



Mike Kreidler- Insurance commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2021-20**

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

Relating to the adoption of

Out of State Title Records Storage

11/30/2021

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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 reason's 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

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)). Rulemaking 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.

Section 3: Rule Development Process

On August 3rd, 2021, the Commissioner filed a CR-101 pre-proposal public notice of intent to adopt rules. The comment period was open through August 20th, 2021. Two comments were received.

On September 20th, 2021, the Commissioner issued a Stakeholder draft of the amended rules relating to out of State record retention for Title insurance agents the comment period was open through September 30th, 2021. Two comments were received.

On October 19th, 2021, the Commissioner filed a CR-102 proposed rulemaking. The comment period was open through October 29, 2021. No new comments were received.

On November 29th, 2021, the Commissioner held a public hearing to hear testimony on the proposed rule. 20 people attended the public hearing, and 1 testimony was provided. The hearing summary is in Appendix A.

The responsiveness summary chart included in Section 5 addresses the comments received.

Section 4: Differences Between Proposed and Final Rule

There were no differences between the two.

Section 5: Responsiveness Summary

Comment	Response
Comments offering support and participation.	We appreciate the review of the rule and the submitter’s effort to provide supporting comments.
<p>“The provision as currently stated is overly broad and burdensome. Many title insurance companies and agents operate in multiple states, the location of which may provide for less costly storage and retention of records. Further, with current day technological advances, much record storage may occur in digital form and be completely adequate for retention purposes. Agents may have historical records numbering in the thousands, the relocation of which would be cost prohibitive and not advance a necessary purpose. If the goal of the rule is that the records be adequate and easily accessible, it does not follow that requiring them to be located in Washington rather than to be accessible in Washington is necessary.”</p>	<p>Comment reviewed with no resulting changes to the rule.</p> <p>The OIC notes RCW 48.29.190 (1)(a) states: “Every title insurance company and title insurance agent conducting the business of an escrow agent as defined in RCW <u>18.44.011</u> and exempt from licensing under RCW <u>18.44.021</u>(6) shall: Keep adequate records, as determined by rule by the insurance commissioner, of all transactions handled by the title insurance company or title insurance agent, including itemization of all receipts and disbursements of each transaction. <i>These records shall be maintained in this state, unless otherwise approved by the insurance commissioner, for a period of six years from completion of the transaction...</i>” (emphasis added.)</p> <p>The OIC notes that the rule does not prohibit title insurance companies and agents from storing records, including electronic records, outside of Washington state. However, pursuant to RCW 48.29.190(1)(a), title insurance companies and agents must receive approval from the Insurance Commissioner prior to doing so.</p>

	<p>The rule outlines the process for title insurance companies and agents to request approval under RCW 48.29.190(1)(a) and details the requirements for title insurance companies and agents to store title records outside of Washington.</p>
<p>“Applying the proposed rule to electronic records would create an inappropriate administrative burden on the OIC of approving insurance companies’ disaster recovery and technology plans that include potential spillover data centers in places outside of Washington. If the insurance company can provide secure storage of records with access in the State of Washington, this should satisfy the Rule. Otherwise, insurance companies are deterred from seeking out secure electronic storage over a less secure physical option, to the detriment of the insurance consumers they serve.”</p> <p>The stakeholder “encourages the Office of Insurance Commissioner to consider access capability in Washington, instead of physical storage, as the key criterion for storage of Washington insurance records.”</p>	<p>Comment reviewed with no resulting changes to the rule.</p> <p>See comment above. Additionally, the rule is appropriate for the OIC to administer RCW 48.29.190(1)(a). The OIC has not identified any inappropriate administrative burdens on the OIC regarding the approval process set forth under RCW 48.29.190(1)(a) and the rule.</p> <p>The intent of the rule is not to review or approve an insurers or agency disaster recovery plan for all their data. It only refers to title insurers and the WA title records that are being stored outside of the state of WA. How an insurer chooses to store these records is entirely up to them if it meets the criteria spelled out in the rule.</p> <p>An insurer would not be deterred from seeking secure storage since it is their obligation to protect their data.</p>
<p>The Stakeholder “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.”</p> <p>Further they recommend “clarifying the rule so that the common practice of maintaining and storing records electronically would not be impacted by the change to the rule.”</p> <p>The stakeholder also recommended edits to the rule language.</p>	<p>Comment reviewed with no resulting changes to the rule.</p> <p>See comments above.</p>
<p>“Based on the stakeholder draft it is not clear that this rule applies to electronic storage of records, but it is clearer after the Public hearing. Our prior comments earlier</p>	<p>Comment reviewed with no resulting changes to the rule.</p> <p>See comments above.</p>

<p>also asserted that for a large company like us, do we need to get permission for each server located throughout the country? We were with the impression that the stakeholder draft only addressed the physical storage of records, and it should be that way, if the state has accessed the data within the state.”</p>	<p>Regarding WAC 284-04-635, the OIC notes the security breach reporting requirements apply to breaches involving personal information and protected health information. Title insurance companies and agents are required to comply with this regulation.</p>
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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 Govdelivery email system.
- The CR 103 documents and adopted rule will be posted on the Office of the Insurance Commissioner’s website.
- Questions will be addressed by Office of the Insurance Commissioner’s staff as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection
Rule Content	Policy
Authority for rules	Policy
Enforcement of rule	Legal Affairs
Market Compliance	Producer licensing

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

- The agency will meet with and provide assistance to any affected property insurer.
- Policy staff will distribute copies of the final rule and the Concise Explanatory Statement to all interested parties through the State’s Govdelivery email system.

- The CR 103 documents and adopted rule will be posted on the Office of the Insurance Commissioner's website

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

- The agency will meet with and provide assistance to any affected property insurer.
- Policy staff will distribute copies of the final rule and the Concise Explanatory Statement to all interested parties through the State's Govdelivery email system.
- The CR 103 documents and adopted rule will be posted on the Office of the Insurance Commissioner's website

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

The agency will monitor the market to better understand the impacts of this rulemaking on the insurance repair process.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: Tabba Alam
Presiding Official, Hearing on Rule-making**

Matter No. R 2021-20

Topic of Rule-making: Out of State title insurance records Storage.

This memorandum summarizes the hearing on the above-named rule making, held on November 29th, 10 AM, on Zoom meeting over which I presided in your stead.

The following agency personnel were present: Tabba Alam, Sofia Pasarow and Jeff Baughman.

In attendance and testifying:

There were 18 stakeholders and one testified.

Contents of the presentations made at hearing:

Hello and good morning, my name is Tabba Alam. This is the public hearing for Commissionermatter No. R 2021-20 Out of State Title Records Storage Rule. We intend to adopt this rule on December 1st, 2021.

I am sure most of you have had the chance to review and comment on the stakeholder draft so I will not read the rule language aloud, but to summarize, many of the non-resident title agencies have contacted the OIC regarding the storage of their records outside of the State of Washington. These title agencies are storing their records electronically, such as in the Cloud, databases etc. and have asked permission to store the records outside of the state. Unfortunately, there is no defined process for these requests or a defined threshold to determine whether a title agency can compliantly conduct out of state storage of such title or escrow records.

This rule essentially establishes the process for seeking and determining this approval, and clearly outlines it. The rule intends to provide proper parameters on how title agencies can request Commissioner approval and the threshold of success for outside of the state title records storage.

We have done so by adding a new section to WAC 284-29-160 Recordkeeping. One the recommendation of our senior licensing and education manager, we have put the email address to which the request for the approval needs to be addressed.

The hearing was adjourned.

SIGNED this 30th day of November_2021

*Tabba Alam
[NAME], Presiding Official*