

**WSR 12-07-015**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed March 12, 2012, 1:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-21-082.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-520, 181-78A-525, 181-78A-530 and 181-78A-535, in response to changes in standards. Effects professional certification preparation programs and aligns those standards to match with recent review and improvement of residency programs.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street Northwest, Gig Harbor, WA 98335, on May 10, 2012, at 8:30 a.m.

Date of Intended Adoption: May 10, 2012.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 3, 2012.

Assistance for Persons with Disabilities: Contact David Brenna by May 3, 2012, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revises rules per requirement that professional educator standards board (PESB) routinely review and improve standards for programs.

Reasons Supporting Proposal: Clarifies statutory requirements.

Statutory Authority for Adoption: RCW 28A.410.210.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

March 12, 2012

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 09-22-023, filed 10/26/09, effective 12/1/11)

**WAC 181-78A-520 Approval standard—Professional education advisory board.** The following ~~((evidenece shall be evaluated to determine whether each professional~~

~~certificate program is in compliance with the program approval standards of WAC 181-78A-515(1)-~~

~~College or university.)) requirements shall govern the professional certificate program.~~

(1) The professional education advisory board ~~has been established ((for the preservice program))~~ in accordance with WAC 181-78A-209 ~~((shall also serve as the professional advisory board for the professional certificate program))~~.

(2) The professional education advisory board has ~~((participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval))~~ adopted operating procedures and has met at least three times a year.

(3) The professional education advisory board has reviewed ~~((the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7)))~~ all program approval standards at least once every five years.

(4) The professional education advisory board ~~annually has ((made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner))~~ reviewed and analyzed data for the purposes of determining whether candidates demonstrated the knowledge and skills to make a positive impact on student learning and providing the institution with recommendations for programmatic change. This data may include, but not be limited to: Candidate surveys, follow-up studies, candidate performance portfolios, and program evaluations.

(5) The professional education advisory board has ~~made recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.~~

(6) The professional education advisory board ~~for administrator preparation programs participated in the candidate selection process for principal preparation programs.~~

AMENDATORY SECTION (Amending WSR 09-22-023, filed 10/26/09, effective 12/1/11)

**WAC 181-78A-525 Approval standard—Accountability.** ~~((The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(2). Each college, university or educational service district shall:~~

(1) ~~Submit for initial approval to the professional educator standards board a performance-based professional certificate program which shall include the program components specified in WAC 181-78A-535.~~

(2) ~~Provide documentation that the respective professional education advisory board has participated in the development of and has approved the proposal.~~

(3) ~~Identify the professional certificate administrator who shall be responsible for the administration of the professional certificate program.~~

(4) ~~Delegate to the professional certificate administrator responsibility for reviewing or overseeing the following: Application for the professional certificate program; advising candidates once accepted; developing and implementing the~~

individualized professional growth plan, the instruction and assistance components, and the assessment seminar; maintaining current records on the status of all candidates accepted into the professional certificate program; and serving as the liaison with the superintendent of public instruction certification office to facilitate the issuance of the professional certificates when candidates have met the required standards.

(5) Establish the admission criteria that candidates for the professional certificate shall meet to be accepted into the professional certificate program.

(6) Describe the procedures that the approved program will use to determine that a candidate has successfully demonstrated the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

(7) Prepare an annual summary of the status of all candidates in the program and submit the summary to the respective professional education advisory board.

(8) Submit any additional information required to the respective professional education advisory board that it requests.

(9) Submit an annual report to the professional educator standards board as part of a less intensive evaluation cycle which will include the following:

(a) A summary of program requirements, linkages of the program to individual professional growth plans, linkages to school district and school improvement plans, and, to the extent possible, linkages to school district professional development programs where such programs are in place in school districts.

(b) A summary of program design, assessment procedures and program revisions in the previous year.

(c) The number of candidates completing the program during the period between September 1 and August 31.

(d) The number of candidates enrolled in the program.

(e) Other information related to the professional certificate program requested by the professional educator standards board.

(10) Facilitate an on-site review of the program when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards.

Provided, That subsequent to the initial program review specified in WAC 181-78A-105 on-site reviews shall be scheduled concurrently with regularly scheduled reviews of residency educator preparations offered by the university or on a five-year cycle for programs offered through an educational service district; provided that the professional educator standards board may approve a variation in the schedule as it deems appropriate.) The following requirements shall govern the professional certificate program.

Each approved educator preparation program shall maintain an assessment system that:

(1) Assesses outcomes in alignment with the conceptual framework and state standards.

(2) Systematically and comprehensively gathers evidence on candidate learning.

(3) Collects candidate work samples that document the knowledge and skills to make a positive impact on student learning.

(4) Aggregates key data over time.

(5) Incorporates perspectives of program personnel, candidates, and P-12 partners.

(6) Includes processes and safeguards that ensure fair and unbiased assessment of candidates.

(7) Provides for regular analysis of assessment results.

(8) Is systematically linked to program decision-making processes.

AMENDATORY SECTION (Amending WSR 09-22-023, filed 10/26/09, effective 12/1/11)

**WAC 181-78A-530 Approval standard—Governance and resources.** ~~((The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the resources program approval standard of WAC 181-78A-515(3):~~

~~(1) Administrators, faculty, and facilitators implementing the college, university or educational service district professional certificate program have appropriate qualifications (academic, experience, or both) for the roles to which they are assigned. Such responsibilities may be shared, when appropriate, among the collaborating agencies.~~

~~(2) The college, university or educational service district shall have responsibility for maintaining fiscal records and ensuring adequate financial support for the professional certificate program.~~

~~(3) Instructional, technological, and other needed resources shall be sufficient in scope, breadth, and recency to support the professional certificate program.)~~ The following requirements shall govern the professional certificate program:

(1) Program leadership, authority, and budget.

(a) An officially designated administrator is responsible for the management of operations and resources for the preparation program.

(b) Budgetary allocations are sufficient for the program to assure that candidates meet state standards.

(2) Personnel.

(a) The program has adequate personnel to promote teaching and learning.

(i) Specific program personnel are assigned the responsibility of advising applicants for certification and for maintaining certification records.

(ii) The program has adequate field supervisors and other support personnel.

(b) Qualifications and professional practices. Program personnel are qualified for their assignments by virtue of education, experience, and current understanding of research and best practices.

(c) Performance and professional development.

(i) Program personnel evaluate their own effectiveness in achieving program goals.

(ii) The program evaluates personnel effectiveness in teaching and learning.

(iii) The program provides opportunity for personnel to engage in professional development.

(3) Program facilities and resources. The program has adequate facilities and resources to promote teaching and learning.

AMENDATORY SECTION (Amending WSR 09-22-023, filed 10/26/09, effective 12/1/11)

**WAC 181-78A-535 Approval standard—Program design.** The following requirements shall govern ((the design of)) the professional certificate program:

**((1) Principal/program administrator.**

(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school.

(b) The professional certificate program must be available to all qualified candidates.

(c) Using the six knowledge and skills standards, and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board or educational service district with its professional education advisory board. Additional agencies may participate in the development of the program if the approved provider and its professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC 181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

(ii) Formalized learning opportunities, past and current experience, professional development opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards as defined in WAC 181-78A-270 (2)(b).

(iii) A final presentation to a panel that includes experienced administrators, during which the candidate provides evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; and a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

(e) Candidates who do not successfully complete a final presentation shall receive an individualized analysis of strengths and weaknesses and a plan for assistance, and shall be allowed additional opportunities to present evidence pertaining to benchmarks not previously met.

**(2) Educational staff associate (ESA)—school counselor, school psychologist, school social worker.**

(a) To be eligible for enrollment in a professional certificate program, a candidate shall be employed in his/her ESA role in a public school, a professional educator standards board-approved private school, or state agency providing educational services for students.

(b) The professional certificate must be available to all qualified candidates.

(c) Using the knowledge and skills standards in WAC 181-78A-270 (5), (7), and (9), and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with the ESA candidate's professional growth team (WAC 181-78A-010 (10)(c)) or the professional education advisory board (PEAB). The individual's professional growth plan shall be based on an assessment of the candidate's ability to demonstrate the standards at the professional certificate benchmark level in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

(ii) Formalized learning opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards in the specific ESA role as defined in WAC 181-78A-270 (5), (7), or (9).

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill, and performance; positive impact on student learning; and specification of areas for continuing education and development.

(e) The candidate will present his/her portfolio to the professional education advisory board (PEAB) or the professional growth team (PGT) who will make a recommendation to the university program administrator/designee regarding the extent to which the candidate meets the professional certificate standards.

(f) Candidates who demonstrate they meet all standards and certification requirements pursuant to WAC 181-79A-150 will be recommended by the university program administrator/designee for the professional certificate.

(g) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for assistance.

(h) No limit shall be placed on the number of times a candidate with a valid residency certificate may enroll in the culminating seminar.)) (1) Recruitment and admission.

(a) Programs will, at a minimum, recruit and admit any candidates in their service region who hold a residency certificate and at least two years of experience in the role.

(b) Learner expectations for program requirements, progression, and completion are identified, published, and accessible.

(2) Program design.

(a) Entry seminar.

(i) The program provides an orientation to the process and to the benchmarks/strands.

(ii) The program includes formalized learning opportunities and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards as defined in WAC 181-78A-270.

(iii) Administrator candidates will complete a 360-type assessment aligned to the interstate school leaders licensure consortium standards.

(b) Professional growth plan implementation. The program includes the development of a draft professional growth plan focused on the career level standards.

(c) Panel presentation.

(i) The program includes a final presentation to a panel that includes experienced P-12 educators in the role, during which the candidate provides evidence of professional certificate level knowledge, skill, and performance.

(ii) Candidates who do not successfully complete a final presentation receive an individualized analysis of strengths and weaknesses and a plan for assistance, and shall be allowed additional opportunities to present evidence pertaining to strands/benchmarks not previously met.

(3) School-based experiences.

(a) Candidate work produced in the program is responsive to, and integrated with, the job responsibilities of candidates.

(b) Entry and exit criteria and a process for mitigating concerns are provided for candidates.

(4) Collaboration. Program personnel collaborate for continuous program improvement with P-12 partners, PEAB members, and candidates.

(5) Diversity in learning experiences.

(a) Candidates reflect on interactions with diverse populations in order to integrate professional growth in cultural competency as a habit of practice.

(b) Program personnel model equity pedagogy through:

(i) Interactions with diverse populations;

(ii) Reflective practice on their own professional growth in cultural competency;

(iii) Culturally relevant communication and problem solving; and

(iv) Personalized instruction that addresses cultural and linguistic backgrounds.

Preproposal statement of inquiry was filed as WSR 11-23-089.

Title of Rule and Other Identifying Information: WAC 182-502-0005 Core provider agreement (CPA).

Hearing Location(s): Health Care Authority, Cherry Street Plaza Building, Apple Conference Room (106A), 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on April 24, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 25, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on April 24, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 12, 2012, TTY/TDD (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to this rule are necessary in order to:

(1) Implement 42 C.F.R. 455.410 which mandates states to require all ordering, prescribing, or referring providers to be enrolled as participating providers.

(2) Clarify language regarding the core provider agreement effective date, when a provider may ask for an effective date earlier than the agency's approval of the provider application, and how far back the agency's chief medical officer may authorize an effective date under the exceptions. This clarification is necessary to allow medicaid provider entities that are subject to survey and certification by the Centers for Medicare and Medicaid Services or the state survey agency, a reasonable amount of time to submit their medicare certification letters to the agency.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, Health Care Authority, P.O. Box 45504, Olympia, WA, (360) 725-1306; Implementation and Enforcement: Ellen Silverman, Health Care Authority, P.O. Box 45506, Olympia, WA, (360) 725-1570.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

March 13, 2012

Kevin M. Sullivan  
Rules Coordinator

**WSR 12-07-028**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed March 13, 2012, 12:39 p.m.]

Original Notice.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-502-0005 Core provider agreement (CPA).** ~~(1) ((All healthcare)) The agency only pays claims submitted by or on behalf of a health care professional((s)), ((healthcare entities)) health care entity, supplier((s)) or contractor((s)) of service ((must have)) that has an approved core provider agreement (CPA) with the agency or ((be enrolled as)) is a performing provider on an approved CPA ((to provide healthcare services to an eligible medical assistance client; otherwise any request for payment will be denied)) with the agency.~~

~~(2) ((For services provided out of state refer to WAC 388-501-0180, 388-501-0182 and 388-501-0184.~~

~~(3) All performing providers of services to a medical assistance client must be enrolled under the billing provider's CPA.~~

~~(4) The department does not pay for services provided to clients during the CPA application process, regardless of whether the CPA is later approved or denied, except as provided in subsection (5) of this section.~~

~~(5) Enrollment of a provider applicant is effective no earlier than the date of approval of the provider application.~~

~~(a) Any exceptions must be requested in writing to the medicare director with justification as to why the applicant's effective date should be prior to the CPA approval date. The requested effective date must be noted and must be covered by any applicable license or certification submitted with this application. Only the medicare director or the medicare director's written designee may approve exceptions. Exceptions will only be considered for the following:~~

- ~~(i) Emergency services;~~
- ~~(ii) Department approved out of state services;~~
- ~~(iii) Retroactive client eligibility; or~~
- ~~(iv) Other critical department need as determined by the medicare director or the medicare director's written designee.~~

~~(b) For federally qualified health centers (FQHCs), see WAC 388-548-1200. For rural health clinics (RHCs), see WAC 388-549-1200.)) Performing providers of services to a medical assistance client must be enrolled under the billing providers' CPA.~~

~~(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form.~~

~~(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.~~

~~(5) The agency does not pay for services provided to clients during the CPA application process, regardless of whether the agency later approves or denies the CPA application, except as provided in subsection (6) of this section.~~

~~(6) Enrollment of a provider applicant is effective on the date the agency approves the provider application.~~

~~(a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective~~

~~date. The chief medical officer will not authorize an effective date that is:~~

~~(i) Earlier than the effective date of any required license or certification; or~~

~~(ii) More than three hundred sixty-five days prior to the agency's approval of the provider application.~~

~~(b) The chief medical officer or designee may approve exceptions as follows:~~

~~(i) Emergency services;~~

~~(ii) Agency-approved out-of-state services;~~

~~(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;~~

~~(iv) Retroactive client eligibility; or~~

~~(v) Other critical agency need as determined by the agency's chief medical officer or designee.~~

~~(c) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.~~

~~(d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.~~

**WSR 12-07-033**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

(Securities Division)

[Filed March 14, 2012, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-094.

Title of Rule and Other Identifying Information: The securities division proposes to amend the rules set forth in chapter 460-33A WAC, which provide an optional method of registration for "mortgage paper securities" as defined in WAC 460-33A-015(4). The proposed rules would strengthen investor suitability requirements; revise the calculation of the number of investors that may participate in a loan; establish requirements for participation agreements; revise net worth and bonding requirements; revise provisions regarding escrow accounts and escrow agreements; establish requirements for servicing agreements; codify the requirement for a disclaimer in advertisements; clarify the fiduciary duties of a mortgage broker-dealer; include additional "dishonest and unethical practices" in WAC 460-33A-090; clarify the requirements for appraisals; clarify investors' rights to receive information and access records concerning their investments; update record-keeping requirements at WAC 460-33A-115; and make other updates and changes.

Hearing Location(s): Department of Financial Institutions (DFI), Securities Division, 150 Israel Road S.W., Tumwater, WA 98501, on April 24, 2012, at 10 a.m.

Date of Intended Adoption: April 25, 2012.

Submit Written Comments to: Jill Vally, Associate General Counsel, DFI, Securities Division, P.O. Box 9033, Olympia WA 98507, e-mail [jill.vally@dfi.wa.gov](mailto:jill.vally@dfi.wa.gov), fax (360) 704-7035, by April 24, 2012.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by April 18, 2012, TTY (360) 664-8126 or (360) 902-8824.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the rules in chapter 460-33A WAC to address concerns that have surfaced during the course of routine examinations of mortgage broker-dealers and the investigation of complaints received from investors who purchased mortgage paper securities. The proposals would:

- Revise the minimum financial thresholds for investors in mortgage paper securities set forth in WAC 460-33A-031;
- Revise the calculation of the number of investors who may participate in a loan;
- Establish the requirements for participation agreements, including basic contents and actions that may not be taken by a mortgage broker-dealer. The participation agreement must also allow investors to call meetings, prohibit the distribution of any excess proceeds from the sale of foreclosed property to the mortgage broker-dealer, prohibit payment of late fees to a mortgage broker-dealer on a loan that has been foreclosed, and bind a mortgage broker-dealer to the agreement's terms to the extent the mortgage broker-dealer maintains an interest in the loan or property acquired through foreclosure;
- Revise the required amount of the surety bond that may be used to satisfy net worth requirements;
- Require the escrow account agreement to provide that the escrow agent maintains independence, that the escrow account is subject to examination by the securities division, and that funds belonging to the mortgage broker-dealer may not be commingled in the account;
- Revise the servicing agreement requirements to clarify that the mortgage broker-dealer who provides loan servicing owes a fiduciary duty to investors, to require that investors may access the books and records concerning their investments, to require mortgage broker-dealers provide quarterly reports to investors concerning loans in default, and to clarify that a mortgage broker-dealer is not entitled to collect late fees on a loan that has been foreclosed;
- Codify the requirement for a disclaimer in advertisements;
- Clarify the fiduciary duties owed by a mortgage broker-dealer to investors in mortgage paper securities;
- Include additional "dishonest and unethical practices" in WAC 460-33A-090;
- Clarify requirements for appraisals;
- Clarify the right of investors to access books and records of the mortgage broker-dealer that concern the investor's investments;
- Update and clarify the record-keeping requirements set forth in WAC 460-33A-115; and
- Make other clarifications and changes.

Reasons Supporting Proposal: The changes proposed should be adopted to better protect investors purchasing mortgage paper securities in registered offerings. The securi-

ties division believes these changes are necessary in light of recent examinations and investigations.

Statutory Authority for Adoption: RCW 21.20.060, [21.20].070, [21.20].090, [21.20].100, [21.20].180, [21.20].-210, [21.20].250, [21.20].270, and [21.20].450.

Statute Being Implemented: Chapter 21.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DFI, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: Bill Beatty, Director of Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Introduction:** This small business economic impact statement (SBEIS) is written in support of proposed rule amendments drafted by DFI, securities division to amend its rules at chapter 460-33A WAC. The rules in chapter 460-33A WAC provide an optional method of registration for mortgage paper securities and mortgage broker-dealers under the Securities Act of Washington, chapter 21.20 RCW.

Mortgage paper securities are high risk investments. The rules concerning mortgage paper securities and mortgage broker-dealers have not been amended since 2001, yet the market for mortgage paper securities has undergone significant changes. In recent years, several mortgage broker-dealers licensed with the securities division to sell mortgage paper securities under chapter 460-33A WAC have ceased operations and faced financial difficulties. The securities division regularly examines its mortgage broker-dealers, and during these periodic examinations has noted certain issues that could be addressed by revision of the mortgage broker-dealer rules. In addition, the securities division enforcement section in recent years has received and investigated complaints from mortgage paper securities investors. These investigations highlighted areas of the rules which could be improved to increase investor protection and to reduce the potential for fraud.

The securities division has involved its licensed mortgage broker-dealers throughout the rule-making process and has made changes to the proposed rules in response [to] their concerns. The securities division finds that the proposed rule amendments should be adopted in order to better protect investors purchasing mortgage paper securities in public offerings in Washington.

**Procedural Background:** The securities division filed form CR-101 to initiate the rule making on June 1, 2009, and originally filed form CR-102 on February 10, 2010. The securities division held a hearing on a previous draft of the proposed rules on March 23, 2010. After reviewing the comments received during the hearing, the securities division revised its proposals and circulated the potential amendments to all then-licensed mortgage broker-dealers. The securities division received some feedback on those potential amend-

ments. In December 2011, the securities division distributed a small business economic impact survey to its licensed mortgage broker-dealers. The securities division has made some additional changes to the proposed amendments and now intends to proceed with the rule making to amend chapter 460-33A WAC.

**Summary of Proposed Rule Amendments:** The proposed rule amendments would amend twenty-one rule sections under chapter 460-33A WAC and create two new sections. The proposed changes are summarized as follows:

*Minimum Investor Suitability Requirements:* The proposed rule making would amend WAC 460-33A-031 to change the minimum investor suitability requirements. Investors would be required to be accredited investors; **or** have a minimum net worth of either \$250,000; or a net worth of \$70,000 **and** \$70,000 in annual income.

In addition, investors who are **not** accredited investors will be limited to investments in mortgage paper securities that do not exceed twenty percent of the investor's net worth, provided that the investor's total investment in mortgage paper securities with any one borrower does not exceed twenty percent of the investor's net worth. In the alternative, investors who are not accredited investors will be limited to investments that do not exceed ten percent of the investor's income for the last year, provided that the investor's total investment in mortgage paper securities does not exceed twenty percent of the investor's net worth. The current rule allows an investor to qualify to invest without meeting any income or net worth thresholds if that investor is a sophisticated investor.

*Maximum Number of Investors in a Loan:* The proposed rule making would amend WAC 460-33A-035 to change the calculation of the maximum number of investors who can participate in a loan. Where a loan is greater than \$500,000 and is secured by a first lien, the maximum number of investors will be the number that results from dividing the loan amount by \$50,000. Under the current rule, a loan may have a maximum of twenty-five investors if the loan is greater than \$100,000 and is secured by a first lien.

*Participation Agreements:* The proposed rule making would create a new section, WAC 460-33A-036, which requires that the mortgage broker-dealer obtain a signed participation agreement from each investor prior to the release of funds from escrow. The rule specifies the information which must be contained in the participation agreement.

*Net Worth and Bonding Requirements:* The proposed rule making would amend WAC 460-33A-040 to increase the face value of a surety bond used to satisfy net worth requirements. The current maximum face value of the surety bond is \$100,000. The proposed rule change would increase the maximum face value of the surety bond that could be required to the greater of \$100,000 **or** one percent of the amount of securities registered, up to a maximum face value of \$250,000.

*Servicing Agreements:* The proposed rule making would amend WAC 460-33A-065 to specify that certain provisions shall be contained in the servicing agreement, including a provision that the servicing agent must send quarterly notices to investors in the event of borrower default, and a provision that investors will not pay the mortgage broker-dealer late

fees assessed on the borrower before foreclosure of a loan if those fees were not received from the borrower prior to foreclosure.

*Additional Provisions:* In addition to the changes listed above, the proposed rules will:

- Revise requirements for escrow accounts and escrow account agreements, including requiring the mortgage broker-dealer to keep evidence of investor payments;
- Require that the mortgage broker-dealer provide the investor a copy of the recorded instrument within ten days of receipt by the mortgaged broker-dealer of the recorded instrument;
- Require that the mortgage broker-dealer maintain a customer complaint file;
- Require a legend be added to advertisements;
- Clarify requirements for appraisals;
- Clarify the fiduciary duties that mortgage broker-dealers owe to investors in mortgage paper securities;
- Include additional "dishonest and unethical practices" in WAC 460-33A-090;
- Clarify investors' right to access the books and records of the mortgage broker-dealer concerning their investments; and
- Make other clarifications and changes.

**Need for Economic Impact Statement:** RCW 19.85-030 provides that an agency shall prepare an SBEIS if the rules it is proposing would impose more than minor costs on businesses in an industry. Minor costs are defined by RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whatever is greater; or one percent of annual payroll. The securities division determined that a small business economic impact may be required for this rule making.

**Survey of Mortgage Broker-Dealers:** In order to gather the information to prepare an SBEIS, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the securities division prepared a small business economic impact survey to survey its licensed mortgage broker-dealers. The securities division currently has only one licensed mortgage broker-dealer.

On December 12, 2011, the securities division sent a letter by regular mail and e-mail to the licensed mortgage broker-dealer to request assistance in determining the economic impact of the proposed amendments to the rules under chapter 460-33A WAC on small businesses. The letter directed the current licensee to complete and return an enclosed survey. Each question in the survey focused on a proposed rule amendment and provided a background statement briefly explaining the amendment. The licensee was asked to estimate the cost of implementing each proposed rule.

The mortgage broker-dealer licensee completed the survey and also met with the securities division on February 16, 2012, to discuss the rule making and the economic impact survey. The results of the survey are discussed below.

## REQUIRED ELEMENTS OF SBEIS

**A brief description of the reporting, record-keeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.**

The proposed rule amendments make a variety of changes to the existing mortgage broker-dealer rules, some of which will create new record-keeping, reporting, or compliance requirements for licensees. Licensees already maintain certain records required of broker-dealers under WAC 460-21B-050 and 460-33A-115. As they do currently, licensees will need to demonstrate compliance with the amended rules by providing relevant records during periodic examinations of the mortgage broker-dealer by the securities division.

New record-keeping and compliance requirements created by the rule making include: A requirement to maintain a customer complaint file; a requirement to maintain evidence of payment by investors; a requirement to maintain participation agreements; and a requirement to send quarterly notices to investors who have invested in loans that have gone into default.

As a result of the rule amendments, mortgage broker-dealers may incur expenses by the need to review existing procedures, documents, and agreements to ensure compliance with the new rules. Though not required to do so by the proposed rules, licensees may choose to hire professional services to assist them. Licensees may hire legal or other professional services to create or revise participation agreements, servicing agreements, escrow agreements, quarterly statements, advertisements, suitability questionnaires, subscription agreements, and other documents and agreements used in the mortgage broker-dealer's business. They may also consult professional services for advice on establishing systems or methods to ensure compliance.

In addition, the proposed rule making may have an economic impact on mortgage broker-dealers in the form of increased equipment, supplies, and administrative costs. These costs may relate to the sending of quarterly notices in the event of default, and providing a written notice of the recording of the recorded instrument and a copy of the recorded instrument. Further, licensees who meet the net worth requirement by having a surety bond will have increased expenses from the costs of maintaining a bond with a greater face value.

Licensees were surveyed to determine if the new requirements would add costs to their business, and if so, how much. The survey asked specific questions regarding the costs of recordkeeping, professional services, equipment, supplies, and administrative costs.

In response to the survey, the licensee checked "yes" to indicate that the changes to the servicing agreement would create additional costs. However, the licensee did not provide a cost estimate. The licensee also checked "yes" to indicate that the changes to the surety bond requirements would create additional costs. The licensee estimated that maintaining a surety bond with an increased face value will cost an additional \$500 per year. The licensee maintains a surety

bond though the licensee currently meets the net worth requirement without it.

The licensee did not provide any estimates in the survey response regarding increased recordkeeping, equipment, supplies, or administrative costs, nor any estimates for increased costs of professional services.

**Whether Compliance with the Proposed Rule Will Cause Businesses to Lose Sales or Revenue:** The proposed rules may result in mortgage broker-dealers losing sales or revenue. The proposed rule changes to the minimum suitability requirements may result in previous customers of a mortgage broker-dealer becoming ineligible to invest in future offerings of mortgage paper securities. In addition, these changes will decrease the size of the pool of potential investors for mortgage paper securities because fewer investors will meet the minimum requirements. This could make replacing investors who no longer meet the requirements more difficult. A mortgage broker-dealer could potentially lose sales or have diminished revenue as a result of the new suitability standards.

In addition, the change in the calculation of the maximum number of investors who can participate in a loan may cause mortgage broker-dealers to lose sales or revenue. The rule change may result in investors in loans over \$500,000 being required to invest larger amounts. A mortgage broker-dealer may have a more difficult time selling loan participations for loans over \$500,000 if investors are not willing or able to invest a larger amount of money. As a result, a mortgage broker-dealer could lose revenue.

The survey asked whether the proposed changes to the minimum suitability standards would result in a loss of business or revenue. The licensee estimated that \$80,000 in revenue could be lost as a result of the proposed changes to the minimum suitability requirements. The survey also asked whether the proposed changes to the calculation of the maximum number of investors would result in a loss of business or revenue. The licensee did not provide an estimate for any loss of revenue that might be caused by the change in the maximum number of investors, but instead answered the survey question with a question mark.

**A comparison of compliance costs for the small business segment and the large business segment of the affected industries, and whether the impact on small business is disproportionate.**

RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules will have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules.

The securities division cannot prepare a comparison of the anticipated costs of the rule making for small businesses versus large businesses because there is only one licensed mortgage broker-dealer. No other businesses will be directly affected by the rule amendments. The securities division therefore cannot determine whether the rule making will have a disproportionate economic impact on small businesses.

**Steps taken by the department under RCW 19.85.-030(2) to reduce the costs of the proposed rule on small**



**businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.**

*Investor Protection Purpose:* In drafting the rule amendments, the securities division attempted to balance the business concerns of licensed mortgage broker-dealers with the securities division's mission to protect the investing public and promote confidence in the capital markets. The securities division identified areas of its rules which could be improved to increase protections for investors and to reduce the potential for fraud. These determinations were made as a result of complaints received by the enforcement section regarding mortgage paper securities and mortgage broker-dealers, and as a result of observations made during periodic examinations of mortgage broker-dealers conducted by the securities division. While the proposed rule changes may increase costs to licensees, the securities division believes the costs will be justified by the increased protection for investors.

As a result of feedback received from affected businesses, the securities division made adjustments to its initial draft of the rules. Several of these adjustments were made in order to reduce the cost of compliance for mortgage broker-dealers. These changes are detailed below. The securities division does not believe that it can reduce costs further and still accomplish the investor protection purpose of the rule making.

*Reducing, Modifying, or Eliminating Substantive Regulatory Requirements:* The securities division created an initial draft of revised rules under chapter 460-33A WAC on which it held a hearing and accepted comments. Based on the feedback received, the securities division made certain revisions in preparing a new draft of the proposed rules.

The securities division relaxed the restrictions contained in earlier proposals on the amount of an investor's net worth that may be invested in mortgage paper securities sold by a single mortgage broker-dealer or in mortgage paper securities that involve a single borrower or the borrower's affiliates. This compromise will lessen the impact the changes to the minimum suitability requirement may have on revenue of mortgage broker-dealers.

Similarly, the securities division altered its initial proposal regarding net worth requirements for mortgage broker-dealers. The securities division had initially proposed to eliminate the \$1,000,000 cap on the net worth requirement so that the required amount of net worth would increase as the amount of mortgage paper securities sold by a mortgage broker-dealer increases. In addition, the securities division proposed that the surety bond, which mortgage broker-dealers may use to meet net worth requirements, should increase from having a maximum face value of \$100,000 to having a face value of the greater of \$100,000 or one percent of the amount of securities registered. After receiving comments regarding the cost of such changes to licensees, the securities division decided to keep the net worth requirement capped at \$1,000,000. Taking the suggestion of a licensee, the securities division now proposes to cap the amount of the surety bond at \$250,000. The cap on both the net worth and surety bond will keep costs lower for licensees than the initial proposals would have, but will still increase protection of investors.

