insurance Commissioner, which will identify their exact counties of operations, including expansions, and provide proof of ownership or leasing rights for the applicable tract indexes.

Section 3: Rule Development Process

On July 2, 2021, the Commissioner filed a Preproposal Statement of Inquiry (CR-101) notice of intent to adopt rules and initiate rulemaking on this topic. The comment period on the CR-101 was open through July 28, 2021. Two comments were received in response to the CR-101, with one comment being in support of the proposed regulations and one comment requesting clarification. Both comments are summarized and addressed in the Responsiveness Summary (Section 5).

On July 7, 2021, the Commissioner issued a working stakeholder draft of the amended regulations, which presented an example of the proposed rules regarding Title Agents. The Commissioner notified Title Agent stakeholders via the Gov Delivery application and posted notice to the OIC Website. The stakeholder draft was published with a three-week comment period, open until July 28, 2021. Three comments were received in response to the stakeholder draft. These comments are summarized and addressed in the Responsiveness Summary (Section 5).

On October 6, 2021, the Commissioner filed a Proposed Rule Making CR-102. The comment period was open through October 27, 2021. Multiple comments were submitted in response to the CR-102 filing, which are outlined in the Responsiveness Summary (Section 5).

On November 15, 2021, the Commissioner held a public hearing and was available to hear testimony on the proposed rule. Multiple people attended the public hearing and testimony was provided from two commenters. The Hearing Summary is contained in Appendix A.

On November 19, 2021, the Commissioner will adopt the regulations proposed under R 2021-10 relating to Title Agent County Declarations, with an effective date of January 1, 2022.

The Responsiveness Summary included in Section 5 addresses all comments and testimony received in response to this rulemaking (R 2021-10).

Section 4: Differences Between Proposed and Final Rule

The proposed rules stated that Title Insurance Agents must submit a declaration to the Commissioner indicating their county or counties of operation, prior to doing business (WAC 284-29-130(4)). A rulemaking comment was received that requested revisions for clarity, such as adding the terms title insurance to the phrase prior to doing business. The commenter believed that since title agents provide ancillary services, such as escrow business or contract collections, the Commissioner should make it clear that the only business considered in the rule is title insurance business.

The Commissioner drafted the rule to apply to title Insurance business, being located in Chapter 284-29 WAC, in the section for Title Agent Insurance Reports Required (WAC 284-29-130), and having a definition in law that states selling, soliciting, or negotiating insurance is the business of a title insurance agent (RCW 48.17.010(16)).

However, the commenter identified the goal the Commissioner is attempting to achieve with this rulemaking, preventing title insurance business from occurring with undeclared title insurance agents who are not meeting statutory duties. Additionally, the revision requested did not make the rule substantially different from that proposed (RCW 34.05.340(1)); the general subject matter of the adopted rule will remain the same as the proposed rule (applying to title insurance business) (RCW 34.05.340(3)); and the issues determined in the proposed rule or the anticipated effects of the adopted rule would not differ from those of the proposed rule (RCW 34.05.340(3)).

Therefore, the proposed rule was revised to include the terms 'title insurance' in front of the word business.

Section 5: Responsiveness Summary

<u>Comments</u>	<u>Consideration</u>
<p>Comment included information on an interested party who respectfully requests to participate in this rulemaking.</p>	<p>Reviewed, with no resulting changes to the rules.</p> <p>This comment communicated an interest from the commenter to participate in the rulemaking process. Information was provided to the commenter so participation could occur, but no changes resulted to the rules from these comments.</p>
<p><i>Encourage the OIC to put some definitions around the word “proof.” What constitutes proof under this rule? What documents are you going to be looking for? Our lease? How are you going to ensure that the leasing company has back to patent functionality that is required by law? For those of us with physical plants are we going back to inspection?</i></p> <p>Comments assert importance of methodology of “proof” that is used by the OIC and ensuring that the company requesting license to do business in that county actually has “real access” to the records prior to the digital plants along with access to the current digital indexes, and all of the documents back to patent.</p>	<p>This comment communicated a concern with assigning or determining a defining measure of success for ‘proof’ of ownership or leasing rights for applicable tract indexes, as well as the functionality of records for title plants.</p> <p>This comment was carefully considered, and a substantive change resulted to the stakeholder draft rules, where the amended section now includes a defining measure of success for the term proof. Proof shall come in the form of real property ownership documents, copies of leases, or other documentation verifying ownership or rights to the applicable tract indexes.</p> <p>Reviewed and revised rules to include a defining measure of success for the term ‘proof’, as it relates to lease or ownership rights for associated tract indexes. Sentence added <i>“Proof shall come in the form of real property ownership documents, copies of leases, or other documentation verifying ownership or rights to the applicable tract indexes.”</i></p> <p>The comments for back to patent functionalities and real access are beyond the scope of this rulemaking.</p>
<p><i>My concern with the draft is if this will result in submittal of title plant lease or sale documents to the OIC, and, if so, if they will become public documents. Leasing/selling title plants is a competitive business, and the mechanics are proprietary.</i></p>	<p>Reviewed, with no resulting changes to the rules.</p> <p>There may be a misunderstanding of the proprietary nature of the verifying leases and ownership documents. OIC is not requesting all leases, or ownership documents to be submitted, only those that the agent will be doing title insurer business in. OIC is not</p>

