

WSR 21-18-093
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-04—Filed August 30, 2021, 5:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-134.

Title of Rule and Other Identifying Information: Prohibiting the depreciation of labor on property claims.

Hearing Location(s): On Wednesday, October 13, 2021, at 9:00 a.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website here <https://www.insurance.wa.gov/prohibiting-depreciation-labor-property-claims-r-2021-04>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: October 14, 2021.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 12, 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.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: When a homeowner has property damage covered under their homeowner's insurance policy, the insurance company investigates the loss, values the damage, and then issues an actual cash value (ACV) payment. The ACV payment is replacement cost less depreciation. After the repairs are fully completed, the insurance company releases the withheld depreciation to the insured to fulfill their obligation to cover the replacement cost as defined in the policy. Besides applying depreciation to the loss of value due [to] wear and tear, deterioration, and obsolescence [obsolescence] to physical and material items, some insurance companies are applying depreciation to the labor costs associated with the repair process. The commissioner is considering rule making to prohibit the depreciation of labor in these situations.

Reasons Supporting Proposal: The practice of depreciating labor costs on insurance payments for property damage claims floats a significant part of the labor repair costs to the consumer and their repair contractor, unfairly shifting a burden to the consumer during the repair process and likely against the principle of indemnity. The commissioner has seen a steady rise of policy forms that are writing this practice into their definition of ACV. The commissioner will consider rule making to prohibit the depreciation of labor on property claims.

Statutory Authority for Adoption: RCW 48.02.060, 48.27.020, 48.18.120.

Statute Being Implemented: RCW 48.18.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7042; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, fax 360-586-3109, email davidf@oic.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: RCW 19.85.025(4) states that a small business economic impact statement does not have to be completed if the agency is able to demonstrate that the proposed rule does not affect small businesses. Under RCW 19.85.020(3), a small business is defined as "... any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

Direct property and casualty insurers employ on average 6,393 individuals annually, and there are on average 87 firms. Therefore, there are estimated to be 74 employees per firm (6,393 total individuals employed/87 firms). There are four known insurance companies that would be directly impacted by this rule: State Farm, Allstate, Farmers, and Safeco. After examining the profiles of each of these companies, OIC has been able to determine the number of employees per company:

State Farm: 57,500 employees.

Allstate: 45,780 employees.

Farmers: 12,740 employees.

Safeco: 7,200 employees.

This estimate is above the small business threshold as defined by RCW 19.85.020(3). The figures used for this calculation are drawn from the 2020 Washington State Employment Security Department's Quarterly Census of Employment and Wages.

August 30, 2021

Mike Kreidler

Insurance Commissioner

OTS-3223.1

AMENDATORY SECTION (Amending Order R 77-2, filed 4/28/77)

WAC 284-20-010 Standard fire policies. (1) This regulation is promulgated pursuant to RCW 48.18.120(1) to define and effect reasonable uniformity in all basic contracts of fire insurance.

(2) All policies which include coverage against loss or damage by fire are hereby defined to be basic contracts of fire insurance unless they come within the scope of insurance code provisions, or regulations adopted by the commissioner, providing that they may be regarded as marine, inland marine, vehicle, or casualty policies.

(3) Except for the provisions of the next succeeding three paragraphs, no company shall issue any basic contract of fire insurance covering property or interest therein in this state other than on the

form known as the 1943 New York Standard Fire Insurance Policy, herein referred to as the "standard fire policy": Provided, however, that such form shall be modified to conform to RCW 48.18.290 with respect to the number of days' notice of cancellation required. In addition, such form shall be modified as necessary to conform to WAC 284-20-020 with respect to inception and expiration times. Such modifications may be by endorsement.

(a) Insurers issuing a standard fire policy pursuant to this regulation are hereby authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy: Provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination provided such assumption clause has been filed with and approved by the commissioner in accordance with RCW 48.18.100.

(b) The pages of the standard fire policy issued pursuant to this regulation may be renumbered and the format rearranged for convenience in the preparation of individual contracts, and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsement attached to or printed thereon, and such other data as may be conveniently included for duplication on daily reports for office records.

(c) As an alternative form, a form written in clear, understandable language, which provides terms, conditions and coverages not less favorable to the insured than the "standard fire policy," may be used. Such alternative form may be incorporated in or integrated within a form providing other or additional coverages, as, for example, a home-owners policy or a special multiperil policy. The intent of this subsection is to permit understandable plain language policies and package policies without diminishing any rights an insured would have under the 1943 New York Standard Fire Insurance Policy.

(d) By use of such alternative form, an insurer certifies that it is not less favorable to the insured than the "standard fire policy." If, in the adjustment of claims, any provision of the "standard fire policy" applicable to such claims is found to be more favorable to the insured than the alternative form used, then provisions of the "standard fire policy" shall govern.

(4) Except for the intrinsic labor costs that are included in the cost of manufactured materials or goods, the expense of labor necessary to repair, rebuild, or replace covered property is not a component of physical depreciation and may not be subject to depreciation or betterment.

[Order R 77-2, § 284-20-010, filed 4/28/77; Rule 128, filed 3/14/61.]