The securities division also proposed changes to the requirements for servicing agreements which it revised in response to comments received. For instance, that securities division had initially proposed that there be an annual renewal of servicing agreements. Comments indicated that this would require the hiring of additional personnel. In response, the securities division removed the proposal to require annual renewing of servicing agreements.

*Simplifying, Reducing or Eliminating Record-Keeping and Reporting Requirements:* The securities division had initially proposed that mortgage broker-dealers provide quarterly reports to investors in loans in default, and that mortgage broker-dealers also provide reports at any other time investors requested. Comments received indicated that allowing an investor to request more than one report per quarter would be burdensome. The securities division decided to change its proposal to remove the provision that would allow investors to request a report at any time. By limiting the number of reports to one per quarter, the costs to the mortgage broker-dealer will be reduced.

Mortgage broker-dealer licensees currently must file annual financial statements within ninety days of the mortgage broker-dealer's fiscal year end. In its revised draft, the securities division decided to extend the deadline for filing annual financial reports to one hundred twenty days after the fiscal year end. This change will assist licensees who may have difficulty providing the financial reports within ninety days of the end of the fiscal year.

**How the Department Will Involve Small Business in Rule Development:** Since the beginning of the rule-making process in 2009, the securities division has involved its mortgage broker-dealer licensees in the rule-making process, and has revised its initial proposals in response to comments received from the licensees.

On June 1, 2009, the securities division sent copies of the notice of preproposal statement of inquiry (CR-101) concerning the possible amendment of the mortgage paper securities rules to all currently licensed mortgage broker-dealers. At the time, there were eight licensed mortgage broker-dealers. The notice invited licensees to attend an information meeting on July 22, 2009, so that the securities division could share ideas for rule changes and get feedback from licensees. Four licensees attended the meeting in person, with a fifth licensee participating by telephone.

The securities division took the feedback received at the meeting into account when drafting the initial draft of the proposed rules. The proposed rules were filed with the notice of proposed rule making (CR-102) on February 10, 2010. The securities division held a hearing on the proposed rules on March 23, 2010. Two mortgage broker-dealer licensees attended the hearing. The securities division also received written comments from two licensees.

Following the rule-making hearing, the securities division revised the proposed draft of the rule amendments in response to the comments received. On June 10, 2010, the securities division provided the revised draft to all current licensees along with an explanation of the changes and a summary of the comments received. At this time, there were six licensees. The securities division requested comments on the revised draft, and received comments from one licensee.

The securities division next prepared a survey to determine the economic impact of the proposed rule making on mortgage broker-dealer licensees. In February 2012, the securities division met with its one remaining licensee to discuss the proposed rules. The securities division made minor changes to its proposed draft in response to the licensee's comments. The securities division will continue to seek the feedback of the licensee as the rule-making process continues.

In addition to involving its mortgage broker-dealer licensees in the rule-making process, the securities division distributed the CR-101 and the initial CR-102 notices to the interested persons list for securities registration and exemptions. The persons on the list may include small businesses and those that advise small businesses. The filings provided instructions for how an interested person may participate in the mortgage broker-dealer rule-making process by submitting comments or attending the rule-making hearing. The securities division will continue to send notices filed in the mortgage broker-dealer rule making to the interested persons list.

**A List of the Industries That Will Be Required to Comply with the Rule:** Mortgage broker-dealers registered to sell mortgage paper securities under chapter 460-33A WAC will be directly affected by the proposed rule changes. The securities division currently has only one licensed mortgage broker-dealer. The securities division had more licensed mortgage broker-dealers in the past and may have more in the future.

**An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule:** The securities division surveyed its mortgage broker-dealer licensee to determine whether the proposed rule making could result in the addition or elimination [of] any jobs. The licensee who responded to the survey indicated that one to two jobs could be eliminated. The licensee did not anticipate that any jobs would be created as a result of the rule making.

A copy of the statement may be obtained by contacting Jill Valley, DFI, Securities Division, P.O. Box 9033, Olympia, WA 98501, phone (360) 902-8760, fax (360) 704-7035, e-mail [jill.valley@dfi.wa.gov](mailto:jill.valley@dfi.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

March 14, 2012

Scott Jarvis  
Director

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-015 Definitions.** As used in this chapter:

(1) "Mortgage broker-dealer" means a person who is defined as a "broker-dealer" in RCW 21.20.005(3) and who effects transactions in mortgage paper securities registered under the provisions of this chapter.

(2) "General offering circular" means a disclosure document that gives a general description of what is involved in the purchase of mortgage paper securities and the business of offering the mortgage paper securities including a description of the mortgage broker-dealer.

(3) "Mortgage salesperson" means a person other than a mortgage broker-dealer who is defined as a "salesperson" in RCW 21.20.005(2) and who represents a mortgage broker-dealer in effecting offers or sales of mortgage paper securities registered under the provisions of this chapter.

(4) "Mortgage paper securities" means notes and ~~(bonds, or)~~ other debt securities secured by mortgages or trust deeds on real or personal property or by a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing, including any guarantee of or interest in the foregoing.

(5) "Specific offering circular" means a disclosure document describing the specific mortgage paper securities offering, which is meant to accompany the general offering circular.

(6) "Financial institution" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or other similarly regulated financial institution, or holding company for any of the foregoing.

(7) "Construction loan" means a loan in which twenty-five percent or more of the loan proceeds will be used to fund future improvements to real estate securing the loan.

(8) "Income-producing properties" means real property that produces income on a regular basis.

(9) "Participation agreement" means the agreement entered into by investors in mortgage paper securities that sets forth the rights and responsibilities of the investors as to each other and as to others and that may provide for the delegation of authority and responsibility for the management of the loan underlying the mortgage paper securities, the management of property acquired by the investors through foreclosure, and other assigned duties.

AMENDATORY SECTION (Amending WSR 92-18-009, filed 8/21/92, effective 9/21/92)

**WAC 460-33A-017 Registration not required.** Securities exempt from registration pursuant to RCW 21.20.310 and transactions exempt from registration pursuant to RCW 21.20.320 need not be registered under the rules of this chapter(=).

Note: Persons intending to rely upon RCW 21.20.320(5) should consult WAC 460-44A-075.

AMENDATORY SECTION (Amending WSR 96-11-025, filed 5/6/96, effective 6/6/96)

**WAC 460-33A-020 Optional registration procedures for mortgage paper securities.** An applicant for registration of a mortgage paper securities offering may elect to register the offering under the rules of this chapter in lieu of following the registration procedure for debt securities under the Securities Act of Washington. Registration under this chapter requires the filing of a registration application as prescribed

by the director of the department of financial institutions accompanied by the following:

- (1) The general offering circular;
- (2) A sample specific offering circular;
- (3) The mortgage paper escrow and trust agreement;
- (4) The participation agreement;
- (5) The mortgage paper service agreement;
- ~~((5))~~ (6) The mortgage broker-dealer's articles of incorporation and bylaws or articles of organization;
- ~~((6))~~ (7) Sample documents to include any note, bond, mortgage, deed of trust, master deed of trust, real or personal property contract, indenture, guaranty, or other such instrument;
- ~~((7))~~ (8) The financial statements of the mortgage broker-dealer, including a balance sheet, profit and loss statement, and statement of cash flow as set forth in RCW 21.20.-210(14). Pursuant to RCW 21.20.210 (14)(c), if the estimated proceeds of the mortgage paper securities offering, together with the proceeds from registered offerings during the year preceding the date of filing of the mortgage paper securities offering, exceed one million dollars, said financial statements shall be audited. If such proceeds exceed five million dollars, said financial statements for the previous two fiscal years shall be audited;
- ~~((8))~~ (9) The subscription and ~~((acknowledgement))~~ acknowledgment agreements;
- ~~((9))~~ (10) An opinion of counsel, if requested, on the legality and validity of the mortgage paper securities being issued;
- ~~((10))~~ (11) An opinion of counsel, if requested, regarding the application of the usury laws to the mortgage paper securities being offered;
- ~~((11))~~ (12) Such other information as the director may prescribe or request.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-031 Minimum investor suitability requirements.** (1) In addition to complying with the suitability requirements set forth in RCW 21.20.702, in each purchase, sale, or exchange of mortgage paper securities registered under the rules of this chapter, the mortgage broker-dealer shall ~~((have reasonable grounds to believe and after making reasonable inquiry shall believe that both the conditions of subsections (1) through (3) of this section are satisfied:~~

~~(1) The investment is suitable for the purchaser upon the basis of the facts disclosed by the purchaser as to the purchaser's other security holdings, the purchaser's other mortgage paper security holdings, and the purchaser's financial situation and needs:~~

~~(2) The purchaser qualifies for at least one of the following:~~

~~(a) The purchaser's investment in the mortgage paper securities being offered does not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse: Provided, That the purchaser's total investment in mortgage paper securities involving any one borrower or his~~

~~affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;~~

~~(b) The purchaser's investment in the mortgage paper securities being offered does not exceed ten percent of the purchaser's (including spouse) taxable income for federal tax purposes for the last year: Provided, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;~~

~~(c) The purchaser, either alone or with a purchaser representative as defined in WAC 460-44A-501, has, as stated in WAC 460-44A-505, such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment; or~~

~~(d) The purchaser is an accredited investor as defined in WAC 460-44A-501.~~

~~(3))~~ have reasonable grounds to believe that either:

(a) The investor is an accredited investor as defined in WAC 460-44A-501; or

(b) The following requirements are satisfied:

(i) The investor has a minimum net worth of either:

(A) Two hundred fifty thousand dollars; or

(B) Seventy thousand dollars provided the investor has a minimum annual income of seventy thousand dollars; and

(ii) The prospective investment by the investor qualifies for one of the following:

(A) The investment in the mortgage paper securities being offered does not exceed twenty percent of the investor's net worth, or joint net worth with that person's spouse: Provided, That the investor's total investment in mortgage paper securities involving any one borrower or the borrower's affiliates may not exceed twenty percent of the investor's net worth, or joint net worth with that person's spouse; or

(B) The investment in the mortgage paper securities being offered does not exceed ten percent of the investor's (including spouse) taxable income for federal tax purposes for the last year: Provided, That the investor's total investment in mortgage paper securities involving any one borrower or the borrower's affiliates may not exceed twenty percent of the investor's net worth, or joint net worth with that investor's spouse.

(2) For purposes of subsections (1)(b)(i)(A) and (B) of this section, net worth shall be determined exclusive of home, home furnishings and automobiles.

(3) The mortgage broker-dealer shall document its determination that an investment in mortgage paper securities is ~~((appropriate))~~ suitable for each investor in accordance with WAC 460-33A-115 (1)(f).

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-035 Limitations on the use of optional registration of this chapter.** Unless the director makes a special notation on the permit issued to the mortgage broker-dealer granting permission to offer the following types of securities based upon a showing that the investors will be

adequately protected, the following types of securities cannot be offered or sold under the rules of this chapter:

(1) Offerings involving construction loans may not be sold using the rules of this chapter unless the loan to value ratio, as determined utilizing the current value of the property without considering future improvements, is within the limits established by subsection (7) of this section.

(2) Offerings involving the mortgage broker-dealer, its officers, agents, affiliates, and persons controlling the mortgage broker-dealer or affiliates may not be sold as part of the optional registration of the rules of this chapter unless the registration with the director includes a full description of these transactions. An offering "involves" the persons listed where the person is the owner, the borrower, or has an interest in the proceeds other than fees, commissions, or mark-ups.

(3) Offerings involving documents reserving the right to subordinate the position of any investor to any mortgage, trust deed or lien created at or after the sale.

(4) Offerings involving pooling or participations involving more than ten investors may not be sold under the optional registration of the rules of this chapter. However, where ~~((only first liens are involved and the note amount equals or exceeds one hundred thousand dollars))~~ the amount of the loan is greater than five hundred thousand dollars and the loan is secured by a first lien, the registrant may sell to ~~((up to twenty five investors))~~ the number of investors that results from dividing the loan amount by fifty thousand dollars. A husband and wife and their dependents may be counted as one investor.

(5) Offerings in which the real property or other collateral securing the notes(~~(-bonds))~~) or other obligations is not within this state unless the general offering circular contains disclosure of all material facts concerning the relevant laws of the state in which the real property is situated and a risk factor discussing the risks of investing in out-of-state real estate.

(6) Offerings involving notes(~~(-bonds))~~) or other obligations secured by a single mortgage, deed of trust or real estate contract or a single group of mortgages, deeds of trust or real estate contracts that are not identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being ~~((a lender))~~ an investor, and the sale to each ~~((purchaser or))~~ investor is not upon the same terms; provided however, an offering may be subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued.

(7) Offerings in which the aggregate principal amount of the notes(~~(-bonds))~~) or other obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, exceed the following percentages of the current market value (as determined by WAC 460-33A-105) of the real property:

- (a) Single-family residences - Eighty percent.
- (b) Commercial and income-producing properties - Sev-enty percent.
- (c) Unimproved property which has been zoned for commercial or residential development - Fifty percent. For purposes of this section, "unimproved property" includes real

property with structures that cannot be legally occupied, do not substantially conform with the appraisal of the property prepared pursuant to WAC 460-33A-105, or otherwise lack the functional attributes or basic amenities customarily found in the type of structures in question.

(d) Other real property - Forty percent.

(8) Offerings involving real estate paper in which a default in any note(~~(-bond))~~) or other obligation will not be a default in all notes(~~(-bonds))~~) or other obligations concerning a specific loan.

(9) ~~((Offerings in which the following actions may be taken on behalf of the investors without the consent of investors holding a majority percentage of the unpaid dollar amount of notes, bonds, or obligations:~~

(a) ~~Consenting to the sale or transfer by the borrower of the collateral securing the loan, or the substitution of a new borrower;~~

(b) ~~Approving any modification to the loan which decreases the rate of interest payable to the investors;~~

(c) ~~Deferring or forgiving the payment of any principal or interest;~~

(d) ~~Making any agreements concerning the release, substitution, or exchange of any collateral, or any portion of the collateral, for the loan;~~

(e) ~~Entering into any agreement to reduce the principal amount of the loan (except for actual payments of principal);~~

(f) ~~Making any concession with respect to compliance with any material obligations imposed by the instruments evidencing or securing the loan; or~~

(g) ~~Extending or renewing the loan.~~

~~((10))~~ (10) Loans in which investors are required to designate the servicing agent as their attorney-in-fact with respect to documents and instruments, other than those described below, which would otherwise require signing or other action by the investors:

(a) Escrow instructions concerning the closing and collection of the loan;

(b) Instruments necessary to substitute investors; and

(c) Partial or full satisfaction or release of the deed of trust or other security instrument pursuant to the provisions of the deed of trust or security agreement upon receipt of the appropriate payment.

~~((11))~~ (10) Offerings in which the investors holding a majority percentage of the unpaid ~~((dollar))~~ amount of any loan may not remove the servicing agent.

~~((12))~~ (11) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected.

#### NEW SECTION

**WAC 460-33A-036 Participation agreement.** (1) In each sale of mortgage paper securities, the mortgage broker-dealer shall obtain a signed participation agreement from the investor prior to the release of funds from escrow.

(2) The participation agreement shall address the following:

(a) The rights of investors to interest on the loan and other amounts derived from the loan and the property securing the loan;

(b) The rights and responsibilities of investors to contribute additional funds;

(c) Any restrictions on transfer;

(d) Any rights of first refusal;

(e) The intended tax treatment of an investment in mortgage paper securities and income derived therefrom;

(f) The nature and the extent of the authority of the mortgage broker-dealer to negotiate any loan modifications or workouts with borrowers, or to seek or negotiate the sale or lease of real property acquired by investors through foreclosure of their lien; and

(g) The requirements for amending the participation agreement.

(3) The participation agreement shall provide that the following actions may not be taken on behalf of the investors without the consent of investors holding a majority percentage of the unpaid amount of notes or other obligations:

(a) Consenting to the sale or transfer by the borrower of the collateral securing the loan, or the substitution of a new borrower;

(b) Approving any modification to the loan that decreases the rate of interest payable to the investors;

(c) Deferring or forgiving the payment of any principal, interest, or other amounts due in connection with the loan;

(d) Making any agreements concerning the release, substitution, or exchange of any collateral, or any portion of the collateral, for the loan;

(e) Entering into any agreement to reduce the principal amount of the loan (except for actual payments of principal);

(f) Making any concession with respect to compliance with any material obligations imposed by the instruments evidencing or securing the loan; or

(g) Extending or renewing the loan.

(4) The participation agreement shall provide that to the extent the mortgage broker-dealer owns an interest in the loan, the mortgage broker-dealer, or any successor or assignee, shall be bound by the terms of the participation agreement.

(5) The participation agreement shall provide that investors holding interests representing at least ten percent of the unpaid amount of the loan, or that hold interests representing at least ten percent of the property acquired by investors through foreclosure, may call a meeting of the investors in the loan.

(6) The participation agreement shall provide that in the event a loan is foreclosed and the property that secures the loan is sold, the excess of the sale proceeds after payment of expenses and repayment of any funds advanced by the mortgage broker-dealer or others shall be distributed to the investors, including the mortgage broker-dealer to the extent it owned an interest in the loan and owns an interest in the property, in proportion to their respective interests in the loan. The participation agreement shall not provide for any such excess to be distributed to the mortgage broker-dealer except to the extent the mortgage broker-dealer owned an interest in the loan and owns an interest in the property.

(7) The participation agreement shall not provide for the payment of late fees, default interest, or other fees and expenses that are assessed against a borrower who has defaulted on a loan, but that are not paid prior to foreclosure, to the mortgage broker-dealer once a loan has been foreclosed. The mortgage broker-dealer may, however, be compensated at a reasonable rate for services performed in pursuing foreclosure and the management or sale of property acquired by investors through foreclosure.

(8) The participation agreement shall not provide for the indemnification of the mortgage broker-dealer by the investors for acts or omissions that constitute a violation of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-037 Disclosure requirements in the sale of real estate owned property.** The following apply to real property acquired by owners of mortgage paper securities through foreclosure or otherwise in settlement of the note or bond which is the subject of the mortgage paper security (real estate owned or REO):

(1) The mortgage broker-dealer shall provide investors a written disclosure document when making a recommendation to investors to sell REO.

(2) The disclosure document required by subsection (1) of this section shall include an appraisal (~~(or updated appraisal)~~) meeting the requirements of WAC 460-33A-105 and dated within twelve months of the recommendation unless:

(a) A real estate broker's opinion of value dated within twelve months of the recommendation is obtained pursuant to WAC 460-33A-038;

(b) In offering the mortgage paper securities to the current owners, the loan-to-value ratio was established by relying on the tax assessment valuation pursuant to WAC 460-33A-105(6). In this instance, the specific offering circular required by subsection (1) of this section may use the current tax assessment valuation; or

(c) The investors, excluding the mortgage broker-dealer and its affiliates, holding a majority percentage interest in the unpaid (~~(dollar)~~) amount of the notes (~~(-bonds)~~) or other obligations consent to the waiver of this requirement. The mortgage broker-dealer may not require investors to consent to this waiver prior to issuing its recommendation to sell REO.

(3) Regardless of whether an appraisal is required or furnished pursuant to subsection (2) of this section, investors holding a majority percentage interest in the unpaid (~~(dollar)~~) amount of the notes (~~(-bonds)~~) or other obligations may direct the mortgage broker-dealer to obtain an appraisal or a new appraisal that is dated within twelve months of the mortgage broker-dealer's recommendation. The costs of such an appraisal shall be the responsibility of the mortgage paper security investors unless the mortgage broker-dealer agrees to pay for the appraisal.

(4) The disclosure document required by subsection (1) of this section shall disclose the following:

(a) A summary of the purchase and sale agreement;

(b) The estimated expenses and other disbursements from the sale proceeds together with the estimated net proceeds to investors if the sale is approved;

(c) A summary of property marketing completed prior to receipt of the purchase and sale agreement;

~~((e))~~ (d) Estimated marketing period necessary to obtain fair market value of the property established by the current appraisal, if an appraisal is required under subsection (2) or (3) of this section;

~~((f))~~ (e) Current appraised value or a real estate broker's opinion of value pursuant to WAC 460-33A-038 of the property, as well as the appraised value of the property at the time the loan was originated, if an appraisal or opinion of value is required under subsection (2) or (3) of this section;

~~((g))~~ (f) Current tax assessed value of the property, as well as the tax assessed value at the time the loan was originated;

~~((h))~~ (g) A summary of the reasons for which the mortgage broker-dealer is making the recommendation to investors to accept the purchase and sale agreement;

~~((i))~~ (h) A summary of the options available to investors should they elect to reject the purchase and sale agreement;

~~((j))~~ (i) The right of investors to obtain upon written request a list of all investors holding an interest in the property subject to the purchase and sale agreement and their respective addresses; and

~~((k))~~ (j) The right of investors holding a majority percentage of the interest in the property to remove the mortgage broker-dealer as the servicing agent in accordance with WAC 460-33A-035(11).

(5) If the terms of the purchase and sale agreement include seller financing, the disclosure document required in this section shall disclose the following in addition to the disclosure required under subsection (4) of this section:

(a) A loan application completed by the prospective buyer;

(b) The credit report of the prospective buyer;

(c) The financial statements of the prospective buyer, if available;

(d) A comparison of the loan terms in the original offering with those proposed in the purchase and sale agreement; and

(e) A summary of the options available to an individual investor who does not wish to participate in the loan should investors holding a majority percentage of the interest in the property accept the purchase and sale agreement.

(6) The disclosure document required in this section shall be sent to all the investors holding an interest in the property subject to the purchase and sale agreement at their last known addresses at least ten days prior to the closing date of the sale.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-040 Net worth or bond requirement.**

(1) All persons and entities meeting the definition of a mortgage broker-dealer must meet and maintain one of the following at all times:

(a) A minimum tangible net worth, as determined by generally accepted accounting principles, of the greater of one hundred thousand dollars or ten percent of the amount of securities registered pursuant to this chapter up to a maximum of one million dollars; or

(b) File a surety bond in ~~((the face amount of one hundred thousand dollars satisfactory to the securities administrator))~~ a form acceptable to the securities administrator with a face amount of the greater of one hundred thousand dollars or one percent of the amount of securities registered pursuant to this chapter up to a maximum of two hundred fifty thousand dollars; or

(c) In the event the mortgage broker-dealer and any affiliate does not handle the funds of ~~((lenders))~~ investors and borrowers, minimum tangible net worth of five thousand dollars, as determined by generally accepted accounting principles.

(2) Every mortgage broker-dealer must maintain a positive net worth at all times.

(3) Every mortgage broker-dealer~~((s failing))~~ that fails to~~((maintain the above mentioned minimum))~~ comply with the net worth requirements set forth in this section must inform the securities division of such failure within seventy-two hours at which time all sales of securities must be suspended.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-055 Escrow account.** (1) Escrow account required. All funds received from ~~((lenders or))~~ investors to purchase mortgage paper securities shall be deposited within forty-eight hours of receipt in an escrow account acceptable to the director. All checks by which purchases or investments are made shall be made payable to the escrow account.

(2) Escrow agent. The escrow account shall be maintained in a financial institution as set forth in WAC 460-33A-015(6), with an escrow agent registered under chapter 18.44 RCW, or with some other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis. ~~((All checks by which purchases or investments are made shall be made payable to the escrow account.))~~

(3) Disbursements from escrow account. All necessary disbursements shall be made from the escrow account. ~~((No person acting as a mortgage broker-dealer or its agent shall accept any purchase or investment funds for mortgage paper securities in advance of the time necessary to fund the loan transaction. No such fund shall be maintained in such account for longer than sixty days without disbursing the funds and the escrow agreement must provide that funds maintained in such))~~ Funds held in the escrow account shall be returned to ~~((the))~~ investors on the sixty-first day from deposit in the account if the funds have not previously been disbursed following the recordation of the applicable instrument in accordance with WAC 460-33A-060(1).

(4) Interest on funds held in escrow account. No interest earned on escrow account funds shall be paid to the mortgage broker-dealer or its affiliates. ~~((The escrow agreement~~

must provide that funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the lenders or investors:

(2) The escrow agreements shall provide that the funds will not be subject to the mortgage broker-dealer's creditors.

(3) The account shall be subject to an audit at any reasonable time by the securities division.) (5) **Prohibition on commingling funds of mortgage broker-dealer in escrow account.** Funds belonging to the mortgage broker-dealer shall not be commingled in the escrow account except insofar as the mortgage broker-dealer purchases mortgage paper securities for its own account. Payments to which a mortgage broker-dealer is entitled in connection with a particular loan or sale of mortgage paper securities shall be promptly distributed to the mortgage broker-dealer upon the closing of the loan or the recordation of the applicable instrument in accordance with WAC 460-33A-060(1).

(6) **Contents of escrow agreement.** The escrow account required to be maintained pursuant to WAC 460-33A-055 shall be governed by an agreement that provides:

(a) Funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the investors;

(b) Funds will not be held in the escrow account for more than sixty days without disbursing the funds and that funds maintained in such account shall be returned to the investor on the sixty-first day from deposit in the account;

(c) Funds held in the escrow account will not be subject to the mortgage broker-dealer's creditors;

(d) The escrow agent agrees that the escrow account is subject to examination at any reasonable time by the securities division; and

(e) The escrow agent agrees to follow the law of escrow and maintain its independence from all parties to the agreement, including the mortgage broker-dealer.

**AMENDATORY SECTION** (Amending Order SDO-140-86, filed 10/20/86)

**WAC 460-33A-060 Recordation. (1) Instrument.** Every person acting as a mortgage broker-dealer or ((his)) its agent selling mortgage paper securities must record the applicable instrument in the applicable place before any disbursement of funds takes place. Such recorded instrument must bear the name of the lien holder or beneficiary and not the name of the mortgage broker-dealer unless the mortgage broker-dealer is the actual lender. Such recorded instrument must reflect the amount or percentage of the loan purchased by the investor.

(2) **Notice to investors.** Every person acting as a mortgage broker-dealer or its agent selling mortgage paper securities must provide notice of recording to the investor within ten days of receipt by the mortgage broker-dealer of the recorded instrument. The notice must be in writing and must include a copy of the recorded instrument.

**AMENDATORY SECTION** (Amending Order SDO-124-89, filed 8/17/89, effective 9/17/89)

**WAC 460-33A-065 Service agreement.** (1) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, who undertakes to service a mortgage paper security shall have a written agreement with the ((lender or holder of the contract)) investors setting forth specifically what services will be provided.

(2) The service agreement shall ((require)) provide:

(a) That payments received on the note, bond or obligation be immediately deposited to a trust account and in accordance with the provisions of this rule;

(b) That such payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received;

(c) That payments received on the note, bond or obligation shall be transmitted to the ((purchasers or lenders)) investors pro rata according to their respective interests within thirty-one days after receipt thereof by the agent. If the source for such payment is not the maker of the note, bond or obligation, the agent will inform the ((purchasers or lenders)) investors of the source for payment. A broker or servicing agent who transmits to the ((purchasers or lenders)) investors such broker's and/or servicing agent's own funds to cover payments due from the borrower but unpaid may recover the amount of such advances from the trust fund when the past due payment is received; ((and))

(d) That the servicing agent will file a request for notice of default upon any prior encumbrances and promptly notify the ((purchasers or lenders)) investors of any default on such prior encumbrances or on the note or ((notes)) other obligations subject to the servicing agreement;

(e) That any fee to be collected by the servicing agent shall be reasonable in relation to the services performed;

(f) That the servicing agent may not accept, provide, or charge any undisclosed compensation or realize any undisclosed remuneration;

(g) That in the event a borrower defaults on a loan or the investors acquire property that secured a loan, the servicing agent shall send, at least once every calendar quarter or ninety-day period, each investor a statement setting forth all income and expenses incurred in connection with the loan or the property during that period, or since the last statement, within fifteen days after the end of the calendar quarter or ninety-day period or receipt of an investor's request for a statement, until such time that the default has been cured or the property has been sold, at which time a final statement shall be provided to each investor;

(h) That any provision providing for the indemnification of the servicing agent shall not provide for indemnification by the investors for acts or omissions that constitute a violation of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder;

(i) That whenever the servicing agreement requires the consent or approval of the investors, the investors shall have a minimum of fifteen days from the date the request for consent or approval is sent by the servicing agent to approve or disapprove of the matter in writing unless a shorter period of time is permitted under this chapter or consented to in writing

by investors holding interests representing a majority interest in the unpaid amount of the loan; and

(j) That the servicing agent will, upon request by an investor, provide a list of the investors holding an interest in a loan to the investor, along with the respective percentage interests in that loan held by each investor and their most recent mailing addresses on file with the servicing agent.

(3) The servicing agreement shall not provide for the payment of late fees, default interest, or other fees and expenses that are assessed against a borrower who has defaulted on a loan, but that are not paid prior to foreclosure, to the mortgage broker-dealer once a loan has been foreclosed. The mortgage broker-dealer may, however, be compensated at a reasonable rate for services performed in pursuing foreclosure and the management or sale of property acquired by investors through foreclosure.

(4) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, that provides servicing on loans sold as mortgage paper securities owes the duties of a fiduciary to each investor.

(5) Any notices to investors concerning the servicing of the loan in which they have invested, or property that has been acquired by investors through foreclosure, shall be sent to each investor at the investor's last known address.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-070 Origination and assignment.**

Every mortgage broker-dealer or his agent or affiliate that originates loan transactions and later intends to offer these as mortgage paper securities to ~~((lenders or))~~ investors must obtain the permission of the director. Every mortgage broker-dealer or its agent or affiliate that purchases or takes mortgage paper in its own name, whether for its own account or the account of others, and intends to offer such as mortgage paper securities to ~~((lenders or))~~ investors must disclose its interest in the property or the transaction and must not disburse funds from the escrow account until the applicable instrument has been properly recorded in the name of the ~~((lenders or))~~ investors.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-075 Advertising.**

(1) No person effecting a transaction in mortgage paper securities shall advertise in any manner any statement or representation, with regard to any mortgage paper security, which is false, misleading or deceptive.

(2) Every mortgage broker-dealer or its agent shall file with the director ~~((five))~~ seven calendar days prior to use, true copies of all advertising materials. If not disallowed by written notice or otherwise within ~~((five))~~ seven calendar days from the date filed, the material may be disseminated. No person shall use any such material in any way after the director gives written notice that such material contains any statement or omission that is false or misleading.