requesting full disclosure on the proprietary mechanics being employed with these businesses or title plant transactions. OIC is only requesting copies of leases or ownership documents for applicable tract indexes, to verify title agents lease or own the proper tract indexes prior to doing business in these jurisdictions, as required per statute ([RCW 48.29.160](#)).

OIC asserts that the lease or ownership documents for applicable tract indexes would not qualify as proprietary information. The leases or ownership documents do not detail the confidential or privileged mechanics of title indexes plant tract transactions, and only show ownership rights to the applicable tract indexes in the jurisdiction where the title agent will be doing insurance business. The OIC is not requesting specific information, details, or data for title indexes plant tract transactions. Instead, the OIC is only requesting documentable proof that verifies a statutory requirement. While the mechanics of title tract plant transactions may be proprietary in nature to some degree, the information (leases/ownership documents) being requested is required by law ([RCW 48.29.160](#)), limited to our regulatory function, and includes lease or ownership details that would not constitute a violation of privacy under [RCW 42.56.050](#).

The consumer protection and public safety components of regulating title insurance agents to provide proof of lease or ownership rights to applicable tract indexes aligns with statutory requirements ([RCW 48.29.160](#)), necessitates these rules and will not alter the confidentiality, privilege, and proprietary exemptions and protections available under current law (Public Records Act). In these instances, title agents are allowed to indicate records as confidential and proprietary. If proprietary information is sought from OIC through a public disclosure request, then the agency would first notify the submitter or holder of the proprietary materials, so that they can initiate an action in the proper court to prevent disclosure.

