



September 29, 2021

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Via: [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov)

**RE: First American Title Insurance Company's Comments  
R 2021-20 Out of State Title Records Storage  
Proposed Amendment to WAC 284-29-160**

This letter serves as First American Title Insurance Company's ("First American") comments to the stakeholder's draft of the proposed regulation as contained in WAC 284-29-160(5).

First American recommends clarifying the rule so that the common practice of maintaining and storing records electronically would not be impacted by the change to the rule. It is believed that what is being sought is the ability for the Commissioner to request information or copies of documents from a file. Based on the proposed draft of the rule, however, it may be implied that in addition to maintaining and storing an electronic file, a title company would have to also create a physical file that would then have to be "stored" within the state of Washington. The rule should be clarified to avoid the need to create a physical file and store that file somewhere either in the State of Washington or out of state when no such physical file may have been created.

The proposed language places an emphasis on where records are "stored" which may be problematic when dealing with electronic records. For a national company, it is not clear that if the server that is used to maintain files is not located in Washington whether permission would be required. Certainly, the file is accessible in Washington even though the server may not be physically located in Washington. As such, the rule should be clarified that the requirement to obtain the Commissioner's approval to store records outside of the state is only applicable to storing a physical file outside of the state.

First American recommends clarifying the requirement to obtain permission for storing a physical file out of the state would not apply to records that are no longer required to be maintained by the title company. WAC 284-29-160(3) requires that title companies keep records for a period of three years after the end of the year being reported upon. Records may have been historically retained or sent to locations out of the state after the expiration of this period. Once the title company no longer needs to maintain the physical file in Washington pursuant to the retention requirements of WAC 284-29-160(3), there should not be a requirement to then obtain permission to store expired records.

First American does not believe that the added language regarding security breach notifications as contained in WAC 284-04-625 needs to be included in the proposed rule. The term "out of state records" is not defined or made clear and as such, may include records that are stored outside the State of Washington. The proposed language in subparagraph (5)(d) is too broad and may be unnecessary considering the requirements contained in WAC 284-04-625. Accordingly, First American recommends deleting subparagraph (5)(d).

First American recommends modifying the proposed language in WAC 284-29-160(5) as follows:

(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. **Title insurance companies and agents satisfy the requirement to store records in this state if records are maintained electronically and the records are made accessible from a location within this state by providing an electronic copy of the records requested.**

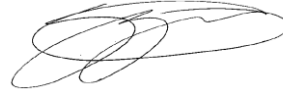
(a) Title insurance companies and agents must request approval from the commissioner prior to storing their **physical** records outside of the state. Requests shall be emailed to [prodcomp@oic.wa.gov](mailto:prodcomp@oic.wa.gov). **Approval of storing physical records out of the state is not required for records older than a period of three years after the end of the year of reporting.**

(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.~~

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew B. Sager", written over a white background.

Matthew B. Sager