(3) All advertisements concerning the offer or sale of mortgage paper securities that are not rated by a nationally recognized statistical rating organization or insured against

loss shall include the following legend: Mortgage paper securities are not rated or insured against loss and may be subject to substantial risks that are further described in the general and specific offering circulars. Past performance is not a guarantee of future results. Investors are urged to read the general and specific offering circulars prior to investing.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-081 Expiration of mortgage broker-dealer registration, renewal procedure**~~((delinquency fees))~~. A license issued to a mortgage broker-dealer shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall ~~((be deemed delinquent))~~ terminate at the expiration of the issuer's securities registration. ~~((For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of one hundred dollars in addition to the renewal fee. No renewal applications will be accepted after that time.))~~

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-086 Expiration of mortgage securities salesperson registration, renewal procedure**~~((and delinquency fees))~~. A license issued to a mortgage securities salesperson shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall ~~((be deemed delinquent))~~ terminate at the expiration of the issuer's securities registration. ~~((For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of fifty dollars in addition to the renewal fee. No renewal applications will be accepted after that time.))~~

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-090 Dishonest and unethical practices—Mortgage broker-dealers.** The phrase "dishonest and unethical practices" as used in RCW 21.20.110~~(((7)))~~ (1)(g) includes the following acts by mortgage broker-dealers or mortgage salespersons:

(1) To cause investors to sign reconveyances of title, quit claim deeds, or any other like instruments before such instruments are required in connection with some transaction such as payoff or foreclosure.

(2) To fail to deliver, within a reasonable time, to the investor proceeds, received by the mortgage broker-dealer, of sale, refinancing, or foreclosure of an obligation owned by the investor.

(3) To engage in any dishonest or unethical practice as set forth in WAC 460-21B-060 or 460-22B-090.



(4) To fail to comply with the material terms of agreements between the mortgage broker-dealer and the investors in mortgage paper securities.

(5) To obtain an agreement from investors in mortgage paper securities that provides for the indemnification of the mortgage broker-dealer or its affiliates by investors for violations of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-095 Fiduciary duty—Mortgage broker-dealers.** A mortgage broker-dealer owes the duties of a fiduciary to investors in mortgage paper securities. For the purposes of this section, examples of these duties include, but are not limited to, the following:

(1) A mortgage broker-dealer must act in the best interests of and in the utmost good faith toward the investors in mortgage paper securities;

(2) In the event a conflict arises in connection with a mortgage broker-dealer acting as an agent for both mortgage borrowers and ~~((purchasers of))~~ investors in mortgage paper securities, every mortgage broker-dealer shall resolve the conflict in favor of the ~~((purchasers of))~~ investors in mortgage paper securities;

(3) A mortgage broker-dealer shall disclose any potential and actual conflicts of interest it may have in mortgage paper securities transactions to the prospective investors in mortgage paper securities;

(4) A mortgage broker-dealer must comply with the material terms of agreements with investors in mortgage paper securities, including servicing and participation agreements;

(5) A mortgage broker-dealer must use reasonable care in performing its duties; and

(6) A mortgage broker-dealer has a duty to allow reasonable access to each investor to pertinent records concerning loans in which the investor has invested and property in which the investor has acquired an interest through foreclosure.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

**WAC 460-33A-100 Written statement.** Every person selling a mortgage paper security that is required to be registered under the regulations of this chapter shall ~~((require the purchaser or his agent to sign a))~~ obtain a signed receipt for the general and the specific offering circulars containing all the applicable information required by WAC 460-33A-025 and 460-33A-030 from the investor or his agent before the ~~((purchaser))~~ investor shall be obligated to fund the transaction. No person shall permit the ~~((purchaser))~~ investor to sign such receipt if any of the required information is omitted. The mortgage broker-dealer shall retain an executed copy of receipt for four years.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-105 Appraisals.** (1) An appraisal of each parcel of real property or other property which secures or relates to a transaction subject to the provisions of this chapter shall be made by an independent appraiser. The appraisal shall be kept on file by the mortgage broker-dealer for four years.

(2) The appraisal shall be prepared and reported in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by The Appraisal Foundation.

(3) The appraisal shall reflect the value of the property on an "as is" basis not ~~((an))~~ ~~((as-built))~~ subject to repair." ~~((basis))~~ "per plans and specifications," or otherwise.

~~((3))~~ (4) The appraisal shall conform to the following requirements:

(a) The appraisal shall be prepared by a competent, independent appraiser acceptable to the administrator; and

(b) The appraiser shall be appropriately licensed ~~((or certified))~~ in conformance with the ~~((Certified))~~ The Real Estate Appraiser Act, chapter 18.140 RCW.

~~((4-An))~~ (5) The effective date of the appraisal ~~((made))~~ must be within the twelve-month period prior to the sale of the mortgage paper security ~~((is sufficient)).~~

~~((5))~~ (6) The written consent of any appraiser who is named as having prepared an appraisal in connection with the mortgage paper securities offering shall be kept on file by the mortgage broker-dealer.

~~((6))~~ (7) In lieu of the appraisal required by this section, the mortgage broker-dealer may elect to rely on the most recent tax assessment valuation of each parcel of real property.

~~((7))~~ (8) The specific offering circular shall disclose the ratio of the aggregate principal amount of the notes~~((bonds))~~ or other obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, compared to the most recent tax assessment valuation of the real property or the appraised amount, if an appraisal was obtained pursuant to this section. If the loan to value ratio is disclosed based on the appraised value of the real property, the specific offering circular shall also disclose the most recent tax assessment valuation of the real property.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-110 Financial statements and annual reports.** Every mortgage broker-dealer shall file with the director upon registration under WAC 460-33A-080 and annually, a report containing financial statements prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or by the chief executive and accounting officers of the mortgage broker-dealer who shall certify that they each have verified the material accuracy and completeness of the information contained therein. The annual report shall include, but not be limited to the receipt and disposition of all funds handled in connection with transactions subject to the rules of this chapter. The annual report shall be filed with the director within ~~((ninety))~~ one hundred twenty days after the close of the period of the

report unless, for good cause shown, the director in writing, extends the time therefor. The report shall contain the following:

- (1) Total number of sales, as principal or agent, subject to the rules of this chapter during the period, and
- (2) Total dollar volume of such sales.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-115 Books and records.** Each mortgage broker-dealer ~~((shall))~~ has a duty to make and keep current in this state ~~((the following))~~ books and records relating to its business. This duty includes the duty to make, keep and preserve the records referenced in WAC 460-21B-050, as well as the following records concerning sales of mortgage paper securities and other asset-backed securities:

(1) A file for each loan which the mortgage broker-dealer has funded through sales of mortgage paper securities and other asset-backed securities, including securities not registered pursuant to chapter 460-33A WAC, which file shall contain the following:

(a) A copy of each appraisal or tax assessment valuation ~~((required by WAC 460-33A-105));~~

(b) Copies of all documents of title representing current interests in the real property securing the loan;

(c) Copies of title insurance policies and any other insurance policies on the real property securing the loan;

(d) Evidence of payments for the purchase of securities in the loan to include copies of checks submitted by investors, ACH payments, and records of other electronic payments;

(e) A copy of the signed participation agreement for each investor;

(f) The ~~((acknowledgement))~~ acknowledgment of receipt by each investor of the specific and general offering circulars or other disclosure materials;

~~((g))~~ (g) The subscription agreement for each investor;

~~((h))~~ (h) A copy of the investor suitability questionnaire for each investor and documentation of the mortgage broker-dealer's determination that an investment in mortgage paper securities or other asset-backed securities is suitable for each investor in accordance with RCW 21.20.702 and WAC 460-33A-031. If the mortgage broker-dealer has not verified the suitability of an investment in mortgage paper securities for ~~((a purchaser))~~ an investor within the prior twelve months, the mortgage broker-dealer shall conduct a reasonable inquiry to verify that further investment in mortgage paper securities is suitable based on the criteria set forth in WAC 460-33A-031 and document such a determination. As an alternative to maintaining this documentation in the loan files, the mortgage broker-dealer may maintain this documentation in separate files provided a list of all investors participating in the loan is included in the loan file with an indication of the location of this documentation for each investor;

~~((g))~~ (i) The specific offering circular for the offering or other offering materials provided in sales of asset-backed securities;

~~((h))~~ (j) All correspondence with investors relating to the loan;

~~((k))~~ (k) The loan application of the borrower and all supporting documents such as the credit report on the borrower;

~~((l))~~ (l) Copies of all service agreements with investors relating to the loan;

~~((m))~~ (m) Copies of the escrow instructions and settlement statements relating to the loan;

~~((n))~~ (n) Copies of all real estate broker's opinions of value obtained in accordance with WAC 460-33A-038 and their written consent to use their opinions of value in connection with an offering of mortgage paper securities.

(2) A file for each loan for which the mortgage broker-dealer is soliciting funds through the sale of mortgage paper or other asset-backed securities, which file shall contain the same items required under subsection (1) of this section except for those items which are not yet available because the mortgage paper or asset-backed security has not yet been sold.

(3) A file containing copies of all service agreements required under WAC 460-33A-065.

(4) Ledgers (or other records) reflecting all assets, liabilities, income, expense, and capital accounts.

(5) Ledgers, accounts (or other records) itemizing separately each cash account of every customer including, but not limited to, all funds in the mortgage broker's escrow and trust account, all proceeds of sale, refinancing, foreclosure, or similar transaction involving the real or personal property securing a loan funded by sales of mortgage paper, and all moneys collected from the borrower on behalf of the investors.

(6) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of net liquid assets as of the trial balance date pursuant to WAC 460-33A-040. Such trial balances and computations shall be prepared currently at least once a month.

(7) A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:

(a) His or her name, address, Social Security number, and the starting date of his or her employment or other association with the broker-dealer.

(b) His or her date of birth.

(c) The educational institutions attended by him or her and whether or not he or she graduated therefrom.

(d) A complete, consecutive statement of all his or her business connections for at least the preceding ten years, including his or her reason for leaving each prior employment, and whether the employment was part time or full time.

(e) A record of any denial of a certificate, membership or registration, and of any disciplinary action taken, or sanction imposed, upon him or her by any federal or state agency, or by any national securities exchange or national securities association, including a record of any finding that he or she was a cause of any disciplinary action or had violated any law.

(f) A record of any denial, suspension, expulsion or revocation of a certificate, membership or registration of any bro-

ker-dealer with which he or she was associated in any capacity when such action was taken.

(g) A record of any permanent or temporary injunction entered against him or her or any broker-dealer with which he or she was associated in any capacity at the time such injunction was entered.

(h) A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject.

(i) A record of any other name or names by which he or she has been known or which he or she has used.

(8) A file containing all written complaints and memoranda prepared by the mortgage broker-dealer summarizing each oral complaint received from investors in mortgage paper securities or other securities sold by the mortgage broker-dealer.

#### NEW SECTION

**WAC 460-33A-116 Access to loan records by investors.** (1) An investor in mortgage paper securities has a right to access the books and records maintained by a mortgage broker-dealer concerning the loan underlying the mortgage paper securities purchased by that investor, as well as records concerning property in which an investor has acquired an interest through foreclosure of loans sold as mortgage paper securities, to the extent it is reasonably necessary in the interest of the investor.

(2) Every mortgage broker-dealer shall provide investors in mortgage paper securities and their agents and attorneys access to the books and records required to be maintained by WAC 460-33A-115 (1) and (2), except for the records set forth in WAC 460-33A-115 (1)(d) through (h) to the extent those records concern investments in mortgage paper securities by persons other than the requestor, concerning loans in which the investors have invested. Every mortgage broker-dealer shall provide investors in mortgage paper securities and their agents and attorneys the opportunity to inspect and copy books and records during ordinary business hours at the mortgage broker-dealer's principal office if the investor or its agent or attorney gives the mortgage broker-dealer notice of the investor's demand at least five business days before the date on which the shareholder wishes to inspect and copy. A mortgage broker-dealer may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Every mortgage broker-dealer shall furnish to an investor in mortgage paper securities, and to the legal representative of a deceased investor or investor under legal disability:

(a) Without demand, any information concerning the mortgage paper securities purchased that is reasonably required for the proper exercise of the investor's rights under the participation agreement or this chapter; and

(b) On demand, any other information concerning the mortgage paper securities purchased, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-125 Notice of changes by mortgage broker-dealers.** (1) Each mortgage broker-dealer shall, upon any material change in the information contained in its application for registration promptly file an amendment to such application setting forth the changed information (and in any event within thirty days after the change occurs).

(2) Each mortgage broker-dealer shall notify the director of the employment of any new agent in Washington and of the termination of employment of any agent in Washington, giving the full name and Social Security number of the individual involved, the date of employment or termination, and the location of the office in which he or she was or will be employed by submitting a completed ((NASD)) FINRA Form U-4 to the director or the director's designee within twenty-one days after the event occurs.

(3) Each mortgage broker-dealer shall notify the director of the termination of employment of any agent in Washington by submitting a completed ((NASD)) FINRA Form U-5 to the director or the director's designee, within thirty days after the event occurs.

#### **WSR 12-07-040**

#### **PROPOSED RULES**

#### **LIQUOR CONTROL BOARD**

[Filed March 14, 2012, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-24-098.

Title of Rule and Other Identifying Information: New sections in chapter 314-02 WAC, Requirements for retail liquor licensees; create new chapter 314-23 WAC, Spirits distributors and spirits certificate of approval licenses; and revise chapter 314-28 WAC, Distilleries.

Hearing Location(s): Washington State Liquor Control Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on April 25, 2012, at 10:00 a.m.

Date of Intended Adoption: May 2, 2012.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by April 25, 2012.

Assistance for Persons with Disabilities: Contact Karen McCall by April 25, 2012, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New permanent rules are needed to implement Initiative 1183 that passed on November 8, 2011. Parts of the initiative became effective on December 8, 2011. New license types were created and the state of Washington changed from a controlled liquor system to a privatized liquor system. Emergency rules were adopted on December 7, 2011, to clarify the language in the new laws created in Initiative 1183. Permanent rules are needed to replace the emergency rules and further clarify the new laws.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, 66.24.640.

Statute Being Implemented: RCW 66.24.055, 66.24.-160, 66.24.630, 66.24.640.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has a positive impact on businesses or individuals who wish to sell spirits in the state of Washington.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required.

March 14, 2012

Sharon Foster  
Chairman

#### NEW SECTION

**WAC 314-02-103 What is a wine retailer reseller endorsement?** (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license to allow the sale of wine at retail to on-premises liquor licensees.

(2) No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) A grocery store licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(4) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(5) The annual fee for the wine retailer reseller endorsement is one hundred sixty-six dollars.

#### NEW SECTION

**WAC 314-02-104 Central warehousing.** (1) Each retail liquor licensee having a warehouse facility where they intend to receive wine and/or spirits must register their warehouse facility with the board and include the following information:

(a) Documentation that shows the licensee has a right to the warehouse property;

(b) If a warehouse facility is to be shared by more than one licensee, each licensee must demonstrate to the board

that a recordkeeping system is utilized that will account for all wine and/or spirits entering and leaving the warehouse for each license holder. The system must also account for product loss;

(c) Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee; and

(d) Alternatively, if the warehouse does not have a recordkeeping system that provides the required information, wine and/or spirits for each licensee in a shared warehouse must be separated by a physical barrier. Where physical separation is utilized, a sketch of the interior of the warehouse facility must be submitted indicating the designated area the licensee will be storing product. (Example: If ABC Grocery and My Grocery, each licensed to a different ownership entity, both lease space in a warehouse facility, the wine and/or spirits must be in separate areas separated by a physical barrier.)

(2) Upon the request of the board, the licensee must provide any of the required records for review. Retail liquor licensees must keep the following records for three years:

(a) Purchase invoices and supporting documents for wine and/or spirits purchased;

(b) Invoices showing incoming and outgoing wine and/or spirits (product transfers);

(c) Documentation of the recordkeeping system in a shared warehouse as referenced in subsection (1)(b) of this section; and

(d) A copy of records for liquor stored in the shared warehouse.

(3) Each licensee must allow the board access to the warehouse for audit and review of records.

(4) If the wine and/or spirits for each licensee in a shared warehouse is not kept separate, and a violation is found, each licensee that has registered the warehouse with the board may be held accountable for the violation.

#### NEW SECTION

##### **WAC 314-02-106 What is a spirits retailer license?**

(1) A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license. The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee must possess a federal basic permit for purchasing spirits at wholesale for resale under the Federal Alcohol Administration Act. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The annual fee for a spirits retail license is one hundred sixty-six dollars.

#### NEW SECTION

**WAC 314-02-107 What are the requirements for a spirits retail license?** (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

- (i) Inventory management;
- (ii) Employee training and supervision; and
- (iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.

#### NEW SECTION

**WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?**

(1) A **spirits retailer** must submit quarterly reports and payments to the board.

The required reports must be:

- (a) On a form furnished by the board;
- (b) Filed every quarter, including quarters with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 20th). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** If a spirits retailer licensee does not submit its quarterly reports and payment to the board as required in subsection (1) of this section, the licensee is subject to penalties.

A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day quarterly report is due. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

### **Chapter 314-23 WAC**

#### **SPIRITS DISTRIBUTORS, SPIRITS CERTIFICATE OF APPROVAL LICENSES, AND SPIRITS IMPORTERS**

#### NEW SECTION

**WAC 314-23-001 What does a spirits distributor license allow?** (1) A spirits distributor licensee may not commence sales until March 1, 2012. A spirits distributor licensee is allowed to:

(a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;

(b) Sell spirits to any liquor licensee allowed to sell spirits;

(c) Sell spirits to other spirits distributors; and

(d) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

#### NEW SECTION

**WAC 314-23-005 What are the fees for a spirits distributor license?** (1) The holder of a spirits distributor license must pay to the board a monthly license fee as follows:

(a) Ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure; and

(b) Five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(c) The license fee is only calculated on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from a spirits certificate of approval holder.

(d) Reporting of sales and payment must be submitted on forms provided by the board.

(2) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars.

#### NEW SECTION

**WAC 314-23-020 What are the requirements for a spirits distributor license?** In addition to any application requirements in chapter 314-07 WAC, applicants applying for a spirits distributor license must submit:

(1) A copy of all permits required by the federal government;

(2) Documentation showing the applicant has the right to the property;

(3) An acknowledgment form certifying the applicant has a security plan which addresses:

(a) Inventory management; and

(b) Physical security of spirits product with respect to preventing theft.

#### NEW SECTION

**WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?** (1) A **spirits distributor** must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

#### NEW SECTION

**WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?** (1) If a spirits distributor licensee does not submit its monthly reports and payment to the board as required in WAC 314-23-021(1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

#### NEW SECTION

**WAC 314-23-030 What does a spirits certificate of approval license allow?** (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits

manufacturers located outside of the state of Washington but within the United States.

(2) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to distributors or importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(3) A certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(4) An authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain an authorized representative certificate of approval license which allows the holder to ship spirits to spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(5) An authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States may ship spirits to licensed spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

#### NEW SECTION

**WAC 314-23-040 What are the requirements for a certificate of approval license?** The following documents are required to obtain a certificate of approval license:

(1) Copies of all permits required by the federal government;

(2) Copies of all state licenses and permits required by the state in which your operation is located; and

(3) Licensing documents as determined by the board.

#### NEW SECTION

**WAC 314-23-041 What are the monthly reporting and payment requirements for a spirits certificate of approval licensee?** (1) A spirits certificate of approval licensee must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

#### NEW SECTION

**WAC 314-23-042 What if a certificate of approval licensee fails to report or pay, or reports or pays late?** (1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

#### NEW SECTION

**WAC 314-23-050 What does a spirits importer license allow?** (1) A spirits importer license is issued to an in-state spirits importer. A spirits importer is allowed to:

- (a) Import spirits into the state of Washington;
- (b) Store spirits in the state of Washington;
- (c) Sell spirits to spirits distributors; and
- (d) Export spirits in original containers.

(2) An out-of-state spirits importer is required to obtain an authorized representative certificate of approval license as referenced in WAC 314-23-030.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-010 Records.** (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers must:

(a) ~~((Must))~~ Keep records ~~((concerning))~~ regarding any spirits, whether produced or purchased, for three years after each sale. A distiller ~~((may be))~~ is required to report on forms approved by the board;

(b) ~~((Must))~~ In the case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; ~~((and))~~

(c) ~~((Must))~~ Submit duplicate copies of transcripts, notices, or other data that ~~((are))~~ is required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request;

(d) Preserve all sales records to spirits retail licensees, sales to spirits distributors, and exports from the state; and

(e) Submit copies of its monthly records to the board upon request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records ~~((, in the case))~~ of retail sales to consumers; and

(b) Submit ~~((duplicate copies of))~~ its monthly ~~((returns))~~ records to the board upon request.

#### NEW SECTION

**WAC 314-28-030 Changes to the distiller and craft distiller license.** (1) Beginning March 1, 2012, all distilleries licensed under RCW 66.24.140 and 66.24.145 may sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington.

(2) Beginning June 1, 2012, a distiller may sell spirits of its own production to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present at the licensed premises.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-050 What does a craft distillery license allow?** (1) A craft distillery license allows a licensee to:

(a) Produce sixty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) ~~((Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special ordered by an individual Washington state liquor store))~~ For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits distributor;

(d) For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits retailer in the state of Washington;

~~((d))~~ (e) Sell to out-of-state entities;

~~((e))~~ (f) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040;

~~((f))~~ (g) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

~~((g))~~ (h) Contract ~~((produced))~~ produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors until March 1, 2012.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-060 What are the general requirements for a craft distillery license?** Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

- (1) Submit copies of all permits required by the federal government;
- (2) Submit other licensing documents as determined by the board;
- (3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington(=
- ~~(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;~~
- ~~(5) Purchase any spirits used for sampling at the distillery premises from the board; and~~
- ~~(6) Purchase any spirits used for samples provided to retailers from the board)).~~

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license?** (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

- (a) On a form furnished by the board (~~(or in a format approved by the board))~~;
  - (b) Filed every month, including months with no activity or payment due;
  - (c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and
  - (d) Filed separately for each liquor license held.
- (2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(3) ~~((Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge.))~~ On sales on or after March 1, 2012, a distillery or craft distillery must

pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first two years of licensure and five percent of their gross spirits revenues to the board in year three and thereafter.

~~(a) ((Any on-premises sale or sample provided to a customer is considered a sale reportable to the board.))~~ On sales after June 1, 2012, a distillery or craft distillery must pay seven percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

~~(b) ((Samples provided to retailers are considered sales reportable to the board.~~

~~(e))~~ Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

**WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?**

If a distillery or craft distiller ~~((fails to))~~ does not submit its monthly reports ~~((or))~~ and payment to the board ~~((or submits late, then))~~ as required in WAC 314-28-070(1), the licensee is subject to penalties ~~((and surety bonds))~~.

~~((+))~~ Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

~~((2))~~ Surety bonds. A "surety bond" is a type of insurance policy that guarantees payment to the state, and is executed by a surety company authorized to do business in the state of Washington. Surety bond requirements are as follows:

- ~~(a) Must be on a surety bond form and in an amount acceptable to the board;~~
- ~~(b) Payable to the "Washington state liquor control board"; and~~
- ~~(c) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.28.040 and by all applicable WACs.~~

(3) The board may require a craft distillery to obtain a surety bond or assignment of savings account, within twenty-one days after a notification by mail, if any of the following occur:

- (a) A report or payment is missing more than thirty days past the required filing date, for two or more consecutive months;
- (b) A report or payment is missing more than thirty days past the required filing date, for two or more times within a two-year period; or
- (c) Return of payment for nonsufficient funds.



(4) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.

(5) The amount of a surety bond or savings account required by this chapter must be either three thousand dollars, or the total of the highest four months' worth of liability for the previous twelve month period, whichever is greater. The licensee must maintain the bond for at least two years.

(6) Surety bond and savings account amounts may be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee will be required to increase the bond amount or amount on deposit within twenty-one days.

(7) If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue payments from the surety company or assigned account. If the exact amount of payment due is not known because of missing reports, the board will estimate the payment due based on previous production, receipts, and/or sales.)

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

**WAC 314-28-090 Distilleries or craft distilleries(~~— Selling in state, retail pricing and product listing~~)— Selling out-of-state(~~— Special orders~~).** (~~((1) What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?~~)

(a) There are two ways to sell a spirits product at a state liquor store:

- (i) Through the special order process; and
- (ii) Through product listing.

(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.

(c) Before a craft distillery licensee may sell its product to a customer (twenty-one years old or older) at its distillery premises, a licensee must;

- (i) Obtain a retail price from the board;
- (ii) Sell its product to the board; and
- (iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.

(d) ~~Listing a product.~~ A craft distillery licensee must submit a formal request to the board to have the board regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.

(e) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.

(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.

(ii) The purchasing division shall apply the same consideration to all listing requests.

(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see chapter 314-74 WAC).

(e) ~~Obtaining a retail price.~~ A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.

(i) Pricing may not be changed within a calendar month.

(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.

**(2)) What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?**

((a)) (1) A distillery or craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

((b)) (2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's sixty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

((c)) (3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

((d) Product sold out-of-state is not subject to retail pricing by the board.

((e)) (4) A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

## WSR 12-07-049

### PROPOSED RULES

#### BOARD OF

#### PILOTAGE COMMISSIONERS

[Filed March 15, 2012, 2:03 p.m.]

Continuance of WSR 12-05-056.

Title of Rule and Other Identifying Information: Chapter 363-11 WAC, Practice and procedure—Board of pilotage commissioners.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on March 27, 2012, at 9:30 a.m.

Date of Intended Adoption: March 27, 2012.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail [larsonp@wsdot.wa.gov](mailto:larsonp@wsdot.wa.gov), fax (206) 515-3906, by March 1, 2012.

Assistance for Persons with Disabilities: Contact Shawna Erickson by March 24, 2012, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to recontinue the recontinued March 8 public hearing to March 27, 2012.

March 15, 2012  
Peggy Larson  
Executive Director

**WSR 12-07-064**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed March 20, 2012, 8:05 a.m.]

WAC 388-78A-2461, 388-78A-2463 and 388-78A-2467, proposed by the department of social and health services in WSR 11-17-134 appearing in issue 11-18 of the State Register, which was distributed on September 21, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 12-07-066**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 20, 2012, 8:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-082.

Title of Rule and Other Identifying Information: WAC 296-20-030 Treatment not requiring authorization for accepted conditions, 296-20-03001 Treatment requiring authorization, and 296-20-03002 Treatment not authorized.

Hearing Location(s): Department of Labor and Industries Headquarters, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on April 27, 2012, at 1 p.m.

Date of Intended Adoption: June 5, 2012.

Submit Written Comments to: Marie Manteuffel, Department of Labor and Industries (L&I), Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, e-mail marie.manteuffel@lni.wa.gov, fax (360) 902-6315, received no later than 5:00 p.m., May 4, 2012.

Assistance for Persons with Disabilities: Contact office of information and assistance by April 13, 2012, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed language is to amend current WAC language to be consistent with health technology clinical committee

(HTCC) decisions. On June 17, 2011, the HTCC adopted a final determination on spinal injections that conflicts with current chapter 296-20 WAC, Medical aid rules. References to transcutaneous, interferential, and percutaneous nerve stimulators will also be removed per a prior HTCC determination in 2010. Finally, HTCC decisions related to lumbar fusion in 2007 have been implemented, but rule language related to discograms and structured intensive multidisciplinary programs (SIMP) also needs to be amended.

The effect of these changes will be better alignment of coverage decisions with HTCC determinations.

Reasons Supporting Proposal: The department is required to implement coverage determinations of the HTCC per RCW 70.14.110.

Statutory Authority for Adoption: RCW 70.14.110, 51.04.020, and 51.04.030.

Statute Being Implemented: RCW 70.14.110.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: The department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Marie Manteuffel, Medical Program Specialist, Office of the Medical Director, (360) 902-5026; Implementation: Gary Franklin, Medical Director, (360) 902-5020; and Enforcement: Beth Dupre, Assistant Director for Insurance Services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department did not prepare a small business economic impact statement because it determined that the proposed rules will not impose more than minor costs on businesses in an industry, nor will it have a disproportionate impact on small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Marie Manteuffel, Department of Labor and Industries, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-5026, fax (360) 902-6315, e-mail marie.manteuffel@lni.wa.gov.

March 20, 2012

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 00-01-040, filed 12/7/99, effective 1/20/00)

**WAC 296-20-030 Treatment not requiring authorization for accepted conditions.** (1) A maximum of twenty office calls for the treatment of the industrial condition, during the first sixty days, following injury. Subsequent office calls must be authorized. Reports of treatment rendered must be filed at sixty day intervals to include number of office visits to date. See chapter 296-20 WAC and department policies for report requirements and further information.

(2) Initial diagnostic X rays necessary for evaluation and treatment of the industrial injury or condition. See WAC 296-20-121 for further information.

(3) The first twelve physical therapy treatments as provided by chapters 296-21, 296-23, and 296-23A WAC, upon consultation by the attending doctor or under his direct super-

vision. Additional physical therapy treatment must be authorized and the request substantiated by evidence of improvement. In no case will the department or self-insurer pay for inpatient hospitalization of a claimant to receive physical therapy treatment only. USE OF DIAPULSE, THERMATIC (standard model only), SPECTROWAVE AND SUPERPULSE MACHINES AND IONTOPHORESIS IS NOT AUTHORIZED FOR WORKERS ENTITLED TO BENEFITS UNDER THE INDUSTRIAL INSURANCE ACT.

(4) Routine laboratory studies reasonably necessary for diagnosis and/or treatment of the industrial condition. Other special laboratory studies require authorization.

(5) Routine standard treatment measures rendered on an emergency basis or in connection with minor injuries not otherwise requiring authorization.

(6) Consultation with specialist when indicated. See WAC 296-20-051 for consultation guidelines.

~~(7) ((Diagnostic or therapeutic nerve blocks. See WAC 296-20-03001 for restrictions.~~

~~(8) Intra-articular injections. See WAC 296-20-03001 for restrictions.~~

~~(9)) Myelogram if prior to emergency surgery.~~

AMENDATORY SECTION (Amending WSR 08-24-047, filed 11/25/08, effective 12/26/08)

**WAC 296-20-03001 Treatment requiring authorization.** Certain treatment procedures require authorization by the department or self-insurer. Requests for authorization must include a statement of: The condition(s) diagnosed; ICD-9-CM codes; their relationship, if any, to the industrial injury/exposure; an outline of the proposed treatment program, its length and components, procedure codes, and expected prognosis; and an estimate of when treatment would be concluded and condition stable.

