



# 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: August 30, 2021

TIME: 5:18 PM

WSR 21-18-093

**Agency:** Office of the Insurance Commissioner

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR** 21-13-134 ; 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) **Prohibiting the depreciation of labor on property claims**

**Insurance Commissioner Matter R 2021-04**

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
Wednesday October 13, 2021	9:00am	<b>Zoom Meeting: Detailed information for attending the Zoom meeting posted on the OIC website here:</b> <a href="https://www.insurance.wa.gov/prohibiting-depreciation-labor-property-claims-r-2021-04">https://www.insurance.wa.gov/prohibiting-depreciation-labor-property-claims-r-2021-04</a>	Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform

**Date of intended adoption:** October 14, 2021 \_ (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: David Forte  
 Address: PO Box 40260, Olympia, WA 98504-0260  
 Email: rulescoordinator@oic.wa.gov  
 Fax: 360-586-3109  
 Other:  
 By (date) 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  
 Other:  
 By (date)

**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 fulfil their obligation to cover the replacement cost as defined in the policy. Besides applying depreciation to the loss of value due wear and tear, deterioration, and obsolesce to physical and material items, some insurance companies are

applying depreciation to the labor costs associated with the repair process. The Commissioner is considering rulemaking 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 Actual Cash Value. The Commissioner will consider rulemaking 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

**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:	David Forte	PO Box 40260, Olympia, WA 98504-0260	360-725-7042
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: David Forte  
Address: PO Box 40260, Olympia, WA 98504-0260  
Phone: 360-725-7042  
Fax: 360-586-3109

TTY:

Email: davidf@oic.wa.gov

Other:

No: Please explain:

**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)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((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 19.85.025(4).

Explanation of exemptions, if necessary: 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, the 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.

**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. \_\_\_\_\_

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:

<b>Date:</b> August 30, 2021	<b>Signature:</b> 
<b>Name:</b> Mike Kreidler	
<b>Title:</b> Insurance Commissioner	

**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.