<p>Recommend clarifying the rule so that an annual declaration identifying the counties that a title agent owns or maintains tract indexes would not be required.</p> <p>Mentions it is not clear whether an existing title agent would be required to submit a declaration and it is not believed that an annual declaration from an existing title agency provides the information that is important to the commissioner.</p> <p><i>Instead, it is believed that the information being sought is when a new licensee is seeking to conduct business in the state that the new licensee report to the commissioner the counties in which it intends to operate.</i></p> <p><i>Not only is it unclear whether an existing title agent would need to submit an annual declaration but failure to do so could cause the title agent to be restricted from operating. Based on the proposed rule, if the annual report is not submitted then it might be restricted from “conducting business” and may not permitted to “operate.”</i></p> <p><i>As the requirement to submit a report before conducting business appears to be directed to a new licensee, commenter recommends clarifying the rule so that it is clear that the requirement to submit a report identifying the counties in which the title agent will operate be limited to new licensees.</i></p> <p><i>The requirement to provide a title county declaration should be separated from the annual affiliated business ownership requirement of WAC 284-29-130. Based on the proposed language of the rule and as stated previously, an existing title agent should not be required to submit a declaration. However, by including the county declaration requirement in the annual reporting requirements of WAC 284-29-130, it could be interpreted to mean that an annual county declaration is required.</i></p> <p><i>Based on language contained in the proposed rule, it is believed that an existing title agent would only be required to submit a declaration when expanding into a county where they have not operated previously.</i></p> <p><i>To clarify that a declaration should only be required by an existing title agent when expanding its operations, the proposed rule should be removed from WAC 284-29-130 and a separate section of WAC-284-29 should be proposed.</i></p>	<p>Reviewed, with no resulting changes to the rules.</p> <p>OIC asserts that the reporting requirements are clearly communicated and strategically located within the WAC, to not contain an annual reporting requirement.</p> <p>Rules should not be revised to only apply to new title agents, as the current statutory requirement applies equally to new and existing title agents (RCW 48.29.160). No revisions resulted from this comment.</p> <p>The rules accurately articulate that all title agents will be required to comply with these regulations, which will be after agency adoption and at the time of the effective date.</p> <p>OIC asserts that WAC 284-29-130 Reporting Required, is the best and most logical location for these regulations, which will pertain to the reporting required for a Title Agent. An additional and separate report requirement section in the WAC is unnecessary and could lead to additional confusion, rather than clarity. Here, WAC 284-29-130 will contain regulations for Title Agent reporting required, including the Title Insurance Agent Report of Affiliated Business Ownership and the Title Agent County Declarations.</p> <p>Existing title agents under this rule must submit a Title Agent County Declaration to the Commissioner, declaring the county or counties the business will operate in and providing proof of ownership or leasing rights for the applicable tract indexes.</p> <p>Previous revisions were made to the stakeholder draft of the proposed rules, to provide a defining measure of success for proof, where proof “... shall come in the form of real property ownership documents, copies of leases, or other documentation verifying ownership or rights to the applicable tract indexes.”</p> <p>Comments considered with no changes to the rules. Proof of ownership will be required as</p>
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<p><i>The requirement to provide proof of ownership should be clarified or removed as it is not clear what would be required and a title agent may be required to submit confidential information regarding the acquisition or lease of a title plant that it does not want disclosed to its competition.</i></p> <p><i>Proof of ownership should not be required as it should be sufficient for the title agent to confirm and report that they have purchased a tract index through a purchase agreement or that they have entered into a plant agreement that gives them a lease or the ability to access a tract index.</i></p> <p><i>The private information regarding the negotiations and costs of purchasing or leasing a title plant should not be subjected to potential public disclosure by submitting this private information to the commissioner.</i></p> <p><i>Recommend modifying the proposed rule by creating a separate section from WAC 284-29-130 and modifying the proposed language as follows: WAC 284-29-170 In accordance with R.C.W.: (1) Before conducting business in any counties A title insurance agents submitting an application for a license must include a report to the commissioner, declaring the county or counties the business will operate in and providing proof of ownership report whether the title agent purchased or is leasing rights for the applicable tract indexes. (2) A title insurance agent must report to the commissioner the expansion of operations into a new county If business is to be conducted in an additional county not included on previous declarations, then the title insurance agent must submit an updated declaration listing the added business areas counties and include whether the title insurance agent purchased proof of ownership or is leasing rights to the applicable tract indexes, in accordance with RCW 48.29.160.</i></p>	<p>the previous attestation and honor code system proved insufficient.</p> <p>The OIC is not requesting the private information regarding the proprietary mechanics, negotiations, or costs of purchasing or leasing a title plant. The OIC is not requesting specific information, details, or data for title indexes plant tract transactions. Instead, the OIC is only requesting documentable proof that verifies a statutory requirement. While the mechanics of title tract plant transactions may be proprietary in nature, the information (leases/ownership documents) being requested is required by law (RCW 48.29.160), limited to our regulatory function, and includes lease or ownership details that would not constitute a violation of privacy under RCW 42.56.050.</p> <p>The consumer protection and public safety components of regulating title insurance agents to provide proof of lease or ownership rights to applicable tract indexes aligns with statutory requirements (RCW 48.29.160), necessitates these rules and will not alter the current confidentiality, privilege, and proprietary exemptions and protections afforded under current authorities (Public Records Act).</p>
<p><i>Is the OIC’s expectation that title agents would be required to provide ownership or lease information retroactively, submitting proof of interest in all counties in which the title agent currently does business? If so, it would be helpful to the industry for the OIC to clarify how this reporting will work initially and what will be the OIC’s expectation with regard to timing and content of any retroactive filings. No definition is provided within the proposed rule modification regarding “proof of ownership or leasing rights” of the tract indexes. It would be very helpful for</i></p>	<p>Reviewed, with no resulting changes to the rules.</p> <p>Previous revisions occurred to the draft rules, where a defining measure of success was added for the term ‘proof’. Proof shall come in the form of real property ownership documents, copies of leases, or other documentation verifying ownership or rights to the applicable tract indexes.</p>

<p><i>the rule to define “proof” so that the industry has clear understanding of what serves as sufficient evidence of ownership or lease under the proposed rule. It is also important to consider that evidence of ownership or lease interest of a title plant will vary depending on the circumstances that gave rise to the ownership or lease interest. For example, some title plants will have been created solely by regular posting for a period of years. In this example, while the entity does own a complete set of tract indexes as required by statute, there’s no one document evidencing “proof of ownership.” Ownership may also occur through acquisition of a title insurance company, wherein the title indexes ownership or lease interest would transfer to the acquiring entity. Documentation for acquisitions that occurred many years or even decades ago may no longer be available.</i></p>	<p>There is no retroactive applicability of the rules, instead these are new regulations to be complied with at the time of the effective date.</p>
<p>Comments received requested clarification on the type of business that would be prevented, if a title insurance agent failed to declare their county or counties of operation to the Commissioner.</p>	<p>The proposed rules stated that Title Insurance Agents must submit a declaration to the Commissioner indicating their county or counties of operation, <i>prior to doing business</i> (WAC 284-29-130(4)). A rulemaking comment was received that requested revisions for clarity, such as adding the terms <i>title insurance</i> to the phrase <i>prior to doing business</i>. The commenter believed that since title agents provide ancillary services, such as escrow business or contract collections, the Commissioner should make it clear that the only business considered in the rule is <i>title insurance business</i>.</p> <p>The Commissioner drafted the rule to apply to title Insurance business, being located in Chapter 284-29 WAC, in the section for Title Agent Insurance Reports Required (WAC 284-29-130), and having a definition in law that states selling, soliciting, or negotiating insurance is the business of a title insurance agent (RCW 48.17.010(16)).</p> <p>However, the commenter identified the goal the Commissioner is attempting to achieve with this rulemaking, preventing title insurance business from occurring with undeclared title insurance agents who are not meeting statutory duties. Additionally, the revision requested did not make the rule substantially different from that proposed (RCW 34.05.340(1)); the general subject matter of the adopted rule will remain the same as the proposed rule (applying to title</p>