(1) Office calls in excess of the first twenty visits or sixty days whichever occurs first.

(2) The department may designate those inpatient hospital admissions that require prior authorization.

(3) X ray and radium therapy.

(4) Diagnostic studies other than routine X-ray and blood or urinalysis laboratory studies.

(5) Myelogram ~~((and discogram))~~ in nonemergent cases.

(6) Physical therapy treatment beyond initial twelve treatments as outlined in chapters 296-21, 296-23, and 296-23A WAC.

~~(7) Diagnostic or therapeutic injections~~((Epidural or caudal injection of substances other than anesthetic or contrast solution will be authorized under the following conditions only:~~~~

~~(a) When the worker has experienced acute low back pain or acute exacerbation of chronic low back pain of no more than six months duration.~~

~~(b) The worker will receive no more than three injections in an initial thirty-day treatment period, followed by a thirty-day evaluation period. If significant pain relief is demonstrated one additional series of three injections will be authorized. No more than six injections will be authorized per acute episode.)) that include, but are not limited to:~~

~~(a) Therapeutic subarachnoid, epidural, or caudal injections for chronic pain;~~

~~(b) Diagnostic facet injections;~~

~~(c) Sacroiliac joint injections for chronic pain;~~

~~(d) Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three injections per patient. The attending doctor must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one patient.~~

~~Refer to fee schedule payment policies and coverage decisions for authorization criteria.~~

(8) Home nursing, attendant services or convalescent center care must be authorized per provisions outlined in WAC 296-20-091 or 296-23-246.

(9) Provision of prosthetics, orthotics, surgical appliances, special equipment for home or transportation vehicle; custom made shoes for ankle/foot injuries resulting in permanent deformity or malfunction of a foot; ~~((TNS units;))~~ masking devices; hearing aids; etc., must be authorized in advance as per WAC 296-20-1101 and 296-20-1102.

(10) Biofeedback program; structured intensive multidisciplinary pain programs (SIMP); pain clinic; weight loss program; psychotherapy; rehabilitation programs; and other programs designed to treat special problems must be authorized in advance. Refer to the department's medical aid rules and fee schedules for details.

(11) Prescription or injection of vitamins for specific therapeutic treatment of the industrial condition(s) when the attending doctor can demonstrate that published clinical studies indicate vitamin therapy is the treatment of choice for the condition. Authorization for this treatment will require presentation of facts to and review by department medical consultant.

~~(12) ((Injections of anesthetic and/or anti-inflammatory agents into the vertebral facet joints will be authorized to qualified specialists in orthopedics, neurology, and anesthesia, or other physicians who can demonstrate expertise in the procedure, AND who can provide certification their hospital privileges include the procedure requested under the following conditions:~~

~~(a) Rationale for procedure, treatment plan, and request for authorization must be presented in writing to the department or self-insurer.~~

~~(b) Procedure must be performed in an accredited hospital under radiographic control.~~

~~(c) Not more than four facet injection procedures will be authorized in any one patient.~~

~~(13))~~ The long term prescription of medication under the specific conditions and circumstances in (a) and (b) of this subsection are considered corrective therapy rather than palliative treatment and approval in advance must be obtained.

(a) Nonsteroidal anti-inflammatory agents for the treatment of degenerative joint conditions aggravated by occupational injury.

(b) Anticonvulsive agents for the treatment of seizure disorders caused by trauma.

~~((14) Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three~~

~~injections per patient. The attending doctor must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one patient.~~

(15)) (13) The department may designate those diagnostic and surgical procedures which can be performed in other than a hospital inpatient setting. Where a worker has a medical condition which necessitates a hospital admission, prior approval of the department or self-insurer must be obtained.

**AMENDATORY SECTION** (Amending WSR 09-20-040, filed 9/30/09, effective 11/1/09)

**WAC 296-20-03002 Treatment not authorized.** The department or self-insurer will not allow nor pay for following treatment:

(1) Use of diapulse, thermatic (standard model only), spectrowave and superpulse machines on workers entitled to benefits under the Industrial Insurance Act.

(2) Iontophoresis; prolotherapy; acupuncture; injections of colchicine; injections of fibrosing or sclerosing agents; and injections of substances other than anesthetic or contrast into the subarachnoid space (intra-thecal injections).

(3) Treatment to improve or maintain general health (i.e., prescriptions and/or injection of vitamins or referrals to special programs such as health spas, swim programs, exercise programs, athletic-fitness clubs, diet programs, social counseling).

(4) Continued treatment beyond stabilization of the industrial condition(s), i.e., maintenance care, except where necessary to monitor prescription of medication necessary to maintain stabilization i.e., anti-convulsive, anti-spasmodic, etc.

(5) After consultation and advice to the department or self-insurer, any treatment measure deemed to be dangerous or inappropriate for the injured worker in question.

(6) Treatment measures of an unusual, controversial, obsolete, or experimental nature (see WAC 296-20-045). Under certain conditions, treatment in this category may be approved by the department or self-insurer. Approval must be obtained prior to treatment. Requests must contain a description of the treatment, reason for the request with benefits and results expected.

(7) Therapeutic medial branch block injections, therapeutic intradiscal injections, and therapeutic facet injections.

(8) Transcutaneous, interferential, and percutaneous nerve stimulators used in the home setting, and all associated supplies and equipment.

**WSR 12-07-067**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 20, 2012, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-085.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on April 24, 2012, at 1:00 p.m.

Date of Intended Adoption: May 22, 2012.

Submit Written Comments to: Tom Davis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail Thomas.Davis@LNI.wa.gov, fax (360) 902-4249, by 5 p.m. on May 1, 2012.

Assistance for Persons with Disabilities: Contact Tom Davis by April 18, 2012, TTY (360) 902-6687 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3), increase the anesthesia conversion factor from \$3.19 to \$3.22.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from \$118.07 to \$119.01.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: (1) Increasing the conversion factor used to calculate maximum payment for anesthesia services; and (2) increasing the maximum daily payment for physical and occupational therapy services.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Beth Dupre, Assistant Director, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

March 20, 2012

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 11-12-019, filed 5/24/11, effective 7/1/11)

**WAC 296-20-135 Conversion factors.** (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of \$55.34. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~\$(3-19)~~ 3.22 per minute, which is equivalent to ~~\$(47-85)~~ 48.30 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 08-09-121, filed 4/22/08, effective 7/1/08)

**WAC 296-23-220 Physical therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist or a physical therapist assistant serving under the direction of a licensed physical therapist. In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ~~\$(118.07)~~ 119.01 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 08-09-121, filed 4/22/08, effective 7/1/08)

**WAC 296-23-230 Occupational therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((~~118.07~~) 119.01) whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

**WSR 12-07-068**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 20, 2012, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-04-073.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system for workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): Labor and Industries Building, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on April 27, 2012, at 1:00 p.m.

Date of Intended Adoption: May 22, 2012.

Submit Written Comments to: Doug Stewart, P.O. Box 44140, Olympia, WA 98504-4140, e-mail [doug.stewart@lni.wa.gov](mailto:doug.stewart@lni.wa.gov), fax (360) 902-4799, by April 27, 2012, 5:00 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance by April 25, 2012, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is being proposed for housekeeping updates to a number of classifications and reporting rules in the workers' compensation program. The proposal is to correct text and reference errors, format for better readability, update language which has changed as a result of technology, and make classification instructions and/or definitions clearer.

- WAC 296-17-31002 General rule definitions, remove reference to 6302, which no longer exists.
- WAC 296-17-31006 Application process, update all language referring to master application (change department of licensing to department of revenue).
- WAC 296-17-310171 How to report hours for employees supporting multiple business operations, remove 6302, which no longer exists.
- WAC 296-17-31027 Temporary staffing services, correct reference "WAC 296-17-757 through 296-17-76213" to "296-17A-7104 through 296-17A-7122"; correct verbiage.
- WAC 296-17-35203 (9)(b), Special reporting instruction, clarify a taxi record-keeping requirement.
- WAC 296-17-920 Assessment for supplemental pension fund, correct self-insurance WAC reference from WAC 296-15-060 to WAC 296-15-229.
- WAC 296-17A-0107, Utility line construction: Underground, N.O.C., add clarifications for installation of lighting standards in various places.
- WAC 296-17A-0217, Concrete flatwork—Construction and/or repair: N.O.C., add language that concrete curbing may be reported in 0301 (landscaping).
- WAC 296-17A-0219, Construction specialty services, add clarifications for installation of lighting standards in various places.
- WAC 296-17A-0301, Landscape construction operations, N.O.C., add language that concrete curbing may be reported in 0301 (landscaping).
- WAC 296-17A-0302, Brick, block, rock and slate work, N.O.C., add clarifications in language of tile, floor covering, marble, etc.
- WAC 296-17A-0307, Furnaces and heating systems: Installation, service or repair, correct typo in a reference from 3402 to 3404.
- WAC 296-17A-0502, Carpet, vinyl, tile and other floor or countertop covering: Installation or removal, add clarifications in language of tile, floor covering, marble, etc.
- WAC 296-17A-0504, Waterproofing, N.O.C.: Buildings or structures, add manual and mechanized language clarification.
- WAC 296-17A-0510, Wood frame building: Construction or alterations, N.O.C., correct guideline to refer to 0516-02, rather than 0510-02.

- WAC 296-17A-0513, Interior finish carpentry, add clarifications in language of tile, floor covering, marble, etc.
- WAC 296-17A-0601, Electrical wiring in buildings; electrical wiring, N.O.C.; permanent flood lighting: Installation, add clarifications for installation of lighting standards in various places.
- WAC 296-17A-1005, Shake and/or shingle mills, correct reference from WAC 296-17-534 to WAC 296-17A-1002.
- WAC 296-17A-1103, Top soil, humus, peat and beauty bark dealers—Yard operations, clarify language regarding excluded activities.
- WAC 296-17A-1501, Community action organizations—All other employees N.O.C., add clarification excluding businesses that provide only one type of service, which is to be reported in the applicable classification for that service.
- WAC 296-17A-2102, Recycle, collection and receiving stations; rages, bottles, paper and metal container dealers, N.O.C., add "computer recycle" to language.
- WAC 296-17A-2907, Wood cabinet, countertop, and fixture: Manufacturing, modifying or assembly, add clarifications in language of tile, floor covering, marble, etc.
- WAC 296-17A-3104, Soapstone or soapstone products: Manufacturing; marble cutting and polishing; slate milling; stone cutting or polishing, N.O.C., add clarifications in language of tile, floor covering, marble, etc.
- WAC 296-17A-3406, Automobile or truck—Detailing by contractor; glass tinting; windshield repair, add "or installation" to list of exclusions.
- WAC 296-17A-3411, Automobile: Service centers, repair shops or garages, add tire chain installation/roadside assistance.
- WAC 296-17A-3509, Statuary and ornament: Manufacturing, add clarifications in language of tile, floor covering, marble, etc.
- WAC 296-17A-3602, Dental laboratories, add "Kiosks in mall that makes custom dental molds" to subclassification 05.
- WAC 296-17A-3905, Restaurants, N.O.C., add language to subclassification 00, "products made onsite by the restaurant for purchase by their customers are included."
- WAC 296-17A-4107, Business machine: Service, adjustment, repair, and installation, N.O.C., add "computer recycle."
- WAC 296-17A-4904, Clerical office: Insurance companies, agents or brokers, remove Title 48 RCW references which are no longer correct.
- WAC 296-17A-4905, Hotels or motels, clarify language regarding food service.
- WAC 296-17A-5301, Management consultant services, N.O.C., add exception excluding businesses that do only computer consulting for others, which is to be reported in 5302.
- WAC 296-17A-5308, Community action organizations—Professional services and administrative employees, add language "excludes businesses that provide only one type of service which is to be reported in the applicable classification."
- WAC 296-17A-6103, Day nurseries or child day care centers; officials for amateur athletic or cultural events, N.O.C., update language in daycare subclassification 06 to better distinguish activities between 6103 and 6104. Remove from 6103-12 teachers and clerical office.
- WAC 296-17A-6104, Day nurseries or child day care centers - all other employments, N.O.C., update language in daycare subclassification 06 to better distinguish activities between 6103 and 6104.
- WAC 296-17A-6303, Insurance sales personnel and claims adjusters, remove Title 48 RCW references which are no longer correct. Add activities performed in a showroom as this is noted in the list of standard exception classes.
- WAC 296-17A-6406, Retail stores, N.O.C., remove "quickprint" from classification.
- WAC 296-17A-6512, Home care services/home care quality authority (HCQA), correct HCQA to home care referral registry.
- WAC 296-17A-6708, Professional motor vehicle or watercraft race drivers, add cross reference to the race driver reporting requirements.
- WAC 296-17A-7107, Temporary staffing services: Bakery, restaurant, or food sundry preparation; musicians or entertainers, correct and clarify some language concerning which classifications to use for certain activities.
- WAC 296-17A-7109, Temporary staffing services: Electronic, precision, and scientific equipment assembly; nonfield technician services, correct and clarify some language concerning which classifications to use for certain activities.
- WAC 296-17A-7112, Temporary staffing services: Agricultural operations, correct and clarify some language concerning which classifications to use for certain activities.
- WAC 296-17A-7113, Temporary staffing services: Janitorial, plant or facility supplemental maintenance and grounds keeping services, correct and clarify some language concerning which classifications to use for certain activities.
- WAC 296-17A-7115, Temporary staffing services: Cannery, bottling or food processing operations, correct and clarify some language concerning which classifications to use for certain activities.
- WAC 296-17A-7117, Temporary staffing services: Manufacturing operations, N.O.C.; specialty trades, correct and clarify some language concerning which classifications to use for certain activities.
- WAC 296-17A-7202, Real estate agencies, update real estate title references due to industry broker/name changes.

This rule making is needed to maintain the integrity of the department's reporting rules and classification system in order to ensure fund solvency. The proposed changes will correct text and reference errors, format for better readability,

update language to reflect technology changes, and make classification instructions and/or definitions clearer.

Statutory Authority for Adoption: RCW 51.04.020, 51.16.035, and 51.16.100.

Statute Being Implemented: RCW 51.16.035.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, (360) 902-4777; Implementation: Les Hargrave, Tumwater, Washington, (360) 902-4298; and Enforcement: Beth Dupre, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

March 20, 2012

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 11-24-022, filed 11/30/11, effective 1/1/12)

**WAC 296-17-31002 General rule definitions.** In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) ((and can be found in **Appendix A** of this manual)). Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of these chapters (*chapters 296-17 and 296-17A of the Washington Administrative Code (WAC)*).

**The following words or phrases mean:**

**Account:** A unique numerical reference that we assign to you that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

**Account manager:** An individual who works in the underwriting section of the department of labor and industries and manages an employer's workers' compensation insurance account. An account manager is also referred to as an underwriter.

**Actual hours worked:** A worker's composite work period beginning with the starting time of day that the

employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at 360-902-4817.

**Example:** *A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.*

**All:** When a classification contains a descriptive phrase beginning with "all" such as in "all employees," "all other employees," "all operations," or "all work to completion," it includes all operations and employments which are normally associated with the type of business covered by the classification. This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

**And:** When this word is contained in any rule it is to be considered the same as the phrase "and/or."

**Basic classification:** A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, ((6302,)) 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC 296-17A-0101 through 296-17A-7400 establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

**((Bone)) Bona fide officer:** Any person empowered in good faith by stockholders or directors, in accordance with



articles of incorporation or bylaws, to discharge the duties of such officer.

**But not limited to:** When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

**Excludes or excluding:** When a classification contains a descriptive phrase beginning with "excludes" or "excluding" such as "excluding drivers or delivery," "excluding second hand appliance stores," or "excludes construction operations," you must report those operations in a separate classification. If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers' hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

**Exposure:** Worker hours, worker days, flat rate, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the hazards found within a particular business or industry classification.

**Free from direction or control:** The contracted individual has the responsibility to deliver a finished product or service without the contracting firm or individual either exercising direct supervision over the work hours or the methods and details of performance or having the right to exercise that authority under the contract.

**Includes or including:** When a classification contains a descriptive phrase beginning with "includes" or "including" such as "including clerical office," "including meter readers," or "includes new construction or extension of lines," you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

**Industrial insurance:** Refer to the definition of "workers' compensation insurance."

**N.O.C.:** This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related classifications must be reviewed to determine if the business or industry is specified in another classification.

**Example:** *You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, and tropical fish and birds(~~and quick~~*

~~print shops~~)). *We would assign classification 6406 "Retail stores, N.O.C." to your business.*

**Or:** Refer to the definition of the word "and."

**Premium:** The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

**Principal place of business:** The physical location of the business from which the contract of service is directed and controlled.

**Rate:** The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

**Related by blood within the third degree:** The degree of kinship as computed according to the rules of civil law.

**Related by marriage:** The union subject to legal recognition under the domestic relations laws of this state.

**Risk:** All insured operations of one employer within the state of Washington.

**Temporary help:** The term "temporary help" means the same as temporary service contractors defined in (*Title 19 RCW*) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

**Underwriter:** Refer to the definition of an "account manager."

**Within a reasonable period:** Establishing an account with state agencies shall be the time prior to the first date on which the individual begins performance of service toward the contract or the date upon which the individual is required to establish an account with a state agency, as otherwise required by law, whichever event (~~shall last~~) occurs later.

**Work day:** Any consecutive twenty-four hour period.

**Work hour:** Refer to the definition of "actual hours worked."

**Workers' compensation insurance:** The obligation imposed on an employer by the industrial insurance laws (*Title 51 RCW*) of the state of Washington to insure the payment of benefits prescribed by such laws.

**AMENDATORY SECTION** (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

**WAC 296-17-31006 Application process.** (1) **Where can I buy workers' compensation insurance?** Washington law requires that you:

- Purchase your workers' compensation insurance through labor and industries. You will need to complete a business license application to obtain workers' compensation insurance from us; or

- Be certified as a self-insured employer by the self insurance section of the department of labor and industries. For more information on self-insurance you can call 360-902-6867 and one of our self-insurance representatives will assist you.

Employers engaged exclusively in interstate or foreign commerce are permitted to purchase workers' compensation insurance from a private carrier in another state if they do

business in that state. The workers' compensation laws of the other state must allow the Washington drivers to be covered in that state. ~~((You will need to complete a master application to obtain workers' compensation insurance from us. For more information on self insurance you can call (360) 902-6867 and one of our self insurance representatives will assist you.))~~

**(2) Where can I get a ~~((master))~~ business license application?**

You can ~~((get))~~ file and print a ~~((master))~~ business license application on-line at [www.business.wa.gov/BLS](http://www.business.wa.gov/BLS). You can pick up a paper business license application from:

- Any office of the department of labor and industries~~((;))~~;
- Employment security~~((;))~~;
- Department of revenue business licensing service office~~((, the department of licensing master license service, or))~~;
- The corporations division of the office of the secretary of state~~((;))~~;
- For your convenience you can call us at ~~((6360(9)))-902-4817~~ and we will mail you one.

**(3) Where do I send my completed ~~((master))~~ business license application?**

You can mail your completed ~~((master))~~ business license application to the department of ~~((licensing))~~ revenue address shown on the form, or you can return it to your local department of labor and industries office, ~~((department of revenue))~~ or department of employment security district tax office. Be sure to include the appropriate fees indicated on the form.

**AMENDATORY SECTION** (Amending WSR 10-10-108, filed 5/4/10, effective 7/1/10)

**WAC 296-17-310171 How to report hours for employees supporting multiple business operations. I have more than one basic classification assigned to my business and I have workers who work in more than one of these classifications. Can I divide their hours between these basic classifications on my quarterly report?** Yes, you may divide a worker's hours between basic classifications when:

- The classification descriptions allow a division of hours; and
- You maintain records from which the department can determine the hours the worker worked in each classification.

If the classification descriptions do not allow a division of hours, or if you fail to maintain adequate records, you must report the workers' hours in the highest rated risk classification applicable to your business, unless you can establish that the worker did not work in that classification.

**Example:** An employer has the risk classifications and rates shown below:

Risk Class	Description	Rate
0507 05	Roofing work	5.1370
<del>((05010 00))</del> 0510 00	Wood frame building construction	2.9554
0513 00	Interior finish carpentry	1.3821

If the employer did not maintain records showing in which classes a worker worked, all of the worker's hours must be reported in class 0507.

If the employer had records that showed the worker only worked in classifications 0510 and 0513, but no further detail, all of the worker's hours must be reported in classification 0510.

If the employer had records that showed the hours the worker worked in classification 0510 and the hours the worker worked in 0513, the employer may report the worker's hours in both classes.

**I have employees with duties that support more than one basic classification, but I am unable to distinguish their hours between classifications. In what classification(s) do I report these workers' hours?** Sometimes employers are unable to divide a worker's hours between two or more classifications because the same work is incidental to more than one classification. You must report these hours in your governing classification. See **"What is my governing classification?"**

**What is incidental work?** Incidental work is any work, unless specifically excluded, that supports the operations described in your classification description(s), but takes place away from where the product or service is produced.

**For example:**

There is no incidental work:

- At the construction site if the employer is the builder;
- At the assembly facility if the employer is the manufacturer;
- In the emergency room if the employer is the hospital;
- In the kitchen, if the employer is in the restaurant.

Incidental work may include:

- Laundry workers employed by but not working at a hotel;
- Warehouse workers employed by but not working at a retail store;
- A technical support team working for but not at a wholesale distributor;
- Pick-up or delivery work;
- Travel time.

**What is my governing classification?** Your governing classification is the risk classification that describes what we consider your principal business. It is the basic classification assigned to your business with the largest number of worker hours/units reported in the experience rating period as defined by WAC 296-17-850(2). If you're not sure which classification is your governing classification, you should contact your account manager or refer to the expected loss summary in your current experience rating calculation.

If you're a new business and/or a business not experience rated, a provisional governing classification may be approved by your account manager.

*The following exception classifications cannot be considered ~~((as))~~ governing classifications:*

- 4900~~((;))~~
- 4904~~((;))~~
- 4911~~((;))~~
- 5206~~((;))~~
- 6301~~((, 6302,))~~
- 6303~~((;))~~

- 7100((and))
- 7101((-))

**Example 1:** You operate both a motel with classification 4905, and a restaurant with classification 3905. You have an off-site laundry facility that cleans the linens for both the restaurant and for the motel.

In the sample 2009 expected loss summary shown below, the governing classification is the restaurant classification 3905 with a total of 108,199 units.

You must report all the laundry worker hours in your governing classification.

**Expected Loss Summary**

Class	Fiscal Year	Employee Units	Expected Loss Rate	Expected Losses	Primary Ratio	Expected Primary Losses
4905	2005	10,571	.4288	4,532.84	.5790	2,624.51
4905	2006	12,437	.3982	4,952.41	.5790	2,867.45
4905	2007	14,676	.3516	5,160.08	.5790	2,987.69
Class Total		37,684		14,645.33		8,479.65
3905	2005	24,701	.1539	3,801.48	.5980	2,273.29
3905	2006	35,825	.1445	5,176.71	.5980	3,095.67
3905	2007	47,673	.1290	6,149.82	.5980	3,677.59
Class Total		108,199		15,128.01		9,046.55

**Example 2:** You are a cabinet manufacturer who also offers installation services to your customers. Your manufacturing operations are under classification 2907 and your employees performing the installation service are under classification 0513. Your expected loss summary confirms you report more hours for manufacturing work in classification 2907 than for installation work in classification 0513. You must report all the delivery work in ~~(class)~~ classification 2907.

**Example 3:** You have a floor covering store and also offer installation services to your customers. Your store operations are under classification 6309 and your employees performing the installation service are under classification 0502. Your expected loss summary confirms you report more hours for installation work in classification 0502 than for store operations in classification 6309. You must report all the delivery work in class 0502.

classifications to your business based on the nature of your business.

**Note:** This process is identical to how classifications are assigned to a nontemporary staffing business.

**(4) Are there special classifications that apply to temporary staffing businesses?** Yes, we have created a series of special classifications that only temporary staffing businesses use. They are found in WAC ~~((296-17-757))~~ 296-17A-7104 through ~~((296-17-76213))~~ 296-17A-7122.

Example: A temporary staffing business that specializes in providing nurses to medical facilities would be assigned the temporary staffing classification for health care facilities.

Example: A temporary staffing business that provides temporary employees to a variety of client customers would be assigned multiple temporary staffing classifications.

**(5) Do other businesses have special classifications?** All businesses have special classifications.

Example: A nontemporary service employer engaged exclusively in plumbing work would have a plumbing classification assigned to their business.

Example: A nontemporary service employer engaged in framing houses, land clearing and roofing would have a classification for framing, one for land clearing and a separate classification for the roof work. This is done because construction work is done by contract and each contract will be different.

**(6) Why doesn't labor and industries just use nontemporary staffing classifications for temporary staffing businesses?** Temporary staffing companies requested labor and industries to create special classifications for their industry. The alternative to special industry classifications would result in temporary staffing business ~~((to use))~~ using the nontemporary staffing classification that their client customer uses. Labor and industries has over three hundred main classifications and twelve hundred subclassifications that employers report in. Requiring temporary staffing companies

**AMENDATORY SECTION** (Amending WSR 03-20-081, filed 9/30/03, effective 1/1/04)

**WAC 296-17-31027 Temporary staffing services. (1)**

**To whom does this rule apply?** This rule applies to any temporary staffing business providing temporary employees to a client customer.

**(2) Who pays the workers' compensation insurance premium for temporary staffing employees?** RCW 51.16.060 requires the temporary staffing service provider to pay the required premiums for temporary employees assigned to a client customer.

**Note:** If the temporary staffing service provider fails to pay the required premium to labor and industries, the client customer is responsible for the unpaid premium.

**(3) How are classifications determined for a temporary staffing business?** We will assign the classification or

to use all of these classifications would result in an administrative burden for the temporary staffing businesses. Classifications unique to temporary staffing provide temporary staffing businesses the incentives to improve safety for their employees and control the cost of workers' compensation insurance.

**AMENDATORY SECTION** (Amending WSR 11-24-022, filed 11/30/11, effective 1/1/12)

**WAC 296-17-35203 Special reporting instruction. (1) Professional and semiprofessional athletic teams.** Athletes assigned and under contract to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance. Athletes assigned to a Washington-domiciled sports team but under contract with a parent team domiciled outside of the state are mandatorily covered by Washington industrial insurance unless the player is eligible for coverage in another state, and there is a valid coverage agreement as described below.

A player is eligible for coverage in another state only when both the player and the employer agree in writing that the employment is principally localized in that state.

**Example(6):** If the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they cannot agree to be under California coverage since California doesn't qualify as a state in which the player competes in regularly scheduled games.

(a) Upon request, the department will provide forms to the owners of professional and semiprofessional sports teams for entering into agreements for both the sport player and the sport team. These agreements are referred to as "coverage agreements." Unless coverage is refused in the alternative state, the coverage agreement will determine the worker's home state for workers' compensation coverage.

(b) When a sport team and a player agree to workers' compensation coverage in another state, the following rules apply:

Sport player coverage agreement:

(i) A sport player coverage agreement must be signed by the team (employer) and each individual player (worker) covered out-of-state. Workers' compensation premiums for any work performed by the player before the agreement was signed must be paid to the department. To be valid, an agreement must be:

- Signed by both parties, dated, and show the name of the state where coverage is provided.
- Agree that the player's employment is principally located in that state.
- Kept as part of the employer's records for at least three years after the player is released from the team.

(ii) The employer must provide the department a copy of a sport player coverage agreement when requested. Employers who do not provide the department copies of a sport player coverage agreement when requested are considered not to have secured payment of compensation as required and all premiums and penalties allowed for in Title 51 RCW will apply.

(iii) If the employers' out-of-state workers' compensation insurer rejects an injury claim because the player is a Washington worker, the employer is considered not to have secured payment of compensation as required and all premium and penalties allowed for in Title 51 RCW apply.

Sport team coverage agreement:

(c) A sport team coverage agreement must be signed by the employer (team) and the qualifying out-of-state workers' compensation insurer. Workers' compensation premiums for work performed before the agreement was signed must be paid to the department. To be valid, an agreement must:

- Be signed by both parties, dated, and show the name of the state where coverage is provided.
- Specify that the team's players are principally localized in that state.
- Specify the insurer agreeing to provide coverage for a team based in Washington.

(d) The sport team coverage agreement must be signed annually. Copies of the agreement along with a current copy of the team's out-of-state insurance policy must be submitted to the department of labor and industries every year the out-of-state coverage is provided.

Premium payments are required for any work performed by Washington players prior to the date the department receives copies of any year's current sports teams' coverage agreement and proof of out-of-state coverage.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried((-)), part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried((-)), part time, percentage of profits or piece basis, the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and

- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (~~((taxes))~~) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (~~((taxes))~~) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.-030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of

actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(A) The employers' unified business identification account number (UBI).

(B) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(C) The total contract award.

(D) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(E) Physical location/site where the work will be performed including legal description.

(F) Number of acres covered by the contract.

(G) Dates during which the work will be performed.

(H) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall ~~(submit)~~, in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and submit payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account

for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - Verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an ((employers'')) employer's work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' accounts on-line at the department's web site ([www.lni.wa.gov](http://www.lni.wa.gov)) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - Work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

- (i) The name of the contractor who has been engaged to perform the work;
- (ii) The contractor's UBI number;
- (iii) The contractor's farm labor contractor number;
- (iv) The total contract award;
- (v) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;
- (vi) Location where the work is to be performed;
- (vii) A contact name and phone number of the person, firm, or corporation who let the contract;

(viii) The total estimated wages to be paid by the contractor and any subcontractors;

(ix) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(x) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries  
Reforestation Team 8

P.O. Box 44168

((~~Tumwater~~)) Olympia, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

**(5) Logging and/or tree thinning—Mechanized operations—Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - Mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

**(6) Special drywall industry rule.**

**(a) What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

**(b) I do some of the work myself. Can I deduct material I as an owner install or finish?** Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owner}(\text{\$}) \text{ hours} \div (\text{owner}(\text{\$}) \text{ hours} + \text{worker}(\text{\$}) \text{ hours}) = \% \text{ of owner discount.}$$

$$\% \text{ of owner discount} \times (\text{total footage of job} - \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

**(c) Can I deduct material installed or finished by subcontractors?** You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

**(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them?** To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

**Note:** If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

**(e) Can I be disqualified from using the discounted rates?** Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

**(f) If I discover I have made an error in reporting or paying premium, what should I do?** If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department (~~who~~) that find errors in their reporting and paying premiums, and (~~who~~) that voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

**(7) Safe patient handling rule.** The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services



would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

- Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; ~~((nor does it include))~~
- Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; ~~((nor does it include))~~
- Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; ~~((nor does it include))~~
- Birthing centers, which come within the scope of chapter 18.46 RCW; ~~((nor does it include))~~
- Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; ~~((nor))~~
- Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of

nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

**(8) Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).**

(a) **General definitions.** For purposes of this section, the following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers' compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

**Note:** Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

**(b) Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state?** A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, ((#)) that employer will not need to pay premiums in Washington for work in the other state during the calendar year, as long as ((#)) that employer fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at: <http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTeritorial/Default.asp>

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

**Note:** Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

**(c) What if a Washington employer knows the Washington workers' work in another state will exceed the temporary and incidental period?** If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, ((#)) the employer must immediately provide the

department with proof of out-of-state coverage in order to avoid Washington premium liability for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

**(d) What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but ((#)) that does not occur?** If a Washington employer did not pay workers' compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or nonconsecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and interest. The fourth quarter report is due by January 31 of the following year.

