



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 19, 2021
TIME: 5:48 PM

WSR 21-21-101

Agency: Office of the Insurance Commissioner

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 21-18-091_ ; 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) Audited financial statements.

Insurance Commissioner Matter R 2021-22

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 29, 2021	1 PM	Zoom Meeting: Detailed information for attending the Zoom meeting posted on the OIC website here: 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: 12/1/2021 _ (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Tabba Alam
Address: PO Box 40260, Olympia, WA 98504-0260
Email: rulescoordinator@oic.wa.gov
Fax: 360-586-3109
Other:
By (date) 11/29/2021

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
Other:
By (date) 11/24/2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Currently, WAC 284-38-200 phrasing provides a timeline only to filers of consolidated audited statements, it does not mention those that are filing as a single entity. This was not the intent as originally drafted therefore OIC needs to Amend WAC 284-38200 to provide a uniform timeline for submission of audited financial statements by entities authorized to issue charitable gift.

Reasons supporting proposal: Charitable Gift Annuity Certificate of Exemption holders are required to submit annual reports to the Office of the Insurance Commissioner. One component of those reports is an audited financial statement. Depending on the makeup of the organization some of the audited reports are consolidated, combining multiple companies into one financial statement, while others are specific to only one entity.

Statutory authority for adoption: RCW 48.02.060, RCW 48.38.010 (10)

Statute being implemented:

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:

Name of proponent: (person or organization) Mike Kreidler, Insurance Commissioner

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Tabba Alam	PO Box 40260, Olympia, WA 98504-0260	360-725-7170
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:
Address:
Phone:
Fax:
TTY:
Email:
Other:

- No: Please explain:

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 rulemaking exceed its probable costs. Considering 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 rulemaking file.

Determination of exemption

The Office of the Insurance commissioner has determined that under RCW 34.05.328(5)(b)(iv), this rulemaking 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).

Determination

OIC determines that this rule [is/is not] exempt from cost benefit analysis requirements.

¹ Chapter 34.05 RCW

² RCW 34.05.328(1)(c)

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:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((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 RCW 34.05.310 (4)(d),.

Explanation of exemptions, if necessary:

Legal obligations

RCW 19.85 states that “...an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry³...” The Small Business Economic Impact Statement (SBEIS) must include “...a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements... To determine whether the proposed rule will have a disproportionate cost impact on small businesses⁴”.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under RCW 19.85.025(3) – provides exclusions under RCW 34.05.310 (4)(d), it corrects/clarifies existing language.

Determination

OIC determines that this rule is exempt from small business economic impact statement requirements.

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:

³ Chapter 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>

⁴ RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>

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:

Date: October 19, 2021

Name: Mike Kreidler

Title: Insurance Commissioner

Signature:

A handwritten signature in black ink that reads "Mike Kreidler". The signature is written in a cursive, slightly slanted style.

WAC 284-38-200 Annual reporting requirements. (1) Every certificate holder must electronically file with the commissioner a completed annual report within ~~((sixty))~~ 60 days of its fiscal year end. A copy of the annual report form and instructions for completing and filing the annual report are available on the commissioner's website at www.insurance.wa.gov.

(2) As an ongoing statement of financial condition, required under RCW 48.38.010(10), the certificate holder must annually electronically file the following financial reports:

(a)(i) An audited financial statement specific to the certificate holder prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding; or

(ii) A consolidated audited financial statement prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding, which includes a supplemental schedule specific to the certificate holder. ~~((The audited financial statement must be filed within fifteen days of its release date following the certificate holder's fiscal year end.))~~

(b) Unless permanently exempt in accordance with Internal Revenue Service regulations, file a complete public inspection copy of the certificate holder's IRS Form 990 within fifteen days of its filing with the IRS.

(c) Any other financial information required by the commissioner.

(3) The audited financial statement must be filed within 15 days of the release date following the certificate holder's fiscal year end.

(4) The failure by a certificate holder to file an audited financial statement within nine months following its most recent fiscal year end, and when applicable its IRS Form 990 within ~~((fifteen))~~ 15 days of its filing with the IRS, will constitute a finding as referenced under RCW 48.38.050 that the certificate holder failed to provide a satisfactory statement of financial condition as required under RCW 48.38.010(10). The finding may subject the certificate holder to disciplinary action as allowed under RCW 48.38.050.

~~((4))~~ (5) An encrypted or password protected filing or transmission is not considered filed under RCW 48.38.010(10) and this section.

~~((5))~~ (6) For purposes of determining whether a filing deadline has been met, a document is considered received if electronically submitted on or before the date it is due.