	<p>insurance business) (RCW 34.05.340(3)); and the issues determined in the proposed rule or the anticipated effects of the adopted rule would not differ from those of the proposed rule (RCW 34.05.340(3)).</p> <p>Therefore, the proposed rule was revised to include the terms ‘title insurance’ in front of the word business.</p>
<p>Comment received communicates concerns with the following:</p> <ul style="list-style-type: none"> • Defining the measure of success, or threshold, for proof of title plant tract indexes. • If confidential/proprietary documents will be submitted to OIC, then where and how will these document submissions be stored? • Clarification on whether the rules are requiring existing title agents or new title agents to comply as of the effective date. • Clarifying that ‘title’ business cannot be conducted, prior to meeting the reporting/declaration requirements under the new rule. 	<p>Reviewed, with no resulting changes to the rules.</p> <p>Regulations have purposely been drafted to provide clarity and due process in the areas at issue. For example, the rules include a defining measure of success for proof, which also includes “... documentation verifying ownership or rights to the applicable tract indexes.” If any confidential/proprietary records are submitted to OIC, then they will be maintained according to proper state IT standards and under suitable records retention protocols. The rules are drafted by design to apply to all ‘Title Agents’, since the rules did not include ‘new Title Agents’ or ‘existing Title Agents’ as qualifiers. Lastly, clarification has been added in the rules for the types of business that cannot be conducted without declaring to the Commissioner, which now includes the phrase <i>title insurance business</i> (see above comment and consideration).</p>

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

After the permanent rule is filed and adopted with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the Concise Explanatory Statement to all interested parties through the State's Gov Delivery email system.
- The CR-103 documents and adopted permanent rule will be posted on the Office of the Insurance Commissioner's website.

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

Type of Inquiry	Division
Consumer assistance	Consumer Advocacy
Rule content	Policy
Authority for rules	Policy
Enforcement of rule	Rates, Forms & Provider Networks, Legal Affairs, and Company Supervision
Market Compliance	Company Supervision

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

The agency will provide instructions, guidance, and customer service to title agents and all affected parties.

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

The agency will monitor Title Agent compliance with the new regulations by determining the total number of title agents that have declared their counties of operations and submitted proof to the applicable complete set of tract indexes. The agency has an ability to query and analyze data associated to title agent count declarations, as well as information indicating the Title Agents that have provided proof to the applicable complete set of tract indexes.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum	
To:	Mike Kreidler Insurance Commissioner
From:	Michael Walker Presiding Official, Hearing on Rule-making
Matter No. R 2021-10	
Topic of Rule-making: Title Agent County Declarations in WAC 284-29-130	
This memorandum summarizes the hearing on the above-named rule making, held on November 15, 2021, at 9:00 AM, virtually via Zoom due to the Covid-19 pandemic, over which I presided in your stead.	
The following agency personnel were present: Policy Analyst Michael Walker Insurance Enforcement Specialist Tim Ascher Insurance Technician 4 Stacey Baker Producer Licensing & Oversight Program Manager Jeff Baughman Functional Program Analyst 4 Nicole Rayl	
In attendance and testifying: Donald Dartington Matthew Seeger	
Contents of the presentations made at hearing: <u>Donald D.</u> – Provided testimony that indicated confusion with commenter not being able to interpret whether these rules apply to title insurance agents or title insurers. Provided testimony indicating concern with meeting the regulatory duty of verifying or proving ownership or leasing rights to the applicable tract indexes, due in part to lengthy histories and mergers or acquisitions between insurers (who are also sometimes conglomerates with different naming conventions). <u>Matthew S.</u> – Provided testimony that included issues with the defined term of proof, for applicable tract indexes. Requested flexibility in the term and interpretation of proof (due to issues in establishing tract indexes ownership or rights). Requested removing the word 'shall' and allowing additional flexibility, such as the attestation for proving tract indexes ownership or leasing rights.	

The hearing was adjourned.

SIGNED this 15 day of November 2021

Michael S. Walker
Michael Walker, Presiding Official