**(e) What records must the employer keep while employing Washington workers in another state?** In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

**(f) What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental?** A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report of out-of-state work to the department for each state in which ((#)) that employer has Washington workers performing work. The supplemental report must include the following information:

(i) The Washington employer's unified business identification number (UBI).

(ii) The Washington employer's department account identification number.

(iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.

(iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.

(v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

(vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.

(vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.

(viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state. Copies of pertinent records must be made available to auditors in the event of an audit.

**(g) Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state?** Washington workers

may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

**(h) If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington?** Yes, but only if the Washington employer:

(i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;

(ii) Provides proof of out-of-state coverage;

(iii) Filed the appropriate quarterly reports with the department when due; and

(iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

**(9) Special for-hire taxi/industry rules.** All for-hire vehicles must be covered for workers' compensation insurance. The owner of the vehicle is responsible for the workers' compensation insurance premiums. Those businesses that provide only cabulance or limousine services must report actual hours worked.

**(a) What is the unit of exposure for taxis?** Flat rate by driver - The rate is based on four hundred eighty hours per driver each quarter.

Flat rate by vehicle - The rate is based on nine hundred sixty hours per vehicle each quarter.

Actual hours - The rate is based on actual hours worked.

**(b) Can I use a flat rate for reporting some vehicles and actual hours for reporting other vehicles?** No, you must choose to report using only one of the three methods: Flat rate per driver, flat rate per vehicle, or actual hours worked. Owners who choose to report by driver or by actual hours worked must maintain verifiable records, such as lease agreements or payroll records. ~~((For vehicles))~~ Where verifiable records are not available or not maintained, the owner must pay premiums on the flat rate of nine hundred sixty hours per vehicle each quarter.

**(c) What happens if premiums are not paid?** If the for-hire/taxi vehicle owner does not pay premiums, the department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

AMENDATORY SECTION (Amending WSR 11-24-057, filed 12/5/11, effective 1/5/12)

**WAC 296-17-920 Assessment for supplemental pension fund.** The amount of 46.6 mills (\$0.0466) shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be

remitted to the department on or before the last day of January, April, July and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC ~~((296-15-060))~~ 296-15-229. All such moneys shall be deposited in the supplemental pension fund.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0107 Classification 0107.**

**0107-00 Utility line construction: Underground, N.O.C.**

Applies to contractors engaged in underground utility line or cable construction that is not covered by another classification (N.O.C.). Work contemplated by this classification includes the installation and maintenance of underground television cable, power, and telephone line including main, extension, and outside service connection lines by utility contractors. Installation of these types of utilities usually occurs at a depth of ~~((3'))~~ three feet or less. This classification includes digging narrow trenches, laying pipe or conduit, laying line or cable, and filling or backfilling trenches. In some instances automatic equipment is used which in one operation opens the trench, lays the line and backfills. Equipment used by contractors subject to this classification includes backhoes, mechanical or manual trench diggers, automatic equipment and dump trucks.

This classification excludes land or road clearing and excavation which is to be reported separately in classification 0101; overhead television, power, or telephone lines including poles or towers which are to be reported separately in classification 0509 or the applicable utility company classification; asphalt surfacing/resurfacing which is to be reported separately in classification 0210 or 0212; concrete construction which is to be reported separately in the applicable concrete construction classification(s); ~~((and))~~ construction specialty services including the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; and the installation and the hookup of electrical wiring from where the utility company's lines end to the structure's power meter by the contractor wiring a building.

**0107-01 Pipelaying, N.O.C.**

Applies to contractors engaged in underground pipelaying or pipeline construction not covered by another classification (N.O.C.). Work contemplated by this classification includes the installation and maintenance of underground gas, oil or water main construction, and other pipelines such as those extending cross country. Installation of these types of pipes usually occurs at a depth of approximately ~~((3'))~~ three feet. This classification includes digging narrow trenches, laying pipe, making connections, and filling or backfilling trenches. This classification includes machinery and equipment such as backhoes, mechanical or manual trench diggers, and dump trucks.

This classification excludes land or road clearing and excavation which is to be reported separately in classification 0101; construction of sewer lines ~~((and))~~ drainage systems, canals, ditches, or underground tanks generally occurring at a

depth greater than (~~(2')~~) three feet which (~~(are)~~) is to be reported separately in classification 0108; asphalt surfacing/resurfacing which is to be reported separately in classification 0210 or 0212 as applicable; concrete construction which is to be reported separately in the applicable concrete construction classification(s); and construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0217 Classification 0217.**

**0217-00 Concrete flatwork - Construction and/or repair: N.O.C.**

Applies to contractors engaged in the construction and/or repair of concrete flatwork not covered by another classification (N.O.C.) such as, but not limited to, walkways, pathways, fences, and curbing. Work in this classification includes the set-up and tear down of forms, placement of reinforcing steel and wire mesh, and the pouring and finishing of concrete.

This classification excludes land clearing and excavation which is to be reported separately in classification 0101; concrete work performed on or in connection with highway, street, or roadway projects including sidewalks, curbs, gutters, median or retaining walls, sawing, drilling, or cutting operations which is to be reported separately in classification 0214; and concrete work contained within a concrete, masonry, iron or steel frame building or structure such as the foundation, floor slabs, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the building or structure itself which is to be reported separately in classification 0518.

**0217-01 Concrete foundation and flatwork construction and repair: Wood structural buildings**

Applies to contractors engaged in the construction and/or repair of concrete foundation and flatwork for wood structural buildings not to exceed three stories in height. This classification includes the set-up and tear down of forms, placement of reinforcing steel and wire mesh, pouring, and finishing of concrete footings, stem walls, floor pads, cellar or basement floors, garage floors, swimming pools and ponds. This includes incidental concrete work such as walkways or driveways when performed by a foundation contractor.

This classification excludes land clearing and excavation which is to be reported separately in classification 0101; concrete work performed on or in connection with highway, street, or roadway projects including sidewalks, curbs, gutters, median or retaining walls, sawing, drilling, or cutting operations as part of the roadway which is to be reported separately in classification 0214; (~~(and)~~) concrete landscape curbing which is included in classification 0301-08; and concrete work contained within a concrete, masonry, iron or steel frame building or structure such as the foundation, floor slabs, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the

building or structure itself which is to be reported separately in classification 0518.

**0217-02 Concrete sawing, drilling and cutting, N.O.C.**

Applies to contractors engaged in concrete sawing, drilling and cutting not covered by another classification (N.O.C.), including repairs. Work contemplated by this classification includes concrete sawing, drilling and cutting operations in connection with wood frame and nonwood frame buildings or structures, including flatwork, which may or may not be part of the building structure, such as, but not limited to, foundations, walkways, driveways, patios and swimming pools which may or may not be part of the building or structure. Activities include, but are not limited to, the sawing, cutting and drilling for ventilation boxes in the footings or stem walls, (~~(cut)~~) cutting out((s)) for windows or door ways, (~~(preparation)~~) preparing to mount brackets for stairways or interior bearing walls, cutting interior walls as part of a building renovation project, (~~(cut)~~) cutting out((s)) for electrical and switch boxes, and repairing defective areas.

This classification excludes concrete sawing, drilling, and cutting operations performed on or in connection with highway, street, or roadway projects including sidewalks, curbs, gutters, median or retaining walls as part of roadways which are to be reported separately in classification 0214; bridge construction which is to be reported separately in classification 0201; and new dam construction which is to be reported separately in classification 0701.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0219 Classification 0219.**

**0219-00 Construction specialty services, N.O.C.**

Applies to contractors engaged in the installation or removal of lighting for highways, streets, ((~~or~~)) roadways ((lighting)), parking lots, and light standards. It also applies to the installation, repair, or removal of signs, guardrails, roadside reflectors, lane buttons or turtles, or lane markers not covered by another classification (N.O.C.). Usually, these activities occur as finishing touches after new or existing roadways are paved or surfaced. Roadway lighting includes traffic signal lights, and halogen or mercury vapor lights mounted to metal standards erected alongside the roadway. Signs (such as speed limit, road condition, city and town mile destination) are mounted on overpasses or on wood or metal poles erected alongside the roadway. Guardrails include metal barriers mounted on wood or metal poles driven into the roadside shoulder. Lane markers, lane buttons or turtles consist of small reflectors, or chips of plastic or concrete attached to the road with an adhesive bonding material. This classification includes the related hook-up of power to the light standard.

This classification excludes the installation of power lines that feed into power poles which is to be reported separately in the applicable construction classification for the work being performed.

**Special note:** This classification excludes exterior sign erection, repair, or removal not in connection with displaying highway, street, or roadway information or conditions even

though such signs may be erected or placed alongside roadways (such as advertisement bill boards, business, or personal property signs) which is to be reported separately in classification 0403.

#### **0219-01 Construction specialty services**

Applies to contractors engaged in specialty services such as the painting or striping of highways, streets, roadways, or parking lots not covered by another classification (N.O.C.). This classification includes painting, striping, numbering, or lettering of highways, streets, roadways, parking lots, parking garages, airport runways, taxi ways, curbs, roadway dividers ((~~or~~)), median strips, and special traffic areas such as fire, bus, handicap, and no parking zones. The paint or other material used for these markings is usually applied to the surface using a mechanical device, either self-propelled or towed by a truck or other motor vehicle. In some instances, the paint will be applied manually with brush or roller which is included in this classification. This classification includes the application of asphalt sealants to roadways or parking lots. This classification also includes concrete barrier installation, in connection with road construction, by a concrete barrier rental business or by a flagging contractor who also supplies the concrete barriers. This includes the flaggers who are necessary during the installation of the barriers as well as any flaggers the company supplies to the road construction project itself.

This classification excludes the interior painting of buildings which is to be reported separately in classification 0521, the exterior painting of buildings or structures which is to be reported separately in classification 0504; application of asphalt sealant to driveways which is to be reported separately in classification 0504-06; the rental of the concrete barriers and other flagging equipment which is to be reported separately in classification 6409; and flaggers who are not employed by a concrete barrier rental business or by a flagging contractor who also supplies the concrete barriers which are to be reported separately in classification 7116 or 7118 as appropriate.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-0301 Classification 0301.**

#### **0301-04 Lawn type sprinkler systems: Installation, service or repair**

Applies to contractors engaged in the installation, service or repair of lawn type sprinkler systems. This type of activity is performed by landscaping contractors, plumbing contractors, and irrigation specialist contractors. Generally, lawn type sprinkler systems are installed at private residences or commercial businesses. The process involves identifying the area of land to be covered to determine the size and amount of pipe and sprinkler heads needed for the job. The installation involves cutting a trench in the ground ((~~12" to 18"~~)) twelve to eighteen inches deep and wide enough to accommodate the pipe) with a vibrating plow or pipe pulling machine. Next, pipe is laid in the trench, glued, or otherwise joined, heads and canisters are installed, and the timer is

hooked up. The system is checked for leaks, needed adjustments are made, and the pipe and heads are buried.

This classification excludes open canal type irrigation systems which are to be reported separately in classification 0108; the installation, service or repair of above or below ground agricultural/irrigation systems which is to be reported separately in classification 0301-06; and maintenance and cleaning of lawn sprinkler system pipes and heads done in connection with a landscape maintenance contract which is to be reported separately in classification 0308.

#### **0301-06 Agricultural sprinkler/irrigation systems, N.O.C.: Installation, service or repair**

Applies to contractors engaged in the installation, service or repair of above or below ground agricultural sprinkler and irrigation systems not covered by another classification (N.O.C.). The more common types of systems include below ground, fixed or movable, and wheel or impulse. Generally, these types differ from lawn sprinkler systems in that the size of pipes and pumps installed are much larger to produce the water pressure needed to irrigate large areas of land. Installation of below ground systems involves the use of trenching equipment to dig trenches, which are usually more than two feet deep to lay pipe. The above ground systems are laid out and assembled based on the need of the land area.

This classification excludes open canal type irrigation systems which are to be reported separately in classification 0108, and the installation, service or repair of lawn type sprinkler systems which is to be reported separately in classification 0301-04.

#### **0301-08 Landscape construction operations, N.O.C.**

Applies to landscape contractors engaged in new landscape construction or renovation projects not covered by another classification (N.O.C.). This classification also applies to specialist contractors engaged in the installation of invisible fences which are usually used to confine animals within a given area. Landscape construction work contemplated by this classification includes producing a preliminary drawing of the landscape or renovation project, preparing the ground (which may include tilling and spreading top soils or custom mix soils), installing sprinkler systems, planting trees, plants or shrubs, planting or replanting grass from seed or sod, installing ground cover material or plastic to retard weeds, ((~~placement of~~)) placing concrete borders, ((~~and~~)) the incidental construction of rockery, extruded concrete curbing, fences, ponds, paths, walkways, arbors, trellis and gazebos when performed by employees of a landscape contractor as part of a landscape contract. ((~~Such~~)) If these activities are conducted separately from a landscape contract and not part of the landscape project ((~~are to~~)), they must be reported separately in the classification applicable to the work being performed. Equipment used by contractors subject to this classification includes, but is not limited to, tractors with till attachments, small front end loaders, trenchers, mowers, fertilizer spreaders, wheelbarrows, and electric power tools.

Invisible fence construction work contemplated by this classification includes identifying the land area to be fenced, sketching a preliminary drawing, burying the wire in a narrow trench (about ((~~1"~~)) one inch wide by ((~~2"~~)) two to ((~~6"~~)) six inches deep) that has been dug along the field perimeter

(or just securing the wire onto the ground around the perimeter), and connecting ~~((end of wire to a))~~ the low voltage transmitter box (usually about the size of a hand-held calculator) that plugs into a 110 volt electrical outlet. This classification includes training sessions for the animal and related maintenance and repair at the customer's location. Equipment used to install invisible fences includes, but is not limited to, rakes or other hand tools, and small trench diggers.

This classification excludes all grading, clearing, or contouring of land which is to be reported separately in classification 0101; bulkheads not adjacent to water, or similar structures built of rock, which are to be reported separately in classification 0302; and lawn care maintenance or chemical spraying or fumigating which is to be reported separately in classification 0308.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0601 Classification 0601.**

**0601-00 Electrical wiring in buildings; electrical wiring, N.O.C.; Permanent flood lighting: Installation**

Applies to contractors engaged in the electrical wiring of buildings, or in electrical wiring not covered by another classification (N.O.C.). Work contemplated by this classification is characterized as general electrical work, including installation, service or repair at residential and commercial settings. This classification includes ~~((electrical work which generally begins at))~~ the installation, service or repair of extension lines and the hookup of electrical wiring from where the utility company's lines end to the structure's power meter and extends to the inside or outside of the building or its exterior setting, including, but not limited to, the installation of the breaker panel, fuses, plugs and snap switches, rough-in electrical work to include the stringing of insulated or encased wiring and mounting of plug-in or switch housing boxes, installation of plug-in, dimmer and switch units; installation of light fixtures, recessed canister and fluorescent lighting, track lighting, and other interior and exterior lighting fixtures, installation of ceiling fans, and the installation of residential and commercial appliances such as built-in microwaves, dishwashers, electric ovens and oven hoods. This classification also includes the installation of permanent flood lighting at stadiums and parks. Generally, flood lighting fixtures are mounted onto poles, buildings, or other structures; the erection or construction of those structures is not included in this classification.

This classification excludes the installation of overhead or underground power lines and poles by an electric utility company which is to be reported separately in classification 1301; the installation of overhead power lines by a nonelectric utility contractor which is to be reported separately in classification 0509; and the installation of underground power lines by a nonelectric utility contractor which is to be reported separately in classification 0107.

**0601-07 Electrical machinery and auxiliary apparatus: Installation and repair**

Applies to contractors engaged in the installation and repair of electrical machinery and auxiliary apparatus such

as, but not limited to, heavy motors, generators, converters, transformers, compressors and power switchboard equipment. Generally, this type of work occurs at industrial or commercial plants, power plants, or sites where large machinery is to be installed. Work contemplated by this classification includes extending insulator or encased wiring or cable from the power meter, breaker or control panel to the physical location where the machinery is to be installed, and incidental wiring of the machinery or auxiliary apparatus.

**0601-08 Temporary floodlights or search lights: Erection**

Applies to contractors engaged in the erection or set up of temporary floodlights away from the contractor's premises. Usually, these lights are mounted on a truck or trailer, and then transported to the customer site or location where they are operated with use of a generator. Uses of temporary floodlights and searchlights include, but are not limited to, advertising grand openings or special sales at shopping malls, auto dealers, grocery and outlet stores, marking the location of special events such as carnivals or concerts, or at construction project sites.

This classification excludes the erection of permanent floodlight fixtures to poles, buildings or structures which is to be reported separately in classification 0601-00.

**0601-15 Television cable: Installation service or repair in buildings by contractor**

Applies to contractors engaged in the installation, service or repair of television cable in buildings. This classification includes the installation of television cable lines in residential and commercial buildings and includes the dropping of lines from the pole to the house, mounting of cable control panel boxes to the exterior of buildings, extending cable, mounting multiple line adapter units and relay switches, and affixing the cable end for hook-up to televisions and other stereo components.

This classification excludes the installation of underground or overhead television cable lines when performed by a television cable company which is to be reported separately in classification 1305; installation of underground television cable lines when performed by a nontelevision cable company contractor which is to be reported separately in classification 0107; and installation of overhead television cable lines from pole to pole by a nontelevision cable company contractor which is to be reported separately in classification 0509.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-3411 Classification 3411.**

**3411-00 Automobile: Dealers, rental or leasing agencies, including service repair garages;**

**Recreational vehicle: Dealers, rental/leasing agencies, or service/repair garages**

Applies to establishments engaged in selling, renting, or leasing automobiles, including service/repair centers operated by dealers. This classification also applies to establishments engaged in selling, renting, leasing *or* servicing/repairing recreational vehicles. For purposes of this classification, the term "automobile" includes standard sized passenger

cars, ~~((pick-up))~~ pickup trucks, and sport utility vehicles. The term "recreational vehicle" includes motor homes, travel trailers, campers, and also includes sport and utility trailers. Work contemplated by this classification includes, but is not limited to, all phases of automotive mechanical service and repair work, washing, vacuuming, and waxing vehicles, and detailing such as striping, window tinting, vinyl repair, installing molding and electronic accessories when performed by employees of an employer subject to this classification. This classification includes service managers, parts department employees who have shop exposure, towing service for in-shop repairs, lot personnel, and customer courtesy van or car drivers.

This classification excludes: Dealers or service/repair centers for semi-trucks, diesel tractor-trailers, buses, and other heavy equipment or machinery which are to be reported separately in classification 6409; recreational vehicle dealers who also sell factory built housing units such as modular and mobile homes who are to be reported separately in classification 3415; parts department employees who are not exposed to any hazards of the service/repair shop who may be reported separately in classification 6309; auto body shop employees or auto body specialty shops who are to be reported separately in classification 3412; dealers who sell truck canopies and related accessories, but do not sell the other vehicles/trailers included in this classification who are to be reported separately in classification 1106; establishments engaged in welding or cutting repairs and/or hydraulic installation which are to be reported separately in classification 3402; and sales employees who may be reported separately in classification 6301 provided all the conditions of the general reporting rule covering standard exception employees have been met.

**Special notes:** Used automobile dealers will not normally have service/repair garages or parts departments but will have lot personnel and detailers. Automobile rental and leasing agencies will normally have all the operations described above with the exception of parts department employees. New automobile dealers will routinely have all of the operations described above.

Establishments engaged in providing towing service for hire are to be reported separately in classification 1109. For purposes of this classification "towing for hire" means a towing service not performed in connection with repairs to be done by the service/repair shop.

### **3411-01 Automobile: Service centers, repair shops or garages**

Applies to establishments engaged in servicing and repairing automobiles for others. For purposes of this classification, the term "automobile" includes standard sized passenger cars, ~~((pick-up))~~ pickup trucks, and sport utility vehicles. Work contemplated by this classification includes, but is not limited to, all phases of automotive mechanical service when performed by employees of an employer subject to this classification, such as engine overhauls and rebuilding, resurfacing heads, valve grinding, transmission overhauls or rebuilding, electrical repairs, brake service, engine tune ups, fuel injection service, carburetor repair, and engine diagnostic service ~~((when performed by employees of an employer subject to this classification))~~. This classification includes

service managers, parts department employees who have shop exposure, incidental sales of reconditioned cars, towing service for in-shop repairs, ~~((and))~~ customer courtesy van or car drivers, roadside assistance, and tire chain installation. Parts department employees who are not exposed to any hazards of the repair shop may be reported separately in classification 6309.

This classification excludes auto body shop employees who are to be reported separately in classification 3412.

**Special note:** While most businesses assigned to this classification have an inventory of parts which they use in the service and repair of customer vehicles, some employers have full line auto parts stores. Care needs to be taken when considering assignment of classification 6309 for auto part sales. Only those businesses that have a full line auto parts store which is physically separated from the repair shop and whose sales of auto parts are primarily for off-premises repair (do it yourself repair) should be considered for classification 6309. *This classification does not apply to auto repair shops that also sell and install tires on customer vehicles. See classification 6405 for auto repair shops that also sell and install tires.* Establishments engaged in providing towing service for hire are to be reported separately in classification 1109. For purposes of this classification "towing for hire" means a towing service not performed in connection with repairs to be done by the repair shop.

### **3411-02 Automobile: Service specialty shops**

Applies to establishments engaged in providing specialized automobile repair services such as air conditioning systems, muffler repair, cruise controls and electrical systems. For purposes of this classification, the term "automobile" includes standard sized passenger cars, ~~((pick-up))~~ pickup trucks, and sport utility vehicles. Work contemplated by this classification includes, but is not limited to, inspection of vehicle components for wear, diagnostic analysis, and repair of various components such as brakes and cooling systems, after-market installation of components such as cruise control, air conditioning systems, and sun roofs; and specialized repair services such as mufflers and transmissions. This classification includes service managers, part sales, towing service for in-shop repairs, and customer courtesy van or car drivers.

**Special note:** Businesses assigned to this classification will generally have an inventory of supplies and parts which they use in the service and repair of customer vehicles although some sales of parts and components may occur. *This classification does not apply to any shop that sells and installs tires on customer vehicles. See classification 6405 for auto repair shops that also sell and install tires.* Establishment engaged in providing towing service for hire are to be reported separately in classification 1109. For purposes of this classification "towing for hire" means a towing service not performed in connection with repairs to be done by the repair shop.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

### **WAC 296-17A-3602 Classification 3602.**

**3602-01 Electrical, telegraph or radio component, telephone set: Manufacture, assembly, or repair**

Applies to establishments engaged in the manufacture, assembly, or repair of components related to the telegraph, electrical, radio or telephone industry. Component parts may be for items such as, but not limited to, radio or television sets, hearing aids, transformers, coils, condensers, switches, antennae, phones, speaker units, dials, rheostats, plugs, arrestors, resistors, and electrical control relays, circuit breakers, or other parts necessary to accomplish radio, electrical, telegraph or telephone communication. Materials include, but are not limited to, metal, plastic, and wood used for the outside casings, and component parts. Some establishments in this classification manufacture the casings and the internal components. Other establishments in this classification assemble the ready-made parts with air and hand tools such as, but not limited to, drill presses, solder guns, or saws. Internal parts are usually assembled simply by clamping circuit boards in place, then soldering small pieces together. This classification includes engineers, research and laboratory personnel employed by establishments having operations subject to this classification. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**3602-02 Instrument - Scientific, medical, or professional: Manufacturing; magnetic tape: Manufacturing**

Applies to establishments engaged in the manufacture of instruments used in medical, scientific, or professional applications. This classification also applies to establishments engaged in the manufacture of magnetic tapes. Instruments in this classification range widely in shape and size; they include, but are not limited to, dental or surgical instruments, microscopes or other scientific testing or research instruments, surveyors' instruments, and electrical testing instruments. Materials include, but are not limited to, metal, glass, plastic, or wood for casings, and component parts. Processes vary depending upon the product being produced, and could involve some stamping, machining, and heat-treating. However, component parts are usually manufactured by others, and establishments in this classification perform a substantial amount of hand assembling, inspecting, testing, and packaging operations. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**3602-03 Sound recording equipment: Manufacturing**

Applies to establishments engaged in the manufacture of sound recording equipment. Establishments in this classifica-

tion may manufacture all or some equipment such as instruments for measuring sounds, and generators (for producing sounds), filters or modulators (for processing sounds), magnetic or tape recorders (for storing sounds), and speakers (for reproducing sounds). Materials include, but are not limited to, metal, glass, plastic, or wood for casings, clamps, glue or epoxy, and component parts. Components may be produced by the manufacturer or purchased from others and assembled. The assembly may be partially or wholly automated. Machinery includes, but is not limited to, shears, drill presses, grinders, soldering guns, welding equipment, and air or hand tools. There may be inspection areas and sound testing rooms. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**3602-04 Thermometer and steam gauge: Manufacturing**

Applies to establishments engaged in the manufacture of thermometers and/or steam gauges. The most common type of thermometer is a mercury thermometer which consists of a capillary tube that is sealed at its upper end and is enlarged into a spherical or cylindrical bulb at its lower end. This bulb is filled with mercury and mounted on a thin metal or plastic sheet. The manufacturers of steam gauges may simply assemble component parts with hand tools, test, and package them. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**3602-05 Dental laboratories**

Applies to establishments engaged in the manufacture of dentures, artificial teeth, braces, and retainers. These types of establishments are generally referred to as dental laboratories. The manufacture of these items involves precision work with castings, plastic or vinyl molding, and light wire forming. In the state of Washington dental laboratories can fit patients for dentures, in addition to making the denture which is included when performed by employees of employers subject to this classification. This is a shop only classification. Repair work when specified is limited to work performed at the shop. Shops may include kiosks in malls that make custom dental molds used in tooth whitening treatments.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.



**3602-06 Jewelry: Manufacturing or engraving; trophy assembly or engraving**

Applies to establishments engaged in the manufacture or engraving of jewelry, such as, but not limited to, rings, bracelets, necklaces, earrings, watchbands, pins, ~~((broaches))~~ brooches, and cigarette lighters. Jewelry manufacturing or engraving involves working with precious metal and/or stones. Operations usually include polishing, buffing, drilling, and assembly, mixing and melting alloys and metals, then pouring the mixture into small casts. This classification also applies to establishments engaged in assembling or engraving trophies on a production basis. For purposes of this classification, assembly means making trophies from pre-manufactured components purchased from others. The engraving may be done by "etching" or by computer. In the etching method, patterns or lettering ~~((is))~~ are cut into a metal strip that is coated with a solution resistant to etching acids. The metal strip is treated with etching acids that "melt away" the uncoated portion of metal, leaving an impression of the design. Computerized engraving is done by keying the designs or letters into the computer; the designs are transmitted to an "arm" on the computer which "draws" (engraves) them onto the metal plate. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used; and establishments engaged in the manufacture of watches which are to be reported separately in classification 3602-09.

**Special note:** This classification is for manufacturers engaged in the mass production of jewelry items and is distinguishable from jewelry stores reported in classification 6308 ~~((who))~~ that produce custom, one-of-a-kind pieces on a special order basis. Trophy stores in classification 6308 may assemble components to make custom trophies, or engrave plaques for the trophies they sell. Assembly and engraving that is incidental to their retail sales operation is included in their store classification.

**3602-07 Electronic parts: Assembly**

Applies to establishments engaged in the assembly of electronic parts which are usually sold to other manufacturers. They may have automated/robotics assembly lines for all or part of the processes. In manual operations, small parts are soldered, chipped, riveted, or screwed into place with hand tools such as, but not limited to, soldering guns, riveters, drills, screw drivers, or water jets. This classification also applies to establishments engaged in the manufacture or assembly of computers and the manufacture of dry cell (flashlight type) batteries. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported

separately in the classification applicable to the production process used.

**3602-08 Electrical/electronic ignition assembly, cord set, or radio set: Assembly**

Applies to establishments engaged in the assembly of electrical/electronic ignition assemblies, cord sets, and radio set components. An ignition assembly is a switching component that allows an electrical circuit to be completed in order to start a piece of machinery or equipment. Electrical cord sets are the portion of wiring found on appliances and tools that plug into electrical power sources. A radio set is comprised of an input circuit for tuning in to the frequencies of the various transmitters to be received, the demodulation circuit for separating the audio-frequency from the high-frequency carrier, a low-frequency amplifier stage, and the loudspeaker. The amplifier elements are transistors supplied with the necessary operating voltages. Establishments in this classification usually assemble radio component parts and circuit boards that are manufactured by others. The assembly is accomplished by soldering, clipping, riveting, and welding the parts into place. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**3602-09 Watch: Manufacturing**

Applies to establishments engaged in the manufacture of watches. The component parts are usually mass produced on an assembly line. Watch cases are usually made from sheet metal or plastic; watch faces are made from plastic or glass. The internal works are very small gears or springs and/or computer chips. The face may have hands and a dial, or may consist of a light emitting diode (LED). This classification includes the manufacture of internal works of clocks. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes establishments engaged in the manufacture of jewelry which are to be reported separately in classification 3602-06; establishments engaged in the manufacture of wooden housings or casings for clocks such as grandfather and mantle types which are to be reported separately in classification 2905; all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**3602-10 Camera, video camcorder, motion picture projectors: Manufacturing, assembly, or repair**

Applies to establishments engaged in the manufacture, assembly, or repair of cameras, video camcorders, and motion picture projectors. Materials include, but are not limited to, metals, plastics, glass and internal components. Machinery includes, but is not limited to, punch presses, drill presses, and soldering guns. Establishments in this classifica-

tion often assemble products from internal components manufactured by others. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**Special note:** When an establishment subject to this classification has a retail store, if all the conditions of the general reporting rules covering the operation of a secondary business have been met, then both classifications 6406 and 3602-10 may be assigned (~~provided all the conditions of the general reporting covering the operation of a secondary business have been met~~). Otherwise, all operations are to be reported in the highest rated classification of the two.

