

From: [Kammerer, Susan](#)
To: [OIC Rules Coordinator](#)
Cc: [Passmore, Robert](#); [Shiel, Colleen](#); [Brown, Lisa M](#); [Sektnan, Mark](#); [Snyder, David](#)
Subject: WA Premium Change Transparency CR102 - APCIA Comment Letter
Date: Friday, April 28, 2023 10:16:10 AM
Attachments: [image001.png](#)
[WA Premium Change Transparency CR102--APCIA Comments 4 26 23.pdf](#)

External Email

Dear Mr. Walker,

Please see attached APCIA comment letter and feel free to contact Mark Sektnan with any questions.

Thank you,

Susan Kammerer

Administrative Assistant

APCIA

1415 L Street, Suite 670

Sacramento, CA 95814



State of Washington Office of the Insurance Commissioner
302 Sid Snyder Ave., SW
PO Box 40255
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Attention: Michael Walker

Sent via email to: RulesCoordinator@oic.wa.gov

April 28, 2023

Re: APCIA COMMENTS ON STATE OF WASHINGTON R 2022-01 Insurance Underwriting
Transparency; CR-102 dated March 14, 2023 WSR 23-07-077

Dear Commissioner Kreidler:

The American Property Casualty Insurance Association (APCIA) represents insurers and reinsurers of different sizes and business models that provide 45.9% of the property casualty insurance coverage for the State of Washington's individuals, families, communities, and enterprises. We provide these comments in the spirit of working with the insurance regulator to ensure that any final regulation supports an insurance market that is as competitive, financially strong, and innovative as possible.

The formally proposed regulation raises multiple issues and requires further clarification as set forth below. While the proposed formal regulation represents an improvement over prior drafts, we remain concerned that the OIC's proposed regulation exceeds the scope of its statutory authority and fails to fully comply with the Washington Administrative Procedure Act. The OIC has not sufficiently demonstrated that the obligations imposed by the formally proposed Rule are necessary nor has the OIC demonstrated that the Rule is the least costly effective alternative to address the purported lack of transparency by insurers to policyholder. APCIA continues to disagree with the commissioner's foundational assumption that insurers are not sufficiently transparent to policyholders. As noted in our prior comments, insurers already provide significant amounts of information to their policyholders and the public. Insurance rates and rules are publicly filed in Washington and available for scrutiny by any interested policyholder. And the OIC itself offers resources for consumers that seek information regarding insurance rates and premiums in Washington.

APCIA remains concerned about significant obstacles and costs insurers will face in implementing some of the proposed regulation's requirements.

Fundamental Legal Issues

The CR-102 proposal itself, in the section titled "Reasons supporting proposal" acknowledges that "[i]nsurers have limited disclosure duties at the time of renewal under the Insurance Code" and that insurers "...are under no legal obligation to disclose and explain the specific rate and rating factors used to determine premium rate increases." The obligations imposed by the CR-102 exceed the scope of obligations imposed by the Insurance Code.

The formally proposed regulation, even as amended, fails to set forth sufficient justification for the rulemaking. The commissioner's general authority, found at RCW 48.02.060, provides that the commissioner has authority to "(b) [c]onduct investigations to determine whether any person has violated any provision of this code." This formally proposed regulation does not derive from an investigation conducted pursuant to RCW 48.02.060 and the statute does not authorize the OIC to skip the step of "investigat[ing] to determine whether 'any person' has violated" a provision of the Insurance Code. The statute does not contemplate nor authorize sweeping pronouncements of purported industry-wide failings which the commissioner summarily deems to be unfair or deceptive. The broad, unsubstantiated representation that the commissioner has been provided with "consumer complaints and industry responses" that demonstrate a need for greater transparency lacks necessary specifics and exceeds the commissioner's authority.

The formally proposed Rule does not show that the number or frequency of alleged complaints in the context of overall insurance transaction volume merits rulemaking based on accepted standards governing the commencement of regulatory proceedings and fails to explain how imposition of the Rule's new requirements on insurers will benefit policyholders. While the commissioner has some authority to define certain acts or practices as unfair under RCW 48.30.010: (2) In addition to such unfair methods and unfair or deceptive practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period. That authority is specifically limited, including by paragraph 3(b), which requires that the commissioner provide a "detailed description of the facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive..." The formally proposed Rule lacks a sufficiently detailed description of alleged consumer complaints and fails to set forth any factual foundation that supports defining a violation of the Rule as an unfair or deceptive practice.

Issues/Objections Raised to Previous Drafts of the Regulation

We have previously commented on March 1, 2022, June 14, 2022, August 2, 2022, November 14, 2022, and February 6, 2023, on prior drafts urging that they be withdrawn on technical, legal and efficiency grounds. Should the final regulation revert to prior drafts in any material

respect, especially by reincorporating any requirements to provide the specific dollar or percentage impact of each rating factor, then we hereby adopt our previously expressed objections and incorporate them by reference in these comments.

