

**WSR 21-21-102
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-20—Filed October 19, 2021, 5:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-097.

Title of Rule and Other Identifying Information: Out of state title records storage.

Hearing Location(s): On November 29, 2021, at 10:00 a.m. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website <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: December 1, 2021.

Submit Written Comments to: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 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, by November 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)).

Rule making 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: Rule making 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), 48.29.005, and 48.29.190 (1)(a).

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: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7170; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and 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 not required under RCW 34.05.328. 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 rule making 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 rule-making file.

¹ Chapter 34.05 RCW.
² RCW 34.05.328 (1)(c).

Determination of exemption: OIC has determined that under RCW 34.05.328 (5) (b) (iv), this rule making 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).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs associated with the proposed rule to small business. 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	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).

October 19, 2021
 Mike Kreidler
 Insurance Commissioner

OTS-3397.1

AMENDATORY SECTION (Amending WSR 09-20-070, filed 10/5/09, effective 11/5/09)

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.

[Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-160, filed 10/5/09, effective 11/5/09.]