### **3602-11 Fishing tackle: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of fishing tackle. For purposes of this classification, the term fishing tackle is limited to lures, spinners, spoons, flies, plugs, sinkers, artificial bait and similar items. Work contemplated by this classification includes the receipt of supplies such as wire, hooks, spoons, swivels, beads and feathers, and other components from unrelated manufacturers and distributors, hand assembly of components into finished fishing tackle, painting spoons and plug bodies, packaging and shipping. This classification also contemplates testing of products and research and development of new products. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes the manufacture of items such as, but not limited to, reels, poles, nets, tackle boxes, knives, melting pots, plastic beads, wooden or plastic plug bodies, hand tools (pliers, bench vise), molds, specialty clothing or protective gear which are to be reported separately in the classification applicable to the material and process used to produce the product; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

**Special note:** Care should be taken when assigning this classification to verify that the product being manufactured is compatible with the manufacturing and assembly processes contemplated within this classification. Most fishing tackle subject to this classification is hand assembled from small component parts.

### **3602-12 Incandescent lamp or electric tube: Manufacturing**

Applies to establishments engaged in the manufacture of electrical or gas-filled bulbs or tubes such as, but not limited to, incandescent lamps, photoflash lamps, flood lamps, fluorescent tubes, X-ray tubes, cathode-ray tubes, neon tubes or artistic style neon tube signs that are not attached to metal backings. The processes and equipment will vary somewhat depending on the type of electrical bulb, tube, or lamp being made, but the basic operation is the same. Component parts such as, but not limited to, glass bulbs, globes, or tubes, tung-

sten wire, metal bases, shellac, and nitrogen and argon gas are purchased from outside sources. Using flange machines, the bottom of the glass tubing is fused to the flange to produce the base that is used within the bulb or globe. Metal bases may be milled, and then coated with a sealing compound such as shellac. Mounts are assembled and inserted into the flange on stem machines. The assemblies are seared together, and then the tungsten filaments are fixed between support wires forming the stem. The bulbs or globes are flushed with nitrogen to expel any moisture before the stems are inserted into them. These units are inserted into the metal bases and cemented. Air is evacuated and argon gas is pumped into the bases, after which they are heat sealed and trimmed. Neon tube signs or displays are made by heating a thin tube of glass over a ribbon flame until the tube becomes flexible, blowing air into the tube to keep the glass from collapsing, then, while it is still hot, bending it to shape. Because the glass cools rapidly, the heating and bending is repeated until the desired shape is achieved, then the tube is filled with neon or argon gas and the ends sealed.

This classification excludes establishments engaged in the manufacture of metal fixtures equipped with electrical or gas lighting which are to be reported separately in classification 3402; all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

### **3602-14 Musical instrument - Metal: Repair**

Applies to establishments engaged in the repair of metal musical instruments which include, but are not limited to, trumpets, trombones, French horns, and tubas. The operations involve primarily hand work such as, but not limited to, brazing and soldering, as well as fitting, testing, and polishing the instruments. Tools include, but are not limited to, solder or brazing guns, lathes, drill presses, and various types of saws. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; the repair of wood musical instruments which is to be reported separately in classification 2906; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

### **3602-23 Electronics products - Resistors, capacitors, chips and relays, transistors: Manufacturing**

Applies to establishments engaged in the manufacture of resistors, capacitors, chips, relays, and transistors which are usually tiny and delicate. Products manufactured in this classification are usually mass produced with little human intervention during the production process, which is often done in a vacuum or a nitrogen filled room. Materials include, but are not limited to, silicon, wires, and plastics. In addition to the automated equipment, hand-held tools include, but are limited to, pliers, wrenches, and soldering guns. Finished products are inspected, usually through powerful microscopes, then packaged and shipped. This is a shop or plant only clas-

sification. Repair work, when specified, is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

### **3602-24 Stamped metal goods: Manufacturing**

Applies to establishments engaged in the manufacture of small, stamped, metal goods such as, but not limited to, metal tags, buttons, zippers, bottle caps, fasteners, snaps, clasps, buckles, and curtain fasteners. Materials, which come in coils or strips, are run through presses. Most of the stamping is done on automatic stamping presses. Products are cut, stamped, formed, trimmed, and cleaned, then usually finished by plating or lacquering. This is a shop or plant only classification. Repair work, when specified, is limited to work performed at the shop or plant.

This classification excludes the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

### **3602-27 Electronic circuit board, N.O.C.: Assembly**

Applies to establishments engaged in the assembly of electronic circuit boards not covered by another classification (N.O.C.) which are used in a wide variety of electronic and automotive products. The process usually begins by cutting boards to size with power saws, then drilling or punching holes in them with automated drills or punches. Depending upon the original materials used, the boards used for the base may be coated or dipped. Then the chips, transistors, resistors, and/or condensers are installed, usually as part of an assembly line process. Next, the circuit boards are dipped and coated with a thin metal. Finished products are inspected, tested, packaged and shipped. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

### **3602-28 Stereo components: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of stereo components such as, but not limited to, record changers, disc or video players, receivers and amplifiers. Materials include, but are not limited to, circuit boards, resistors, drivers, baffle plates, chambers, trim/rings, and grills. Equipment includes, but is not limited to, hot glue guns, electric drills, electric screw drivers, and automated assembly or manufacturing equipment. Finished products are inspected, tested, packaged and shipped. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the

manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

## **WAC 296-17A-3905 Classification 3905.**

### **3905-00 Restaurants, N.O.C.**

Applies to establishments engaged in restaurant operations not covered by another classification (N.O.C.). These establishments are "traditional, family or full service" restaurants that provide sit-down services, or cafeteria or buffet style meals. This classification includes the preparation and service of food and beverages. Establishments in this classification may serve beer and wine including on premises consumption of beer from microbrewery operations in connection with the restaurant; however, they are prohibited from selling spirits or hard liquor. Typical occupations include, but are not limited to, hostesses, (~~waiters, waitresses~~) wait staff and assistants, cooks, (~~busboys~~;) dishwashers, cashiers, and managerial staff. This classification also includes the preparation of "take-out food" that customers pick up directly from the restaurant for consumption away from the premises and the operation of a card room in conjunction with the restaurant.

This classification excludes establishments engaged in operating restaurants or lounges that sell spirits or hard liquor which are to be reported separately in classification 3905-07, and catering services that are not part of the restaurant operation which are to be reported separately in classification 3909.

**Special note:** Traditional, family or full service restaurants are establishments where wait persons bring customers a menu, take orders, and deliver prepared meals to the customer's table or where customers choose from a variety of food items from a buffet or cafeteria style service. Such establishments will generally use nondisposable eating utensils and plates to serve food as opposed to throw away paper plates and plastic eating utensils. Includes establishments where orders are placed at the counter, and the food or drink is delivered to your table. Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as an independent contractor. Musicians or entertainers who are considered to be employees of a restaurant are to be reported separately in classification 6605.

### **3905-01 Food, drink, and candy vendors or concessionaires**

Applies to street vendors and businesses engaged in operating food, drink or candy concessions at places such as, but not limited to, ball parks, race tracks, theaters and exhibitions. This classification is applicable only to concession operations which are operated (~~independent~~) independently from the facility or event at which the concession service is being provided. These independent vendors selling food items are not employees of the facility or site where the event or exhibition is taking place. Vendors subject to this classifi-

cation sell a variety of food, snack and beverage items from booths, mobile push carts, mobile stands, carrying boxes, or trays.

This classification excludes food and beverage operations (concession stands) operated in connection with an event or facility by employees of the event sponsor or facility operator which are to be reported separately in the classification applicable to the event or exhibition; vendors and route food services, operating in a truck or van moving from place to place throughout the day, which are to be reported separately in classification 1101; vendors of nonfood items which are to be reported separately in the applicable classification; and vending machine service companies that replenish food, snack and beverage products which are to be reported separately in classification 0606.

### **3905-03 Commissaries and restaurants with construction, erection, logging or mine operations**

Applies to commissary or restaurant operations conducted *exclusively* in connection with a construction, erection, logging or mining camp operation. This classification is limited to food preparation services provided at a camp site or at a mess hall used to feed employees of the construction, logging, erection, or mining company. The foods prepared and served are not intended for, or offered to, the general public.

**Special note:** The purpose of this classification is to provide employees engaged in the food preparation activity with a classification representative of the work being performed, even though such activities may be occurring at or adjacent to the construction, logging, erection or mining site as provided for in the general reporting rule covering general inclusions.

### **3905-04 Eating establishments, N.O.C. such as public lunch counters in stores**

Applies to establishments not covered by another classification (N.O.C.) engaged in operating lunch counters and restaurants within a retail store location. Use of this classification is limited to employees of an employer who also operates the retail store where the food service is located.

### **3905-06 Taverns**

Applies to establishments engaged in the operation of a tavern. A tavern is primarily engaged in the sale of beer, wine, and alcoholic beverages for on-premises consumption, and may also provide a variety of foods ranging from peanuts and pretzels to hot food dishes. Typical occupations include, but are not limited to, bartenders, ~~((waiters, waitresses))~~ wait staff and assistants, cooks, ~~((busboys,))~~ dishwashers, and managerial staff. Beer may also be sold by the keg with the rental of necessary taps and pumps. This classification includes the operation of a "beer garden" at special events such as, but not limited to, fairs or race meets, and the operation of a card room in connection with the tavern.

**Special note:** Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as an independent contractor. Musicians or entertainers who are considered to be employees of a tavern ~~((are to))~~ must be reported separately in classification 6605.

### **3905-07 Restaurants serving spirits or hard liquor**

Applies to establishments engaged in the operation of a restaurant having a license to sell spirits or hard liquor, beer and wine in connection with their food preparation and service. This classification includes the preparation and service of food and beverages at sit down restaurants and lounges including on premises consumption of beer from microbrewery operations in connection with the restaurant. Such establishments have extensive cooking facilities and equipment to prepare full meals. Typical occupations covered by this classification include, but are not limited to, bartenders, hostesses, ~~((waiters, waitresses))~~ wait staff and assistants, valet parking attendants, cooks, busboys, dishwashers, cashiers, and managerial staff. This classification also includes the preparation of "take-out food" that customers pick up directly from the restaurant for consumption away from the premises and the operation of a card room in connection with the restaurant.

This classification excludes establishments engaged as a restaurant without a license to sell spirits or hard liquor which are to be reported separately in classification 3905-00; taverns which are to be reported separately in classification 3905-06; catering services which are not part of a restaurant operation which are to be reported separately in classification 3909; musicians who are to be reported separately in classification 6605; and entertainers such as dancers who are to be reported separately in classification 6620.

**Special note:** Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as ~~((an))~~ independent contractors. Musicians or entertainers who are considered to be employees of a restaurant ~~((are to))~~ must be reported separately in classification 6605.

### **3905-08 Pizza parlors**

Applies to establishments engaged in operating a pizza parlor or restaurant. Establishments subject to this classification specialize in the preparation and sales of pizza (but may also provide other foods) and beverages such as wine, beer, alcoholic beverages, or soft drinks for on-premises consumption. Typical occupations include, but are not limited to, hostesses, ~~((waiters, waitresses))~~ wait staff and assistants, cooks, ~~((busboys,))~~ dishwasher, cashiers, and managerial staff. This classification also includes establishments that deliver pizza to customers, or where customers can pick up already prepared pizza at the shop, but where no customer seating is provided.

This classification excludes U-bake pizza operations which are to be reported separately in classification 6403.

**Special note:** Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as ~~((an))~~ independent contractors. Musicians or entertainers who are considered to be employees of a pizza parlor ~~((are to))~~ must be reported separately in classification 6605.

### **3905-09 Fast food drive-ins, N.O.C.**

Applies to establishments engaged in the operation of fast food drive-ins or restaurants. These establishments serve

easily prepared foods quickly and nonalcoholic beverages which can be eaten on the premises or picked up by customers at a counter or a drive through window. Fast food establishments offer a variety of menu items such as, but not limited to, hamburgers, french fries, tacos, sandwiches, fried chicken, hot dogs, fish and chips. Such establishments will generally use disposable eating utensils and throw away plates.

This classification excludes street vendors and/or route food services which are to be reported separately in classification 1101 and full service restaurants which are to be reported separately in classification 3905-00.

### 3905-11 Soft drink lounges

Applies to establishments engaged in operating soft drink lounges. These types of establishments may provide entertainment such as dancing for an adult audience or a place where youth((s)) under ~~((the))~~ age ~~((of))~~ 21 can dance or listen to music. These lounges do not sell alcoholic beverages. This classification includes the preparation and service of light snacks and hors d'oeuvres, such as chips, peanuts, pretzels or finger sandwiches.

This classification excludes entertainers such as exotic dancers who are to be reported separately in classification 6620; and musicians who are to be reported separately in classification 6605.

**Special note:** Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as ~~((an))~~ independent contractors. Musicians or entertainers who are considered to be employees of a lounge ~~((are to))~~ must be reported separately in classification 6605 or 6620 as applicable.

### 3905-12 Ice cream parlors

Applies to establishments engaged in the operation of an ice cream parlor or frozen yogurt shop. These specialty shops offer a limited menu, usually confined to ice cream and frozen yogurt offered in individual servings, various size containers, and specialty items. Special occasion ice cream cakes may be ordered and picked up at a later date by the customer. These establishments usually provide customer seating.

This classification excludes vendors and/or route food services, operating in a truck or van moving from place to place throughout the day, which are to be reported separately in classification 1101~~((;))~~; and vendors selling ice cream from a booth, push cart, mobile stand or tray which are to be reported separately in classification 3905-01.

### 3905-13 Candy, nut, and popcorn retail stores with on-premises manufacturing

Applies to establishments engaged in operating candy, nut or popcorn stores where some or all the products sold are manufactured on the premises. Establishments in this classification may sell a variety of candies, nuts, or popcorn, or may specialize in one or two products. They may also sell their products in gift wrapped packages.

This classification excludes establishments engaged in selling candy, nuts, or popcorn, *that do not manufacture* any product on the premises, which are to be reported separately in classification 6406~~((;))~~; and establishments primarily

engaged in the wholesale manufacturing of candy which is to be reported separately in classification 3906.

### 3905-14 Espresso/coffee stands and carts

Applies to vendors operating espresso or coffee stands or carts. Products sold include, but are not limited to, coffee, espresso, lattes, Italian sodas, soft drinks, pastries and pre-packaged items. These types of vendors *do not prepare food*. This classification is distinguishable from retail coffee, tea or spice stores in that coffee stands or carts in classification 3905 sell only ready-to-serve products; they do not sell packaged coffee, tea or spice items.

This classification excludes street vendors and/or route food services which are to be reported separately in classification 1101.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

### WAC 296-17A-0302 Classification 0302.

#### 0302-01 Brick, block, ~~((rock))~~ and ~~((slate))~~ stone masonry work, N.O.C.

Applies to contractors engaged in interior or exterior work in brick, block, ~~((rock and slate work))~~ stone, brick or stone veneer, granite, marble, slate, or quartz, not covered by another classification (N.O.C.). ~~((Included))~~ Applications in this classification ~~((are projects related to sidewalks, walkways, driveways, patios, steps, pads for wood stoves, flower or planting boxes, fences, inlay for fireplaces, countertops, buffets, full or partial interior or exterior walls, and includes the construction of entire buildings or structures with brick, block or rock products-))~~ also include, but are not limited to, concrete block, glass block, pavers, and slab or engineered stone products. Projects in this classification include, but are not limited to:

- Decorative additions to buildings and landscapes;
- Hardscape installations such as, but not limited to:
  - Driveways;
  - Fences;
  - Patios;
  - Steps;
  - Walkways;
  - Walls;
- Installation of slab stone or concrete countertops;
- Construction of entire buildings or structures with brick, block or stone products;
- Setting tombstones.

Work contemplated by this classification includes, but is not limited to~~((;))~~;

- Cutting;
- Laying ~~((and cutting and/))~~ or installing;
- Polishing ~~((brick, block, rock, slate, marble, granite, and))~~;
- Dry setting or adhering with mortar ~~((of))~~;
- Tuck pointing (filling and/or finishing brickwork or stonework joints with cement or mortar).

This classification excludes;

- Tile setting and countertop installations as described in classification 0502;

- Plastering, stuccoing or lathing work which is to be reported separately in classification 0303; (~~tile setting which is to be reported separately in classification 0502; and~~)

- Incidental construction of rockery, paths, and walkways when performed by employees of a landscape contractor as part of a landscape project, which is to be reported in classification 0301;

- Mechanically placed block or prefab panels next to a roadway for noise barrier, median or retaining walls, which is to be reported in classification 0219;

- Concrete flat work which is to be reported separately in the classification applicable to the work being performed; and

- Masonry work as described in classification 0302-02.

**Special notes:** Contractors who operate a shop to cut, mill and polish stone products are to be assigned classification 3104-53 for the shop work; contractors operating a shop to make finished concrete products are to be assigned classification 3509 for the shop work. When a business is assigned classification 3104 or 3509 for the shop operation, then classification 5206 "Permanent yard or shop" may no longer be applicable to the business.

Contractors often have a showroom to display examples of their work and products which they install. If all the conditions of the general reporting rules covering standard exception employees have been met, then employees engaged exclusively in showing the display area or showrooms to customers are to be assigned classification 6303.

### **0302-02 Masonry(~~, N.O.C.~~)**

Applies to contractors engaged in interior or exterior masonry work (~~(not covered by another classification (N.O.C.), including chimney and fireplace construction. This classification includes)~~) including, but not limited to, the construction, lining or relining of:

- Fireplaces (~~(walls or boxes);~~);
- Chimneys(~~(:);~~);
- Blast furnaces(~~(:);~~);
- Fire pits;
- Ovens(~~(firepits, and setting tombstones)~~).

Work contemplated by this classification includes(~~(not limited to, laying and cutting brick or stone, and)~~):

- Cutting and laying brick, block or stone;
- Tuck pointing (filling and/or finishing brickwork or stonework joints with cement or mortar).

This classification excludes:

- Plastering, stuccoing or lathing work which is to be reported separately in classification 0303;

- Tile setting (~~(which is to be reported separately)~~) as described in classification 0502; (~~and~~)

- Concrete work which is to be reported separately in the classification applicable to the work being performed; and

- All other masonry work which is to be reported in classification 0302-01.

**AMENDATORY SECTION** (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

### **WAC 296-17A-0502 Classification 0502.**

### **0502-04 (~~Carpet, vinyl, tile and other~~) Floor coverings or (~~counter top covering~~) countertops: Installation or removal**

Applies to contractors engaged in the installation or removal of floor coverings or (~~counter top coverings such as;~~) countertops.

- Floor coverings include, but are not limited to, (~~(wall to wall)~~) carpet, vinyl, laminate, tile, (~~(or artificial turf in residential or commercial settings-)~~) terrazzo, or parquet;

- Countertops include, but are not limited to, laminate, tile, and solid surface (synthetic).

Tile is various sizes and shapes, usually from 1" x 1" up to 24" x 24" and packaged in a box. Tile installation in this classification includes, but is not limited to:

- Ceramic, glass, or clay tiles;

- Stone in tile-size dimensions, often used for interior installations in floors, showers, countertops, and backsplashes such as:

- Granite;

- Marble;

- Slate.

Work contemplated by this classification includes(~~(not limited to,)~~) the installation and/or removal of (~~(foam or rubber)~~):

- Countertops;

- Flooring;

- Padding(~~(floor coverings such as rugs or carpet);~~);

- Tack (~~(strips);~~) or door strips(~~(:);~~);

- Subflooring (~~((particle board or plywood), linoleum, vinyl);~~);

- Base boards (~~(or door strips, and hauling existing floor covering debris away. This classification also includes the installation of clay or ceramic tiles on counter tops and backsplashes);~~);

- Artificial turf when used for areas such as patios, and laid similarly to carpet.

This classification excludes contractors engaged in:

- The installation of stone countertops as described in classification 0302;

- The installation of (~~counter tops as part of an interior finish carpentry or cabinetry contract~~) hardwood countertops or flooring which is to be reported separately in classification 0513; (~~(the installation of hardwood floors which is to be reported separately in classification 0513);~~)

- The installation of countertops as described in this classification when the installation is part of an interior finish carpentry or cabinetry contract, which is to be reported in classification 0513;

- The installation of brick(~~(slate, marble or granite which is to be reported separately in classification 0302)~~), block and slab stone as described in classification 0302;

- The installation of roofing tiles which is to be reported separately in classification 0507;

- The installation of artificial field turf in landscaping projects or athletic fields which is to be reported in classification 0301; and

- Floor covering stores which are to be reported separately in the applicable classification.

**Special note:** Contractors often have a showroom to display examples of their work and products which they install.

If all the conditions of the general reporting rules covering standard exception employees have been met, employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303.

**0502-99 (~~Carpet, vinyl, tile and other~~) Floor coverings or (~~counter top covering~~) countertops: Installation or removal**

Applies to floor covering contractors who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" status for prime contractor liability.

**Special note:** Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0513 Classification 0513.**

**0513-00 Interior finish carpentry**

Applies to contractors engaged in interior finish carpentry work for all types of buildings. Generally, the interior finish carpentry work begins after the drywall, taping, texturing, and painting (~~and~~) or wallpapering is complete. This classification includes a variety of interior finish or trim carpentry work (~~to include~~) including, but not (~~be~~) limited to, (~~the~~) installation of (~~wood paneling and wainscoting, wood fireplace mantels, stair railings, posts and banisters, interior doors and door frames, wood molding on windows, baseboards, interior fixtures such as towel bars and tissue holders, closet organizers, installation and/or finishing of hardwood flooring, and cabinets such as kitchen, medicine, laundry and storage. Contractors who operate a wood cabinet manufacturing or assembly shop away from the construction site, are to be assigned classification 2907 for the shop manufacturing work. When a contractor's business is assigned classification 2907 for the shop operation, then classification 5206, "Permanent yard or shop," is no longer applicable to the contractor's business for the storage of materials or repair of equipment~~);

• Cabinets such as kitchen, medicine, laundry and storage;

- Closet organizers;
- Filing systems;
- Hardwood counters and flooring;
- Interior doors and door frames;
- Interior fixtures such as towel bars and tissue holders;
- Stair railings, posts and banisters;
- Wood fireplace mantels;
- Wood paneling, wainscoting, and molding.

Included in this classification (~~includes~~) is the installation of (~~counter tops~~) countertops as described in classification 0502, when part of a contract which includes the installation of cabinets or other interior finish or carpentry work. (~~Contractors engaged exclusively in the installation of counter tops or as part of a floor covering contract are to be~~

reported separately in classification 0502.) Also included is the finishing and/or refinishing of hardwood floors.

Excluded from this classification (~~excludes all~~) are the following types of work which are to be reported in the applicable classification:

• Countertop installation as described in classification 0502 and not as part of a cabinet installation contract;

• Countertop installation as described in classification 0302;

• Carpentry work on the exterior of a building (~~or interior work such as framing interior walls, installing wallboard, taping and texturing walls~~);

• Concrete;

• Electrical;

• Framing interior walls;

• Garage or exterior door installation;

• Glazing;

• Insulation;

• Masonry;

• Painting;

• Plastering (~~painting, masonry, glazing, insulation, installing overhead garage or exterior doors, concrete, electrical and plumbing work which is to be reported separately in the applicable classification.~~

**Special note:** This classification includes the installation of cabinet display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor);

• Plumbing;

• Taping and texturing;

• Wallboard.

**Special notes:** Generally, displays or showrooms are (~~installed~~) maintained where the contractors store their materials. It is common for contractors subject to this classification to sell some interior finish-related products, but the intent of these areas is not to sell products to walk-in customers. This classification includes the installation of cabinet display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor. Sale of these products by an interior finish contractor is included in classification 0513. Classifications 2009, 6309, or similar store classifications, are not to be assigned to a contracting business. If all the conditions of the general reporting rule covering standard exception employees have been met, employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303 (~~provided all the conditions of the general reporting rule covering standard exception employees have been met~~).

Contractors who operate a wood cabinet manufacturing or assembly shop away from the construction site are to be assigned classification 2907 for the shop manufacturing work. When a contractor's business is assigned classification 2907 for the shop operation, then classification 5206, "Permanent yard or shop" may no longer be applicable to the contractor's business.

AMENDATORY SECTION (Amending WSR 08-15-132, filed 7/22/08, effective 10/1/08)

**WAC 296-17A-2102 Classification 2102.**

**2102-00 Warehouses - General merchandise**

Applies to establishments operating as warehouses for general merchandise. This merchandise belongs to a customer and is usually stored for long periods of time. Products typically involved are bulk, nonperishable materials which might include, but not be limited to(~~(rice, coffee,)~~):

- Coffee;
- Dry cement;
- Potatoes(~~(or dry cement)~~);
- Rice.

Work contemplated by this classification includes, but is not limited to(~~(unloading deliveries, moving merchandise within the facility, recordkeeping, security, and maintaining the facility)~~):

- Maintaining the facility;
- Moving merchandise within the facility;
- Recordkeeping;
- Routine maintenance;
- Security.

Equipment and machinery used includes:

- Cleaning and recordkeeping supplies;
- Forklifts;
- Pallet jacks(~~(, forklifts, routine maintenance, cleaning and recordkeeping supplies, and)~~);

- Shop vehicles.

This classification excludes:

- Delivery drivers who are to be reported separately in classification 1102;
- Wholesale dealers who operate a warehouse for storage of their own product which is to be reported separately in the classification applicable to the product being sold;
- Warehousing of household furnishings by a moving and storage company which is to be reported separately in classification 6907;
- Cold storage plants which are to be reported separately in classification 4401;
- Ministorage warehousing which is to be reported separately in classification 4910;
- Field bonded warehouses which are to be reported separately in classification 2008; (~~and the~~)
- Warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

**Special note:** Even though this type of operation may handle some "grocery" products, it differs from 2102-11 in that the products being handled in 2102-00 are in bulk packaging (not cases of consumer-size packages), do not belong to the business that is warehousing them, and are not intended for sale to a wholesaler/retailer.

**2102-04 Recycle, collection and receiving stations; rags, bottles, paper and metal container dealers, N.O.C.**

Applies to establishments engaged in the collection of used paper, aluminum, tin, glass, and plastic for the purpose of selling the material to another business that will recycle/remanufacture it into new products. These facilities normally acquire material by placing collection bins at various

remote locations, operating a drop-off center (this phase of the business is known in the trade as a "buy back center"). This classification includes dealers of rags, bottles, paper and metal containers not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to(~~(;)~~):

- Sorting material(~~(;)~~);
- Operating various pieces of equipment used to crush, reduce, wash, and bale material(~~(;)~~);
- Weighing containers(~~(;)~~);
- Paying customers for receipt of items that have a redemption value by the pound or piece ("buying back")(~~(; and)~~);
- Operating shop or yard vehicles.

Machinery and equipment includes, but is not limited to(~~(, shredders,)~~):

- Balers(~~(;)~~);
- Can crushers(~~(, weigh scales, forklifts, collection bins, shop or yard vehicles, and)~~);
- Collection bins;
- Forklifts;
- Shredders;
- Rolloff trucks to handle the collection bins;
- Shop or yard vehicles;
- Weigh scales. (~~(This classification includes dealers of rags, bottles, paper and metal containers not covered by another classification (N.O.C.))~~)

This classification excludes:

- All trucking outside of the yard which is to be reported separately in classification 1102 (~~and~~);
- Establishments engaged in collecting, sorting and reducing scrap metal such as junk dealers, scrap metal dealers or processors, which also receive(~~(s)~~) glass, paper, plastic, etc., which are to be reported separately in classification 0604; and
- Establishments engaged in collecting used computer equipment for recycling which may be reported in classification 4107.

**Special note:** Classification 2102-04 should not be assigned to an employer who also operates a business subject to classification 4305-18 (Garbage, refuse or ashes collecting) without careful review and an on-site survey. Most garbage collecting businesses have some type of "recycle" program as part of their normal operations in an effort to sort and reduce the amount of waste that goes to landfills and this is considered an inclusion.

**2102-11 Grocery, fruit or produce distributors - Wholesale or combined wholesale and retail**

Applies to establishments engaged in the wholesale, or wholesale/retail, distribution of a variety of grocery items, fruit and produce. A business in this classification buys products from the manufacturer and sells to retail grocery stores, restaurants, and similar businesses. Grocery items may include, but not be limited to(~~(, packaged foods,)~~):

- Beverages;
- Dairy products;
- Frozen foods(~~(;)~~);
- Household cleaning supplies(~~(;)~~);
- Packaged foods;



- Paper products((:));
- Personal care items(~~(beer, soda, and dairy products)~~).

Work contemplated by this classification includes, but is not limited to(~~(unloading deliveries,))~~;

- Breakdown of merchandise into smaller lots;
- Incidental repackaging;
- Maintaining the facility;
- Moving merchandise within the facility(~~(incidental repackaging, breakdown of merchandise into smaller lots,))~~;
- Recordkeeping((:));
- Security(~~(and maintaining the facility))~~;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to((:)):

- Forklifts;
- Pallet jacks(~~(forklifts,))~~;
- Strapping and shrink wrapping equipment(~~(and))~~;
- Vehicles.

This classification excludes:

- Delivery drivers who are to be reported separately in classification 1101;
- Any general merchandise warehouse operations in which the operator of the warehouse does not own the merchandise being handled and it is in bulk quantities, which is to be reported separately in classification 2102-00;
- Cold storage plants handling food products which are to be reported separately in classification 4401;
- Operations specializing in vegetable/fruit packing for wholesale distribution which are to be reported separately in classification 2104;
- Operations specializing in wholesale distribution of beer, wine, ale or soft drinks which ((is)) are to be reported separately in classification 2105;
- Field bonded warehouses which are to be reported separately in classification 2008; and
- The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

### **2102-28 Wool or cotton merchants**

Applies to establishments operating as wool or cotton merchants. Merchants subject to this classification buy raw wool or cotton from others, do incidental sorting, grading and repackaging, and sell the product to another business for use as a raw material to make products such as yarn, thread or fabric. Work contemplated by this classification includes, but is not limited to(~~(unloading deliveries,))~~;

- Hand sorting the product by grade (quality);
- Maintaining the facility;
- Moving merchandise within the facility(~~(hand sorting the product by grade (quality,))~~;
- Repackaging((:));
- Recordkeeping((:));
- Security(~~(and maintaining the facility))~~;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to((:)):

- Forklifts;
- Pallet jacks(~~(forklifts,))~~;
- Repackaging equipment ((and));
- Vehicles.