Consideration of Phased Adoption

The formally proposed regulation is appropriately segmented into two parts, with the first part, WAC 284-30A-040(1) requiring insurers to take action beginning June 1, 2024, and the second part, WAC 284-30A-040(2), requiring additional action by insurers beginning June 1, 2027. Along with other industry colleagues, we ask the OIC to consider implementing the requirements imposed under WAC 284-30A-040(1), but hold off on mandating and implementing the requirements proposed under WAC 284-30A-040(2) until such time as the OIC has an opportunity to identify, evaluate, and apply lessons learned from the implementation of WAC 284-30A-040(1), to maximize benefits to consumers while minimizing implementation issues and costs going forward.

Observations regarding New Sections in the Proposed Rulemaking, CR-102:

APCIA members have shared observations regarding several provisions set forth in the CR-102. We share those observations for consideration during any implementation or enforcement activity.

WAC 284-30A-040 and WAC 284-30A-070

Proposed Sections WAC 284-30A-040 and WAC 284-30A-070 require that insurers provide a “reasonable explanation” to policyholders under certain circumstances. The term “reasonable” is subjective and the section does not provide guidance on how the OIC plans to review/evaluate whether a company has provided a “reasonable explanation” and/or sufficient information.

There is a lack of clarity regarding what might constitute a ‘reasonable explanation’ in a situation on or after June 1, 2024, where a company is not required to send a premium change notice but must still provide a reasonable explanation in response to a policyholder’s request. Where multiple factors may have changed, it is not clear how it will be determined what constitutes a ‘reasonable explanation’ for what is driving the premium increase.

For example, if a company utilizes the OIC’s Premium Change notice, where it appears OIC has already determined as a part of the filing process what is reasonable and sufficient for the first requirement, i.e., a company doesn’t have to provide primary factors for the premium increase, it seems that the company should have the latitude to determine what constitutes a reasonable and sufficient explanation.

WAC 284-30A-030

Many insurers will define antique/classic vehicles slightly differently, so it would be helpful if the final draft Definitions section includes language to recognize this, such as a reference to “or other unique vehicle types otherwise approved by the commissioner” in the exemptions section. It would allow flexibility consistent with the spirit and intent of the statute.

As a specific reference point, here is a company's definition of Antique/Classic/Replica Use vehicles:

- a. A motor vehicle at least 20 years old
- b. A rarity because of unique design and exceptional craftsmanship and condition
- c. Maintained for either pleasure use or occasional use in exhibitions, club activities, parades, and other functions of public interest.

That company has separate definitions for Antique/Collector vehicle versus Classic vehicle.

To further support the point, the term "Classic Car" may be defined slightly differently. The "as otherwise approved" language would allow insurers to request an exemption for "Classic Car" vehicles. And overall, this would help cover any situations where the terms used in the Exemption section may be defined differently across the industry - specialty vehicles, recreational vehicles, etc. (Example - a trailer may fall under "specialty vehicles.")

WAC 284-30A-050

The language lacks clarity regarding whether a company must file the disclaimer with the OIC. If a company need not file the disclaimer, it is unclear how the OIC intends to assess compliance.

Regarding language translation services - Insurers *may* provide policyholders with access to a language translation service specific to the premium change transparency. This can include either written or telephonic translation services. If an insurer translates premium changes, then the translations must comply with WAC 284-20B-150.

Today, we assume that customers for whom English is not their first language have access to translation assistance in order to understand their obligations and rights under the policy contract which is distributed in English. This proposed rule would require insurers that elect to offer translation services to contract with a third-party translation service though that is not required of any other policy documents. It would be best to remove this requirement.

There should be flexibility within the disclaimer requirement where insurers could specifically identify what vehicle types or lines for which customers may request an explanation for the increase. The reference to Chapter 284-30A **WAC** suggests that it would be acceptable for a company to only explain the Auto and/or Property portion of the premium increase and not the Specialty Vehicles.

WAC 284-30A-070

This section provides that insurers may show separate impacts by the different perils or risks being covered and the type of coverage for each. Thus, listing perils should be optional.

The section states that: "Reasonable explanation is a communication standard that requires insurers to provide sufficient information, in terms that are understandable to an average policyholder, which enable the policyholder to figure out the basic nature of any premium increase." As noted above, the formally proposed regulation lacks guidance concerning what is needed to prove a "reasonable explanation." There is also a lack of clarity on what constitutes an average policyholder.

WAC 284-30A-080

It is unclear in the third bullet whether the reference to “percentage or dollar change occurring to the policyholder’s premium” applies to the overall premium or to each particular reason. If intended to apply to each reason, this magnifies our previously stated concerns and highlights ongoing practical problems, and our earlier comments are incorporated by reference.

Conclusion

We appreciate the effort made to move toward a more workable formal regulation, but still have significant questions and concerns. If OIC elects to move forward with the formally proposed regulation, we encourage OIC to adopt a two-phase approach, implementing only WAC-30A-040(1) at this time and holding off on mandating and implementing the additional requirements proposed under WAC-30A-040(2) until such time as OIC has an opportunity to identify, evaluate, and apply any lessons learned from implementation of WAC-30A-040(1). We remain available to continue the dialogue to finalize a statute-based, proportional, cost beneficial, truly useful for consumers and practical final regulation.

Submitted by:

A handwritten signature in black ink, appearing to read 'Mark Sektnan', with a long horizontal flourish extending to the right.

Mark Sektnan
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