This classification excludes:

- Drivers who are to be reported separately in classification 1102;
- Wholesale dealers of a finished wool or cotton product which are to be reported separately in the classification applicable to the product; and
- The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

### **WAC 296-17A-2907 Classification 2907.**

#### **2907-00 Wood cabinet, countertop, and fixture: Manufacturing, modifying or assembly**

Applies to establishments engaged in the manufacture, modification, or assembly of wood cabinets, countertops, and fixtures. Cabinetry work contemplated by this classification includes, but is not limited to((:)):

- Manufacturing custom or modular cabinets((:));
- Assembling prefabricated modular cabinet components((:));
- Refacing existing cabinets and replacing hardware(~~(and))~~;
- Modifying the dimension or design of modular cabinets. ((Manufacturing countertops includes)) This classification includes these duties when performed in the shop by employees of employers subject to this classification:
- Fabricating the core or sub top ((in addition to));
- Laying the plastic laminate, polyester overlay or tile ((when performed in the shop by employees of employers subject to this classification. Finishing that is subcontracted out to a prefinishing contractor or performed by the general or specialty construction contractor at the job site is to be reported in the classification applicable to the work being performed. Finish work, including staining, lamination, and the attachment of hardware, is included in classification 2907-00 when performed by employees of an employer subject to this classification));
- Finish work, including staining, lamination, and the attachment of hardware.

Fixture manufacturing includes built-in items in stores, offices, restaurants, banks and ((residential fixtures)) residences, such as, but not limited to(~~(showcases,))~~;

- Bookshelves;
- Cashier cubicles;
- Check-out counters;
- China hutches;
- Closet organizers;
- Credenzas;
- Curio cabinets;
- Display cases((:)) and pedestals;
- End aisles(~~(display pedestals, shelving,))~~;
- Entertainment centers;
- Partitions(~~(racks, closet organizers, bookshelves, work stations, credenzas,))~~;
- Podiums((:));
- Shelving;
- Showcases;

• Wall units (~~(, china hutches, entertainment centers, cashier cubicles, check-out counters, and curio cabinets)~~);

• Work stations.

The wiring of fixtures for electrical fittings, and the cutting and fitting of plastic laminates, glass, mirrors, or metal trim, when performed in the shop, is included as an integral function of the manufacturing process encompassed within this classification. Raw materials include, but are not limited to

- Carpet;
- Dimensional lumber (~~(, plywood, veneer, particleboard, plastic laminates)~~);
- Electrical hardware;
- Glue;
- Hardware;
- Lacquer;
- Metal trim;
- Mirrors;
- Paint;
- Particle board;
- Plastic laminate;
- Plywood;
- Polyester overlays;
- Sheet rock;
- Slot wall dowels (~~(, hardware, mirrors, metal trim, electrical hardware, carpet, upholstery fabric, stain, paint, lacquer or glue)~~);
- Stain;
- Upholstery fabric;
- Veneer.

Machinery includes, but is not limited to (~~(, table, panel, radial arm, cut-off, chop, rip, band, and miter saws, wide belt sanders, edge sanders, hand finish jointers, mortises, tenoners)~~);

- Air compressors;
- Boring machines;
- Dowel machines;
- Drill presses;
- Dust collectors;
- Edge banders;
- Face framing machines;
- Forklifts;
- Glue spreaders;
- Hand drills (~~(, boring machines, edge banders, dowel machines, glue spreaders, face framing machines)~~);
- Hand finish jointers;
- Mortises;
- Pallet jacks;
- Pneumatic nail, screw and staple guns (~~(, air compressors)~~);
- Sanders that are wide belt or edge;
- Saws that are table, panel, radial arm, cut-off, chop, rip, band, or miter;
- Spray guns (~~(, forklifts, pallet jackets, and dust collectors)~~);
- Tenoners.

This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification. Lumber yards, building material dealers, or general construc-

tion contractors that maintain a separate woodworking shop for manufacturing, assembling cabinets, and fixtures are subject to this classification for the woodworking operations, in addition to any other basic classification applicable to their business.

This classification excludes:

• Finishing that is subcontracted out to a prefinishing contractor or performed by the general or specialty construction contractor at the job site, which is to be reported in the classification applicable to the work being performed;

• The installation of (countertops only which is to be reported separately in classification 0502, the installation of cabinets, countertops, and fixtures which is to be reported separately in classification 0513) the items manufactured in this classification which are to be reported separately in the classification applicable to the work being performed;

• The manufacture of wood furniture and caskets which is to be reported separately in classification 2905;

• The manufacture of metal cabinets which is to be reported separately in classification 3402;

• Lumber remanufacturing which is to be reported separately in classification 2903;

• Veneer manufacturing which is to be reported separately in classification 2904; and

• Sawmill operations which are to be reported separately in classification 1002.

**Special note:** Establishments primarily engaged in the manufacture of cabinets, countertops, and fixtures may make other wood products such as doors, windows, moldings, and/or furniture as an incidental activity to the main business. The manufacture of these incidental products is included within the scope of classification 2907-00. Furniture is generally moveable and unsecured. Fixtures are usually secured, stationary, permanently built-in objects. Even though some fixtures may be secured to a wall or floor, they are not intended to be relocated, unlike furniture which is frequently and more easily arranged.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-3104 Classification 3104.**

#### **3104-08 Plaster, whiting, talc, emery powder: Manufacturing**

Applies to establishments engaged in the manufacture of plaster, whiting, talc or emery powder. Plaster is a mixture of lime, sand, water, and may include hair or other fibers, that hardens to a smooth solid and is used for coating walls and ceilings. Plaster can also be manufactured in dry form and sold in bags. Whiting is a pure white grade of chalk that has been ground and washed for use in paints, ink, and as an extender in pigments, putty or whitewash. Talc is a fine-grained white, greenish, or gray mineral with a soft soapy texture, which is used in the manufacture of talcum and face powder, as a paper coating, and as a filler for paint and plastics. Emery is a fine-grained mineral used for grinding and polishing. This classification is for the production of the powders only. Machinery includes, but is not limited to

• Conveyors;

• Forklifts;

- Machinery for crushing, mixing, grinding, milling (~~and~~), washing (~~and~~), or cooking (~~machinery, conveyors and forklifts~~).

This classification excludes:

- Establishments engaged in the manufacture of plaster statuary or ornaments which are to be reported separately in classification 3509;
- Establishments engaged in the manufacture of plaster-board or plaster block which are to be reported separately in classification 3104-55;
- Interior and exterior plastering and stucco work which is to be reported separately in classification 0303; and
- Quarrying operations which are to be reported separately in classification 1704.

### **3104-52 Asbestos products or mica goods: Manufacturing**

Applies to establishments engaged in the manufacture of asbestos products and mica goods. Asbestos products include, but are not limited to (~~fireproofing, electrical insulation, building materials~~);

- Brake linings(~~;~~);
- Building materials;
- Chemical filters;
- Clutch facings(~~;~~);
- Dryer felt;
- Electrical insulation;
- Fireproofing;
- Valve packings(~~dryer felt, and chemical filters~~).

Asbestos is a fibrous mineral form combined with impure magnesium silicate. Flake asbestos can be mixed, spun and woven into cloth(~~;~~), or the flakes can be used as an ingredient in the processing or treatment of paper. To make molded asbestos products, asbestos is mixed with other ingredients, molded, baked, cut to size, and ground. Mica is also a mineral form; it is split to desired thickness using hand knives or knives mounted on tables. The split mica is sent to punch presses which stamp out the various products usually used by the electrical trades. Mica that is too small to be processed on punch presses may be placed in burling machines, mixed with liquids, and then pressed into sheets. Removal of imperfections is usually done by hand; the sheets are dried, baked in ovens and run through sanders prior to crating and shipping.

This classification excludes:

- Establishments engaged in the manufacture of plasterboard or plaster block which are to be reported separately in classification 3104-55;
- Contractors engaged in the installation or removal of asbestos or mica products at the customer's site (~~which~~) who are to be reported separately in the classification applicable to the phase of construction being performed; and
- Quarrying operations which are to be reported separately in classification 1704.

### **3104-53 (~~Soapstone or soapstone~~) Stone products: Manufacturing; (~~marble cutting and polishing, slate milling, stone cutting~~) fabrication, or polishing, N.O.C.**

Applies to establishments engaged in the manufacture of soapstone products, and the cutting, milling, and polishing of stone not covered by another classification (N.O.C.), such as:

- Granite;
- Grindstone;
- Limestone;
- Lithographic stone (usually sheet zinc) marble(~~;~~);
- Millstone;
- Slate(~~or stone such as grindstone, limestone, millstone and lithographic stone (usually sheet zinc), not covered by another classification (N.O.C.)~~).

Soapstone (also called steatite) is a massive white-to-green talc found in extensive mine beds and is used in products such as, but not limited to(~~;~~);

- Ceramics;
- Decorative accessories;
- Insulation(~~;~~);
- Ornamental objects;
- Paints(~~ceramics, decorative accessories, and ornamental objects~~).

The manufacturing process for stone products requires turning, shaping, carving and polishing (~~of the soapstone~~) with a variety of milling equipment. Finished stone products of granite, marble, or slate (~~or stone~~) include, but are not limited to(~~;~~);

- Countertops;
- Decorative accessories(~~;~~);
- Floor tiles;
- Tops for furniture(~~countertops, floor tiles and~~);
- Other building materials.

Machinery and materials include, but are not limited to(~~;~~ ~~saws, milling machines~~);

- Abrasives;
- Grinders (~~and abrasives~~);
- Milling machines;
- Saws.

This classification excludes:

- Installation of (~~tile, marble or slate~~) stone building materials (~~which is to be reported separately in the classification applicable to the phase of construction being performed~~) as described in classification 0302;
- Tile setting as described in classification 0502; and
- Quarry operations which are to be reported separately in classification 1704.

### **3104-55 Plasterboard or plaster block: Manufacturing**

Applies to establishments engaged in the manufacture of plasterboard (wallboard) or plaster block which are used as building materials. Raw materials include, but are not limited to(~~;~~);

- Fiberboard;
- Plaster(~~fiberboard, and~~);
- Rolls of paper.

Plasterboard is made by bonding plaster to a thin rigid board or to layers of fiberboard or paper to form a flat board or a block. Product is dried in ovens, cut to size with slitters or other cutting machinery, and packed for shipment. This classification includes the mixing of the plaster when done by employees of employers subject to this classification.

This classification excludes:

- Establishments operating as plaster mills which are to be reported separately in classification 3104-08;
- Interior and exterior plastering and stucco work which is to be reported separately in classification 0303; and

• Quarrying operations which are to be reported separately in classification 1704.

### 3104-57 Coating of building materials, N.O.C.

Applies to establishments engaged in the coating of building materials, not covered by another classification (N.O.C.), with preservatives to keep them from decaying when placed into the ground. These materials include, but are not limited to((:)):

- Deck materials;
- Dimensional lumber((~~deck materials~~));
- Fence posts((:));
- Landscaping beams((~~and~~));
- Lattice work.

The coating process may include immersing the lumber in vats of preservative, or cutting or drilling small holes into the lumber and applying preservatives that soak in. Machinery and materials include, but are not limited to((:)):

- Brushes;
- Drills;
- Immersion vats((~~drills, brushes, or~~));
- Machines to drill holes and apply preservatives.

This classification excludes installation of these products which is to be reported separately in the classification applicable to the work being performed.

### 3104-58 Monument dealers

Applies to establishments engaged in selling monuments, statues, cornerstones, and grave markers to others. This classification includes the finish cutting, grinding, polishing, engraving, and sandblasting of the stone when done by employees of employers subject to this classification. Wholesale monument dealers generally receive split, rough cut stone from the mine or quarry. Materials such as granite and marble are cut to block size, and precast bronze markers may be attached to the stone. Some blocks are sold without further processing while others are finished with stone polishers and abrasives, then cut into monuments prior to shipment to retail monument dealers. Retail monument dealers may provide engraving, artwork, lettering, and dates, according to customer specifications, that ((~~is~~)) are usually done with a sandblasting technique. This classification includes installation of monuments when performed by employees of the monument dealer.

This classification excludes:

- Installation of monuments by employees of cemeteries which is to be reported separately in classification 6202;
- Contractors engaged in the installation of monuments which are to be reported separately in the classification applicable to the work being performed; and
- Establishments engaged in providing specialized services, such as, but not limited to, sandblasting which are to be reported separately in the classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

### WAC 296-17A-3406 Classification 3406.

### 3406-00 Automotive or truck gas service stations, N.O.C.: Lube and oil change specialists, and mobile lube and oil services

Applies to establishments operating full service gasoline or diesel service stations not covered by another classification (N.O.C.). This classification includes cashiers. Full service includes, but is not limited to((:)):

- Pumping gas for customers((:));
- Replacing wiper blades((:));
- Checking and/or filling the fluid levels (oil, transmission, wiper wash and antifreeze)((~~and~~));

• Adding air to the tires.

The repairs included in this classification are:

- Oil and filter changes((:));
- Tune-ups((:));
- Replacement of brakes((:));
- Front end alignments ((~~and~~));
- The repair or replacement of tires. ((~~This classification includes cashiers~~))

This also applies to establishments engaged exclusively in preventive automotive maintenance, such as, but not limited to((:)):

- Adding air to tires;
- Changing oil and ((~~oil~~)) filters((:));
- Checking and/or filling fluid levels;
- Checking and/or replacing belts, hoses;
- Lubing chassis((~~checking and/or filling fluid levels~~));
- Replacing wiper blades((~~adding air to tires, and checking and/or replacing belts, hoses, and filters~~)).

This classification excludes:

- Portable automobile or truck car washes which are to be reported separately in classification 6602;
- Establishments engaged in automobile or truck repair services and tune up specialists which are to be reported separately in classification 3411;
- Establishments engaged in the service or repair of machinery or equipment N.O.C. which are to be reported separately in classification 6409;
- Self-service gas stations which are to be reported separately in classification 3409; and
- Convenience grocery stores or mini-markets with self-service gasoline operations which are to be reported separately in classification 3410.

### 3406-01 Automobile or truck storage garages

Applies to establishments operating automobile or truck storage garages. Generally, these types of storage garages consist of an enclosed structure and usually with more than one level of parking. Storage garages may provide additional incidental services such as, but not limited to((:)):

- Gasoline((:));
- Tune-ups((:));
- Washing and waxing services((~~as well as~~));
- Cashiers ((~~and~~));
- Full-time attendants or security personnel.

This classification excludes:

- Portable automobile or truck car washes which are to be reported separately in classification 6602;
- Establishments providing parking lot services which are to be reported separately in classification 6704;

- Automobile or truck repair services which are to be reported separately in classification 3411;
- Establishments engaged in the service or repair of machinery or equipment N.O.C. which are to be reported separately in classification 6409;
- Self-service gas stations which are to be reported separately in classification 3409; and
- Full service gas station services which are to be reported separately in classification 3406-00.

**Special note:** Storage garages applicable to this classification are distinguishable from parking lots in classification 6704 in that parking lots usually are not an enclosed structure, and they do not provide service to automobiles.

#### **3406-04 Automobile or truck - Detailing by contractor; glass tinting; windshield repair**

Applies to establishments engaged in providing automobile or truck detailing services, and to establishments engaged solely in tinting glass in automobiles, or repairing cracks, chips or ~~((bullseyes))~~ bull's-eyes in windshields. This classification includes cashiers. Detailing services involve complete, in-depth cleaning of exteriors and interiors such as, but not limited to ~~((;))~~;

- Washing ~~((;))~~;
- Waxing ~~((;))~~;
- Polishing ~~((;))~~;
- Buffing ~~((;))~~;
- May also involve tinting glass;
- Vacuuming or otherwise cleaning the ~~((auto bodies;))~~

#### autos:

- Chrome work ~~((;))~~;
- Tires ~~((;))~~;
- Hub caps ~~((;))~~;
- Windows ~~((;))~~;
- Mirrors ~~((;))~~;
- Carpets ~~((and;))~~;
- Seats ~~((and may also involve tinting glass. This classification includes cashiers)).~~

This classification excludes:

- Portable automobile or truck car washes which are to be reported separately in classification 6602;
- Tinting or installation of automobile or truck window glass performed by a glass dealer which is to be reported separately in classification 1108;
- Glass tinting or the application of tinted plastic film to glass windows and doors in buildings which are to be reported separately in classification 0511;
- Detailing performed in connection with automobile or truck dealers, service centers or repair garages which are to be reported separately in classification 3411;
- Detailing performed in connection with automobile or truck body and fender repair shops which ~~((are))~~ is to be reported separately in classification 3412;
- Detailing performed in connection with establishments engaged in the service or repair of machinery or equipment, N.O.C. which is to be reported separately in classification 6409; and
- Detailing performed in connection with full service gas stations which ~~((are))~~ is to be reported separately in classification 3406-00.

#### **3406-05 Automobile or truck car washes**

Applies to establishments providing automobile or truck washing services. This classification includes the exterior washing, waxing, polishing or buffing, cleaning of chrome and tires, and the interior cleaning of windows, carpets, dash and seats. These services may be performed at a coin operated self-service unit, or at a full service automatic unit where the vehicle is conveyed through the line assisted by attendants. This classification includes cashiers and the sale of accessory items such as, but not limited to ~~((; bottled car care products;))~~;

- Air fresheners ~~((; floor mats;))~~;
- Beverages ~~((and snack foods;))~~;
- Bottled car care products;
- Floor mats;
- Snack foods.

This classification excludes:

- Portable automobile or truck car washes which are to be reported separately in classification 6602;
- Washing services performed in connection with automobile or truck dealers, service centers or repair garages which are to be reported separately in classification 3411;
- Washing services performed in connection with automobile or truck body and fender repair shops which are to be reported separately in classification 3412;
- Washing services performed in connection with establishments engaged in the service or repair of machinery or equipment, N.O.C. which are to be reported separately in classification 6409;
- Washing services performed in connection with full service gas stations which are to be reported separately in classification 3406;
- Washing services performed in connection with self-service gasoline operations which are to be reported separately in classification 3409; and
- Washing services performed in connection with convenience stores that have self-service gasoline operations which are to be reported separately in classification 3410.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-3509 Classification 3509.**

##### **3509-01 Statuary and ornament: Manufacturing**

Applies to establishments engaged in the manufacture of decorative statuary, and other ornamental items including, but not limited to ~~((;))~~;

- Cornices;
- Countertops;
- Grills;
- Lawn and garden furniture;
- Patio and blocks and stepping stones;
- Planters and fountains ~~((; lawn and garden furniture, patio blocks and stepping stones, grills, and cornices)).~~

Materials ~~((such as, but not limited to, plaster, concrete, hair, wood fiber, powdered lime, sand, gravel, cinders, aggregates, mesh wire and reinforcing rods, and certain plastics are received from outside sources))~~ used to make the items may include:

- Aggregate;

- Cinders;
- Concrete;
- Gravel;
- Hair;
- Mesh wire and reinforcing rods;
- Plaster;
- Powdered lime;
- Sand;
- Wood fiber.

Depending on the item being made, various ingredients are mixed together and cast in metal or rubber molds or in forming machines. After being removed from the molds or forms, they are dried and stored until cured. After curing, items may be sanded and smoothed with grinders, ~~((or))~~ carved by hand; some may be painted with designs or coated with a clear finish ~~((or designs hand painted on))~~. Such finishing work is included within the scope of the classification when performed by employees of employers subject to this classification.

This classification excludes:

- The mining, digging, quarrying, or manufacturing of raw materials which are to be reported separately in the applicable classification;
- The manufacture of decorative tile which is to be reported separately in classification 3503; ~~((and))~~
- The manufacture of concrete blocks, bricks, poles, piles, tile, beams, sewer and irrigation pipe, and septic tanks which is to be reported separately in classification 3105; and
- The pouring and finishing of concrete countertops on a construction site which is to be reported in classification 0217.

**Special note:** This classification differs from classification 3105 "concrete blocks, sewer pipes" in that products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105 which are rough, do not require perfect finishes, and are generally for construction use.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-4107 Classification 4107.**

##### **4107-04 Business machines: Service, ~~((adjustment,))~~ repair, ~~((and))~~ installation, and recycle, N.O.C.**

Applies to establishments engaged in the ~~((adjustment,))~~ service, ~~((or))~~ repair, installation, or recycling of business machines not covered by another classification (N.O.C.) ~~((Types of business machines include, but are not limited to, typewriters, copy, postage meters, keypunch, fax machines, computer components, X-ray and other medical-related electronic equipment. Work contemplated by this classification includes low voltage prewiring to the point of connecting to the live circuit.))~~ This classification includes all work performed on the customer's premises as well as in the employer's shop. ~~((This classification also includes service or repair of depth finders, radar, computerized or noncomputerized embroidery machines and the replacement or refilling of nontoxic toner in printer cartridges which is sometimes referred to as remanufacturing. The plate is removed from~~

~~used cartridges, residuals of old toner is removed with hand-held vacuums, and the cartridge is wiped clean. After pouring new toner into the cartridge, the plate is replaced and the cartridge is considered new. Used toner is wrapped in plastic and discarded.))~~

Installation work contemplated by this classification includes low voltage prewiring to the point of connecting to the live circuit. Types of machines or equipment include, but are not limited to:

- Computer components;
- Copiers;
- Depth finders;
- Fax machines;
- Postage meters;
- Radar equipment;
- X-ray or other medical-related electronic equipment.

Recycling in this classification includes printer cartridge recycling or remanufacturing, and the breakdown of computer equipment to remove useable parts to sell or use for rebuilding and resale. The unusable materials are picked up by recyclable materials processors or garbage collectors.

This classification excludes:

- The retail sale of computers and accessories which may be separately reported in classification 6406;
- Recyclable materials processors described in classification 2102;
- Electrical work with a live power source which is to be reported separately in classification 0601; and
- Low voltage wiring which is to be reported in classification 0608.

##### **4107-20 Piano tuning**

Applies to establishments engaged in tuning services for pianos, organs, and other keyboard musical instruments. Establishments in this classification will tune, clean, replace the felt, and provide minor repair service such as, but not limited to ~~((the removal))~~;

- Removing and ~~((replacement of))~~ replacing bad cords ~~((;))~~;
- Regluing broken keys ~~((; or))~~;
- Replacing faulty foot pedals. This classification includes all work performed on the customer's premises as well as in the shop.

This classification excludes:

- Establishments engaged in the sale of pianos and organs which are to be reported separately in classification 6306;
- Establishments engaged in the sale of other types of musical instruments such as string, wind and percussion instruments, which are to be reported separately in classification 6406; and
- Establishments engaged in the reconditioning of pianos and organs (and the related sales of reconditioned pianos and organs) which are to be reported separately in classification 2906.

**AMENDATORY SECTION** (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

#### **WAC 296-17A-0307 Classification 0307.**

**0307-01 Furnaces and heating systems: Installation, service or repair**

Applies to contractors engaged in the installation, service, or repair of furnaces and heating systems, including duct work, in all types of residential and commercial settings. These services are generally performed by furnace contractors, heating and ventilation contractors, or sheet metal contractors. Work contemplated by this classification includes the fabrication, erection, installation and duct work performed at the job site. Materials include, but are not limited to(;):

- Air purification systems;
- Concrete pads;
- Fireplace inserts or units;
- Fittings;
- Flat sheets of metal;
- Galvanized pipe;
- Gas logs;
- Gas or electric furnace units(;) );
- Heat pumps;
- Heater units(, heat pumps, air purification systems, fireplace inserts or units,);
- Hot water tanks(;) );
- Insulation wrap;
- Preformed or bent venting duct and pipe;
- Thermostats(, flat sheets of metal,);
- Vent collars and reels;
- Vents(, preformed or bent venting duct and pipe, vent collars and reels, fittings, galvanized pipe, insulation wrap, concrete pads and gas logs).

Contractors who operate a sheet metal fabrication shop or who prefabricate the duct systems in a shop away from the construction site are to be assigned classification 3404 for the shop fabrication work. When a contractor's business is assigned classification 3404 for shop operations, then classification 5206, "Permanent yard or shop," is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes:

- Sheet metal fabrication shops which are to be reported separately in classification 3404;
- Duct cleaning work which is to be reported separately in classification 1105;
- Installation or repair of ventilation, air conditioning and refrigeration systems which is to be reported separately in classification 0307-04; ((€)) and
- The installation of wood stoves which is to be reported separately in classification 0307-05.

**Special note:** This classification includes the installation of display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor. Generally, displays or showrooms are installed where the contractors store their materials. It is common for contractors subject to this classification to sell furnace and heating system materials and accessories, but the intent of these areas is not to sell products to walk-in customers. Sales of these products by a furnace and heating systems contractor are included in classification 0307. Classifications 2009, 6309, or similar store classifications(;) are not to be assigned to a contracting

business. If the conditions of the standard exception general reporting rules have been met, employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303 ((provided the conditions of the standard exception general reporting rule have been met)).

**0307-04 Ventilating, air conditioning and refrigeration systems: Installation, service or repair, N.O.C.**

Applies to contractors engaged in the installation, service, or repair of ventilating, air conditioning and refrigeration systems not covered by another classification (N.O.C.), including duct work at the job site in all types of residential and commercial settings. These services are generally performed by heating and ventilation contractors, refrigeration contractors, or sheet metal contractors. Work contemplated by this classification includes the fabrication, erection, installation and duct work performed at the job site. Materials include, but are not limited to(;):

- Air conditioning units(;) );
- Air purification systems;
- Concrete pads;
- Fittings;
- Flat sheets of metal;
- Galvanized pipe;
- Hoods and protective metal covers;
- Hot water tanks;
- Preformed or bent duct portions;
- Refrigeration systems(, air purification systems, hoods and protective metal covers, hot water tanks, flat sheets of metal, vents, preformed or bent duct portions, vent collars and reels, thermostats, fittings, galvanized pipe, insulation wrap, and concrete pads);
- Thermostats;
- Vent collars and reels.

This classification includes the installation or repair of built-in vacuum systems and air (pneumatic) tube systems, such as those at drive-up teller windows. Contractors who operate a sheet metal fabrication shop or who prefabricate the duct systems in a shop away from the construction site are to be assigned classification 3404 for the shop fabrication work. When a contractor's business is assigned classification 3404 for shop operations, then classification 5206 "Permanent yard or shop" is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes:

- Sheet metal fabrication shops which are to be reported separately in classification ((3402)) 3404;
- Installation or repair of furnace or heating systems which is to be reported separately in classification 0307-01; ((and))
- The installation of wood stoves which is to be reported separately in classification 0307-05.

**Special note:** This classification includes the installation of display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor. Generally, displays or showrooms are installed where the contractors store their materials. It is common for contractors subject to this classification to sell ventilating and air conditioning equipment and materials, but the intent of these areas is not to

sell products to walk-in customers. Sales of these products by a ventilating and air conditioning contractor are included in classification 0307. Classification 2009, 6309, or similar store classifications, are not to be assigned to a contracting business. If the conditions of the standard exception general reporting rule have been met, employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303 ((provided the conditions of the standard exception general reporting rule have been met)).

### **0307-05 Wood, pellet, or gas stove: Installation, service or repair**

Applies to contractors engaged in the installation, service or repair of wood, pellet or gas stoves in all types of residential and commercial settings. Work contemplated by this classification includes the fabrication, installation and duct work performed at the job site. Materials include, but are not limited to(~~(, wood, gas or pellet stoves,))~~);

- Gas fireplace logs;
- Heater units;
- Inserts(~~(, heater units,))~~;
- Preformed or bent venting duct and pipe;
- Protective metal covers or hoods(~~(, gas fireplace logs, preformed or bent venting duct and pipe, or))~~;
- Vents (~~and~~);
- Vent collars;
- Wood, gas or pellet stoves.

Contractors who operate a sheet metal fabrication shop or who prefabricate the duct systems in a shop away from the installation site are to be assigned classification 3402 for the shop fabrication work. When a contractor's business is assigned classification 3402 for the shop operations, then classification 5206, "Permanent yard or shop," is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes wood stove and accessory stores which are to be reported separately in classification 6309; stove manufacturing which is to be reported separately in classification 3402; sheet metal fabrication shops which are to be reported separately in classification 3404; brick or masonry work which is to be reported separately in classification 0302; and the installation or repair of furnace or heating systems which is to be reported separately in classification 0307-01.

**Special note:** This classification includes the installation of display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor. Generally, displays or showrooms are installed where the contractors store their materials. It is common for contractors subject to this classification to sell wood stove installation materials and accessories, but the intent of these areas is not to sell products to walk-in customers. Sales of these products by a wood stove installation contractor are included in classification 0307. Classifications 2009, 6309, or similar store classifications, are not to be assigned to a contracting business. Employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303 provided the conditions of the standard exception general reporting rule have been met.

AMENDATORY SECTION (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

### **WAC 296-17A-0510 Classification 0510.**

#### **0510-00 Wood frame building: Construction or alterations, N.O.C.**

Applies to contractors engaged in wood frame building construction or alterations not covered by another classification (N.O.C.). For the purposes of this classification, wood frame building construction means buildings erected exclusively of wood or wood products. This classification includes all building framing activities done in connection with wood frame building construction including (~~(the)~~);

- Placement of roof trusses(~~(;)~~);
- Sheathing roofs(~~(;)~~);
- Installation of exterior building siding(~~(, and the)~~);
- Installation of exterior doors and door frames(~~(-This classification also includes the)~~);
- Installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract on a wood frame building(~~(-This classification also includes the)~~);

- Erection of log home shells at customer's location.

The manufacturing of log homes in a permanent yard which includes peeling the logs, notching the logs with chain-saws, and assembly is to be reported in classification 1003-06.

This classification excludes all other phases of wood frame building construction not listed as part of the framing activities above such as, but not limited to(~~(;)~~);

- Site preparation and excavation (0101);
- Overhead or underground utilities, asphalt work, or concrete work which is to be reported separately in the applicable classification;
- New landscape work (0301);
- Brick work (0302);
- Stucco work (0303);
- Plumbing work (0306);
- HVAC work (0307);
- Carpet and tile work (0502);
- Exterior painting (0504);
- Roof work (0507);
- Insulation work (0512);
- Interior finish carpentry - Interior doors, cabinets, fixtures or molding (0513);
- Installation of garage doors (0514);
- Installation of sheet metal siding, gutters, and nonstructural sheet metal patio covers/carports (0519);
- Interior painting (0521);
- Electrical work (0601) (~~(or)~~); and
- Wallboard installation, taping or texturing which are to be reported separately in the applicable classifications.

For a more thorough description of the activities included and excluded from wood frame building construction, review the Construction Industry Guide.

**Special note:** Classification 0510 also includes wood frame building alterations or remodel work when the activity involves building new additions. The term "new additions" is defined as adding on to an existing wood frame building (upwards or outwards) in which the use of structural supports



and main bearing beams is required. This is distinguishable from classification 0516 - Building repair or carpentry work that typically does not require the placement of structural supports or main bearing beams. The purpose of classification 0516 is to build or rebuild with nonstructural or bearing beams, or to replace an existing portion (including existing structural and bearing beams) of a wood frame building for appearances or as a result of deterioration to make it appear new again. Care should be exercised as the terminology to build, rebuild, remodel, construct or reconstruct is irrelevant to assignment of classification which should recognize what the project actually involves.

**Guidelines:**

- Altering all or part of an existing wood frame building by adding on new additions - 0510
  - Constructing a new wood frame building that never existed - 0510
  - ((~~Altering all or part of an existing wood frame building by adding on new additions - 0510~~))
  - Remodeling all or part of an existing wood frame building *without* adding on new additions - 0516
  - Altering all or part of an existing wood garage by adding on new additions - 0510
  - Altering the existing interior of a wood frame building by adding exterior additions - 0510
  - Constructing a new wood garage that never existed - 0510
  - Constructing, altering, or remodeling the interiors of nonwood frame buildings - 0516
  - Constructing a new wood carport or wood shed that never existed - 0510
  - Constructing or replacing a wood deck for any type of nonwood building - 0516
  - Constructing or replacing a wood deck on an existing wood house - 0516
  - Construction of a new wood deck by the framing contractor when a new wood house is being built - 0510
  - Installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract of a wood frame building - 0510
  - Installation of wood or vinyl siding on a new or existing wood frame building - 0510
  - Installation of wood or vinyl siding on a new addition by the remodeling contractor - ((~~0510-02~~)) 0516-02
  - Installation of wood or vinyl siding on an existing structure by a remodeling contractor - 0516-00
  - ((~~Constructing a new wood garage that never existed - 0510~~))
  - Altering all or part of an existing wood garage by adding on new additions - 0510)
  - Rebuilding an existing wood carport or wood shed (all or part) with or without new additions - 0516
  - Remodeling all or part of an existing wood garage without adding on new additions - 0516
  - ((~~Constructing a new wood carport or wood shed that never existed - 0510~~))
  - Rebuilding an existing wood carport or wood shed (all or part) with or without new additions - 0516
  - Construction of a new wood deck by the framing contractor when a new wood house is being built - 0510

~~Constructing or replacing a wood deck on an existing wood house - 0516~~

~~Constructing or replacing a wood deck for any type of nonwood building - 0516~~

~~Altering the existing interior of a wood frame building by adding exterior additions - 0510~~

~~Remodeling the existing interior of a wood frame building without adding exterior additions - 0516~~

~~Constructing, altering, or remodeling the interiors of nonwood frame buildings - 0516~~

~~Installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract of a wood frame building - 0510-)~~ • Remodeling the existing interior of a wood frame building without adding exterior additions - 0516.

**0510-99 Wood frame building: Construction or alteration, N.O.C. (only to be assigned by the wood framing specialist)**

Applies to framing contractors(;) who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" status for prime contractor liability.

**Special note:** Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1005 Classification 1005.**

**1005-02 Shake and/or shingle mills**

Applies to establishments engaged in the operation and maintenance of a shake and/or shingle mill. Work contemplated by this classification includes receiving raw logs which they cut and split into shakes, shingles and ridge caps. A shake is a roofing or siding material having at least one surface with a natural grain textured split surface. A shingle is a roofing or siding material having sawn faces and backs and ((are)) of a standard thickness at the butt end and tapered finish at the other end. A ridge cap is produced from two pieces nailed together to form a "v" shape placed on the center line of a roof. Raw logs are temporarily stored in the yard. This classification may include operations such as, but not limited to(;):

- Loading raw logs onto a conveyor or log slip(;);
- Cutting the log into rounds(;);
- Splitting the rounds into blocks(;);
- Feeding the blocks through a shake or shingle saw(;);
- Grading ((and)), sorting, bundling, and stacking ((and storing of)) finished shakes, shingles and/or ridge caps.

Machinery and equipment includes, but is not limited to, log loaders, conveyors, log slips, overhead splitters, cut-off saws, shake saws, shingle saws, taper saws, head saws, pallet presses, and forklifts.

This classification excludes:

• Establishments engaged exclusively in the manufacturing of ridge caps or shims which are to be reported separately in classification 2903;

• All operations conducted in the woods, such as logging or the cutting and splitting of shake or shingle bolts, which are to be reported separately in the applicable logging classification;

• Automated shake and shingle mills which are to be reported separately in classification 1002 provided the entire process to produce shakes and shingles uses automated processes at the mill site, and meets the requirements defined in WAC ((296-17-534; and all operations conducted in the woods, such as logging or the cutting and splitting of shake or shingle bolts, which are to be reported separately in the applicable logging classification)) 296-17A-1002.

AMENDATORY SECTION (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

**WAC 296-17A-1501 Classification 1501.**

**1501-00 Counties and taxing districts, N.O.C. - All other employees**

Applies to employees of counties and taxing districts, not covered by another classification (N.O.C.), who:

• Operate machinery or equipment, including transit bus drivers;

• Perform manual labor((~~or who~~));  
 • Supervise a work crew performing manual labor such as custodial or maintenance((~~and machinery or equipment operators including transit bus drivers~~)).

This classification includes administrative personnel such as:

• Engineers, safety inspectors, and biologists who have field exposure((~~and~~));

• Internal inventory and supply clerks.

For purposes of this classification, field exposure is defined as any exposure other than the normal travel to or from a work assignment.

This classification excludes:

• Clerical office and administrative employees who are to be reported separately in classification 5306;

• Electric light and power public utility districts which are to be reported separately in classification 1301;

• Firefighters who are to be reported separately in classification 6904;

• Hospital districts which are to be reported separately in classification 6105;

• Irrigation system public utility districts which are to be reported separately in classification 1507;

• Law enforcement officers who are to be reported separately in classifications 6905 and 6906, as appropriate;

• Port districts which are to be reported separately in classification 4201;

• Privately owned and operated bus or transit systems which are to be reported separately in classification 1407;

• School districts, library districts or museum districts which are to be reported separately in classification 6103 or 6104;

• Water distribution or purification system public utility districts which are to be reported separately in classification

1507; ((irrigation system public utility districts which are to be reported separately in classification 1507; port districts which are to be reported separately in classification 4201; school districts, library districts or museum districts which are to be reported separately in classifications 6103 or 6104; hospital districts which are to be reported separately in classification 6105; firefighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classification 6905 and 6906, as appropriate; clerical office and administrative employees who are to be reported separately in classification 5306, and volunteers who are to be reported separately in classifications 6901 or 6906, as appropriate.))

• Volunteers who are to be reported separately in classification 6901 or 6906, as appropriate.

**1501-01 Housing authorities, N.O.C. - All other employees**

Applies to employees of housing authorities, not covered by another classification, who:

• Perform manual labor((~~or who~~));

• Supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators.

This classification includes all functional operations of a housing authority such as:

• Building and grounds maintenance;

• Inspection, maintenance and repairs, including minor structural repairs((~~;~~);

• Janitorial service((~~and building and grounds maintenance~~)).

Also included in this classification are:

• Administrative personnel such as engineers and safety inspectors who have field exposure;

• Internal inventory and supply clerks;

• Meter readers((~~;~~);

• Security personnel, other than those with law enforcement powers((~~administrative personnel such as engineers and safety inspectors who have field exposure, and internal inventory and supply clerks~~)).

For purposes of this classification, housing authorities are defined as nonprofit, public and political entities which serve the needs of a specific city, county or Indian tribe. The nature and objectives of some of the projects undertaken by housing authorities include providing decent, safe and sanitary living accommodations for low income persons, or providing group homes or halfway houses to serve developmentally or otherwise disabled persons or juveniles released from correctional facilities. A housing authority has the power to:

• Prepare, carry out, lease and operate housing facilities; ((~~to~~))

• Provide for the construction, reconstruction, improvement, alteration or repair of any housing project; ((~~to~~))

• Sell or rent dwellings forming part of the project to or for persons of low income; ((~~to~~))

• Acquire, lease, rent or sell or otherwise dispose of any commercial space located in buildings or structures containing a housing project; ((~~to~~))

• Arrange or contract for the furnishing of the units; ((~~and to~~))

- Investigate into the means and methods of improving such conditions where there is a shortage of suitable, safe and sanitary dwelling accommodations for persons of low income.

This classification excludes:

- Clerical office and administrative employees who are to be reported separately in classification 5306;

- New construction or major alteration activities which are to be reported separately in the appropriate construction classifications; ((clerical office and administrative employees who are to be reported separately in classification 5306;))

- Security personnel with law enforcement powers who are to be reported separately in classification 6905; ((and))

- Volunteers who are to be reported separately in classifications 6901 or 6906, as appropriate.

### **1501-08 Native American tribal councils - All other employees**

Applies to employees of Native American tribal councils who perform manual labor, or who supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators. This classification includes:

- Administrative personnel such as engineers, safety inspectors, and biologists who have field exposure((, and));

- Internal inventory and supply clerks of the tribal council.

For purposes of this classification, field exposure is defined as any exposure other than the normal travel to and from a work assignment.

This classification excludes:

- Clerical office and administrative employees who are to be reported separately in classification 5306;

- Electric light and power public utility districts which are to be reported separately in classification 1301; ((water distribution or purification system public utility districts which are to be reported separately in classification 1507; irrigation system public utility districts which are to be reported separately in classification 1507;))

- Firefighters who are to be reported separately in classification 6904;

- Hospital districts which are to be reported separately in classification 6105;

- Irrigation system public utility districts which are to be reported separately in classification 1507;

- Law enforcement officers who are to be reported separately in classifications 6905 and 6906;

- New construction or reconstruction activities which are to be reported separately in the appropriate construction classification;

- School districts, library districts or museum districts which are to be reported separately in classification((s)) 6103 or 6104; ((hospital districts which are to be reported separately in classification 6105; firefighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classifications 6905 and 6906; new construction or reconstruction activities which are to be reported separately in the appropriate construction classification; clerical office and administrative employees who are to be reported separately in classification 5306;))

- Water distribution or purification system public utility districts which are to be reported separately in classification 1507.

**Special notes:** Housing authorities operating under the name of, and for the benefit of, a particular tribe are not exempt from mandatory coverage. These housing authorities are federally funded and are not owned or controlled by a tribe.

Only those tribal operations which are also provided by county governments are subject to classification 1501. ((The following)) Some activities((, such as)) are considered to be normal operations to be included in this classification. These include, but are not limited to((, visiting nurses and home health care, grounds keepers, building maintenance, park maintenance, road maintenance, and));

- Building maintenance;

- Garbage and sewer works((, are considered to be normal operations to be included in this classification));

- Grounds keepers;

- Park maintenance;

- Road maintenance;

- Visiting nurses and home health care.

All other tribal council operations which are not normally performed by a county government shall be assigned the appropriate classification for the activities being performed.

((The following)) Some operations((, such as)) are outside the scope of classification 1501 and are to be reported separately in the applicable classifications. These include, but are not limited to((;));

- Bingo parlors;

- Casinos;

- Fish/shellfish hatcheries;

- Food banks;

- Gift shops;

- Grocery stores;

- Head Start programs;

- Liquor stores;

- Logging;

- Meals on wheels((, bingo parlors, casinos, liquor stores;));

- Motels/hotels;

- Restaurants;

- Tobacco stores((, grocery stores, food banks, gift shops, restaurants, motels/hotels, Head Start programs, fish/shellfish hatcheries, logging, and));

- Tree planting/reforestation ((are outside the scope of classification 1501 and are to be reported separately in the applicable classifications)).

### **1501-09 Military base maintenance, N.O.C.**

Applies to establishments((;)) not covered by another classification (N.O.C.), engaged in providing all support operations and services on a military base on a contract basis. Such services include, but are not limited to((;));

- Data processing((;));

- Photography((;));

- Mail delivery (on post and to other military facilities)((;));

- Hotel/motel services((;));

- Mess halls((;));

- Recreational facilities(~~(;)~~);
- Grounds and building maintenance(~~(;)~~);
- Vehicle maintenance(~~(; and may also include the)~~);
- Maintenance of such facilities as water works, sewer treatment plants and roads.

This classification excludes:

- New construction or construction repair projects which are to be reported separately in the applicable construction classification for the work being performed;
  - Contracts for specific activities on a military base such as, but not limited to, building maintenance, club or mess hall operations, or vehicle maintenance, which are to be reported separately in the applicable classification for the work being performed;
  - Firefighters who are to be reported separately in classification 6904;
  - Law enforcement officers who are to be reported separately in classification 6905; (~~and~~)
  - Clerical office and administrative employees who are to be reported separately in classification 5306.

**Special note:** Classification 1501-09 is to be assigned to an establishment only when *all* support services on a military base are being provided by the contractor. Care should be taken when assigning classification 1501-09 to firms whose military support services include loading, unloading, repair or construction of vessels, or the repair of buildings or structures used for such activities as that firm may be subject to federal maritime law.

#### **1501-20 Community action organizations - All other employees N.O.C.**

Applies to organizations performing an array of services to support the local community and citizens in need. The services provided by community action organizations may include, but are not limited to:

- Child care; after school care;
- Alternative schools; in home chore services;
- Employment or independence training(~~(;)~~);
- Counseling and assistance;
- Drug and alcohol recovery programs;
- Decent, safe and sanitary living accommodations for low-income or needy citizens;
- Transitional or emergency housing; weatherization;
- Food and clothing banks;
- Meals; (~~(;)~~)
- Medical services.

This classification applies to employees of community action organizations N.O.C. (not otherwise classified) who perform manual-type labor, or who supervise a work crew performing manual labor. Work in this classification includes, but is not limited to:

- Cooks(~~(;)~~);
- Food banks(~~(;)~~);
- Drivers(~~(;)~~);
- Janitorial or maintenance and repair work(~~(; or)~~) weatherization services.

**Note:** Businesses providing only one service described in this class may be assigned the classification applicable to the service provided. If all conditions of the general reporting rules have been met, standard exception classifications may apply.

Excluded from this risk classification (~~(is)~~) are:

- New construction or major alteration activities which are to be reported separately in the appropriate construction classifications;
- Office employees who work exclusively in an administrative office environment who are to be reported in classification 4904-20;
- Professional or administrative employees who may also have duties outside of the office who are to be reported in classification 5308-20;
- Chore workers/home service workers who are to be reported in classification 6511-20;
- Housing authorities which are to be reported in 1501-01 and 5306-26;
- Welfare special works programs which are to be reported in 6505;
- Work activity centers which are to be reported in 7309; (~~and~~)
- Volunteers who are to be reported in classification 6901.

See classifications 5308-20 and 4904-20 for other community action operations.

**AMENDATORY SECTION** (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

#### **WAC 296-17A-4904 Classification 4904.**

##### **4904-00 Clerical office, N.O.C.**

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering clerical office standard exception employees who are not covered by another classification (N.O.C.) assigned to their employer's account. Duties of clerical office personnel contemplated by this classification are limited to:

- Answering telephones(~~(;)~~);
- Creating or maintaining computer software, technical drafting;
- Creating or maintaining financial, employment, personnel or payroll records;
- Handling correspondence(~~(; creating or maintaining financial, employment, personnel or payroll records;)~~);
- Composing informational material on a computer(~~(; creating or maintaining computer software, and technical drafting)~~).

**Special note:** When considering this classification, care must be taken to look beyond titles of employees. Employees may or may not qualify for this classification with occupational titles such as, but not limited to(~~(;)~~):

- Cashiers(~~(;)~~);
- Clerks(~~(; or)~~);
- Ticket sellers(~~(; may or may not qualify for this classification)~~).

This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

##### **4904-13 Clerical office: Insurance companies, agents or brokers**

Applies to clerical office employees of insurance companies, including insurance agents or brokers who perform

duties exclusively of clerical nature and without an interchange of labor between clerical and nonclerical duties. This classification is limited to duties defined as:

- Assisting walk-in customers;
- Handling correspondence such as the preparation of insurance policies and billing;
- Maintaining personnel and payroll records;
- Performing the necessary computer work;
- Responding to telephone inquiries~~(, assisting walk-in customers, handling correspondence such as the preparation of insurance policies and billing,);~~
- Receiving and processing payments and invoices~~(, maintaining personnel and payroll records, and performing the necessary computer work).~~

**Special note:** Individuals performing duties as an agent, broker, or solicitor (and ~~(hold)~~ holding a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010~~(, 48.17.020, and 48.17.030)~~. To elect voluntary coverage these individuals must submit a completed optional coverage form to the department. In addition, care should be exercised to determine if the insurance company employs individuals such as receptionists, bookkeepers, or claims clerks who perform clerical duties which may include the incidental taking of insurance applications and receiving premiums in the office of an agent or broker. Such individuals may or may not hold a license as issued by the office of the insurance commissioner, and are not deemed to be a solicitor, agent or broker when compensation is not related to the volume of such applications, insurance, or premiums. In these instances, the clerical individuals fall under mandatory workers' compensation coverage, and do not meet the requirements to be exempt from coverage as specified in RCW 51.12.020(11).

#### 4904-17 Clerical office: Employee leasing companies

Applies to clerical office employees of employee leasing companies. This classification requires that clerical office employees perform duties exclusively of a clerical nature, without an interchange of labor between clerical and nonclerical duties, and that these duties be performed in an area or areas separated from the operative hazards of the business. This classification is limited to duties defined as:

- Handling correspondence such as preparing and processing billing statements and forms;
- Maintaining personnel and payroll records;
- Receptionist and administrative duties;
- Responding to telephone inquiries~~(, receptionist and administrative duties, handling correspondence such as preparing and processing billing statements and forms, maintaining personnel and payroll records, and);~~
- Performing the necessary computer entry work.

**Special note:** This is a standard exception classification and is not to be assigned unless all the conditions of the general reporting rule covering clerical office standard exception employees have been met.

#### 4904-20 Community action organizations - Clerical office employees

Applies to organizations performing an array of services to support the local community and citizens in need. The services provided by community action organizations include:

- After school care;
- Alternative schools;
- Child care; ~~((after school care; alternative schools; in-home chore services;))~~
- Counseling and assistance;
- Decent, safe and sanitary living accommodations for low-income or needy citizens;
- Drug and alcohol recovery programs;
- Employment or independence training~~(, counseling and assistance; drug and alcohol recovery programs; decent, safe and sanitary living accommodations for low-income or needy citizens);~~
- Food and clothing banks;
- In-home chore services;
- Meals;
- Medical services;
- Transitional or emergency housing;
- Weatherization~~(, food and clothing banks; meals; medical services);~~

This classification includes employees whose work duties include administrative office work such as:

- Answering phones~~(;);~~
- Completing correspondence and forms~~(;);~~
- Reception work~~(;);~~
- Computer work~~(;);~~
- Maintaining financial, personnel and payroll records~~(;);~~
- Conducting meetings~~(;);~~
- Providing counseling services within the offices of the organization.

All work is performed exclusively in an office environment where no other types of work are conducted, and the office is separated from any other work activity by walls, partitions, or other physical barriers. Work performed outside of the office is limited to banking or post office type duties performed by workers who qualify for this classification. A worker's reported hours may not be divided between this classification and any other risk classifications.

Excluded from this risk classification are all other employees including:

- Administrative employees whose duties are not performed exclusively in an administrative office, who are to be reported in risk classification 5308-20;
- Chore workers/home service workers who are to be reported in classification 6511-20;
- Employees who perform labor such as food bank operations, driving, weatherization, janitorial, property management, maintenance and repair work which are to be reported in risk classification 1501-20;
- Medical, dental or nursing professionals~~(, and administrative employees whose duties are not performed exclusively in an administrative office, who are to be reported in risk classification 5308-20; chore workers/home service workers who are to be reported in 6511-20; employees who perform labor such as food bank operations, driving, weath-~~

erization, janitorial, property management, maintenance and repair work which are to be reported in risk classification 1501-20));

- Housing authorities which are to be reported in 1501-01 and 5306-26;

- Volunteers who are to be reported separately in classification 6901;

- Welfare special works programs which are to be reported in 6505;

- Work activity centers which are to be reported in 7309(, and volunteers who are to be reported separately in classification 6901).

See classifications 1501-20 and 5308-20 for other community action operations.

**AMENDATORY SECTION** (Amending WSR 09-20-039, filed 9/30/09, effective 1/1/10)

**WAC 296-17A-5301 Classification 5301.**

**5301-10 Accounting or bookkeeping services**

Applies to establishments engaged in providing general accounting or bookkeeping services to others. Types of services contemplated by establishments subject to this classification include, but are not limited to(~~(, auditing, tax preparation, medical or dental claims processing and billing, and/or advisory services. This classification includes all employments such as, but not limited to, clerical office, outside sales, and personnel who travel from one office to another)~~);

- Auditing;
  - Tax preparation;
  - Medical or dental claims processing and billing;
  - Advisory services.
- This classification includes:
- Clerical office;
  - Outside sales, and personnel who travel from one office to another.

This classification excludes establishments engaged primarily in management consultant services that are not otherwise classified, which are to be reported separately in classification 5301-12.

**Special note:** This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

**5301-11 Law firms**

Applies to establishments engaged in providing legal services to others. Law firms may specialize in one or more areas of law. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

**Special note:** This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or

operated business undertakings unless coincidentally the other operations are also subject to this classification.

**5301-12 Management consultant services, N.O.C.**

Applies to establishments engaged in providing management consulting services not covered by another classification (N.O.C.). Management consultants typically will observe and analyze (~~(organizational structures, work processes or work flows, mail distribution, computer or communication systems, and planning or development of related business needs)~~);

- Computer or communication systems;
- Mail distribution;
- Organizational structures;
- Planning or development of related business needs;
- Work processes or work flows.

After a thorough analysis, consultants usually prepare a written report for the customer which identifies problem areas and/or recommends improvements to processes or equipment. Consultants may remain to oversee the implementation of the recommended improvements. Consultants subject to this classification do not sell any product they have recommended although they may act as an agent for their client in purchasing the product. Consulting projects vary from client to client depending upon the contract. Included within this classification are businesses that provide similar consultative services such as, but not limited to(~~(, advertising agencies, employer representative organizations, public relations companies, mortgage brokers and financial advisers who do not make purchases on behalf of their clients)~~);

- Advertising agencies;
- Employer representative organizations;
- Mortgage brokers and financial advisers who do not make purchases on behalf of their clients;
- Public relations companies.

This classification includes clerical office staff, outside sales personnel and other staff who travel from one office to another.

This classification excludes businesses that perform computer consulting for others, which is to be reported in classification 5302.

**Special note:** This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

**5301-13 Credit bureaus; collection agencies**

Applies to establishments that are licensed to provide collection and/or credit investigation services to others. Services include, but are not limited to(~~(, the collection of NSF checks or delinquent debts owed to clients of the collection agency and checking the credit backgrounds of their client's potential customers.)~~);

- Checking the credit backgrounds of their client's potential customers;
- Collection of NSF checks or delinquent debts owed to clients of the collection agency.

If debts are not collected, the service agency may initiate legal proceedings against the debtor. This classification includes clerical office and outside sales personnel, and other staff who travel from one office to another.

This classification excludes establishments engaged in providing process and legal messenger services which are to be reported separately in classification 6601.

### 5301-14 Employment agencies

Applies to establishments that are licensed to provide employment services for others. Clients of employment agencies may be persons seeking employment or companies looking for employees. Employment agencies usually conduct preliminary interviews with candidates for positions prior to referring them to their client companies for interviews. Generally, establishments subject to this classification place people in permanent positions. This classification includes clerical office and outside sales personnel, and staff who travel from one office to another.

This classification excludes:

- Employees of a temporary help agency who are assigned to work in the administrative or branch offices of the agency who are to be reported separately in classification 7104 ((and)):
- Employees of a temporary help agency who are assigned on a temporary basis to its customers who are to be reported separately in the appropriate temporary help classification.

### 5301-15 Court reporting services

Applies to establishments engaged in providing court reporting services to others. Court reporters record verbatim testimony presented in court proceedings, depositions, public hearings or meetings. The most frequently used method to record testimony is by stenotype machine, although it may be recorded by voice recording on audio tape, or by manual shorthand. Transcription of the recorded material may be performed by the court reporter or by "note readers" or typists. The majority of court reporters today use computer-aided transcription systems. Court reporters may also offer notary public services for their clients. This classification includes clerical office and staff who travel from one office to another.

### 5301-16 Service and professional organizations

Applies to establishments engaged in protecting or furthering the interest of their members and/or the general public. Many of these operate as nonprofit organizations. Service and professional organizations may perform one or many of the following activities: ~~((Maintain a membership directory; collect membership dues; publish a newsletter; sponsor educational training programs; administer certification tests; provide job placement assistance; award scholarships; offer insurance programs; research and interpret local, state, and federal regulations and apprise members of the results; manage promotional marketing programs; organize fund raising campaigns; perform charitable community services; sponsor athletic leagues and tournaments; host conventions; disburse funds; perform collective bargaining; arbitrate disputes; provide counseling, adoption, and advocacy services; lobby the legislature; compile, review, and disseminate informational data; operate a tourist information center; issue~~

~~vehicle license registrations, plates, decals, and certificates of title:))~~

- Administer certification tests;
- Arbitrate disputes;
- Award scholarships;
- Collect membership dues;
- Compile, review, and disseminate informational data;
- Disburse funds;
- Host conventions;
- Issue vehicle license registrations, plates, decals, and certificates of title;
- Lobby the legislature;
- Manage promotional marketing programs;
- Maintain a membership directory;
- Offer insurance programs;
- Operate a tourist information center;
- Organize fund-raising campaigns;
- Perform charitable community services;
- Perform collective bargaining;
- Provide counseling, adoption, and advocacy services;
- Provide job placement assistance;
- Publish a newsletter;
- Research and interpret local, state, and federal regulations and apprise members of the results;
- Sponsor athletic leagues and tournaments;
- Sponsor educational training programs.

Also included in this classification are Economic Development Councils, Boards, or Associations. These nonprofit organizations provide economic consulting services and related statistics to government and industry in the promotion of economic stability, and recruit businesses ~~((who))~~ that will create jobs and provide loans from the grant funds they manage. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

This classification excludes ~~((labor unions and employee representative associations which are to be reported separately in classification 6503, and the collection of donated items by truck which is to be reported separately in classification 1101)):~~

- Collection of donated items by truck which is to be reported separately in classification 1101;
- Labor unions and employee representative associations which are to be reported separately in classification 6503.

**Special note:** If a charitable organization subject to classification 5301 operates a retail store for the sale of donated items, the collection of those items by truck, and all store operations, are to be reported separately in classification 6504.

### 5301-18 Telephone answering services

Applies to establishments engaged in providing telephone answering services for others. Customers include, but are not limited to ~~((, medical professionals, attorneys, private businesses, and individuals)):~~

- Attorneys;
- Medical professionals;
- Private businesses;
- Individuals.

Most answering services today use computerized communications systems to identify company names when

answering calls for various companies, obtain correct information about the company to respond to questions, record and relay accurate messages in a timely manner. Related services often offered by telephone answering service companies include, but are not limited to (~~(, voice mail or paging, rental of office space, telemarketing, dispatching, monitoring alarm systems, placing reminder calls, and scheduling appointments for customers)~~):

- Dispatching;
- Monitoring alarm systems;
- Placing reminder calls;
- Rental of office space;
- Scheduling appointments for customers;
- Telemarketing;
- Voice mail or paging.

This classification includes clerical office personnel and staff who travel from one office to another.

### 5301-19 Travel agencies

Applies to establishments engaged in providing travel arrangement services for others. Travel agencies coordinate all types of travel arrangements for their clients through (~~(air, cruise, train, or bus lines, hotels, motels, or resorts, car rental agencies, travel insurance companies, and related travel providers)~~):

- Air;
- Bus lines;
- Car rental agencies;
- Cruise;
- Hotels;
- Motels;
- Related travel providers;
- Resorts;
- Train;
- Travel insurance companies.

Services vary and could include (~~(delivery of tickets and itineraries to clients, booking reservations and selling tickets for tours, excursions, or other entertainment events, or arrangement of special needs for disabled or elderly travelers)~~):

- Arrangement of special needs for disabled or elderly travelers;
- Booking reservations;
- Delivery of tickets and itineraries to clients;
- Selling tickets for tours, excursions, or other entertainment events.

This classification includes clerical office and sales staff who travel from one office to another.

### 5301-21 Word processing or secretarial services

Applies to establishments engaged in providing word processing or secretarial services to others. Services include, but are not limited to (~~(, desktop publishing, dictation and transcription services, typing/compiling reports, proposals, resumes, or correspondence, sending faxes, and making copies of documents)~~):

- Desktop publishing;
- Dictation and transcription services;
- Making copies of documents;
- Typing/compiling reports, proposals, resumes, or correspondence;

- Sending faxes.

A pickup and delivery service may be offered. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

**Special note:** This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

**AMENDATORY SECTION** (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

### WAC 296-17A-5308 Classification 5308.

#### 5308-20 Community action organizations - Professional services and administrative employees

Applies to organizations performing an array of services to support the local community and citizens in need. The services provided by community action organizations include: (~~(Child care; after school care; alternative schools; in-home chore services; employment or independence training, counseling and assistance; drug and alcohol recovery programs; decent, safe and sanitary living accommodations for low-income or needy citizens; transitional or emergency housing; weatherization; food and clothing banks; meals; medical services.)~~)

- After school care;
- Alternative schools;
- Child care;
- Decent, safe and sanitary living accommodations for low-income or needy citizens;
- Drug and alcohol recovery programs;
- Employment or independence training, counseling and assistance;
- Food and clothing banks;
- In-home chore services;
- Meals;
- Medical services;
- Transitional or emergency housing;
- Weatherization.

This classification applies to professional services and administrative employees. Work duties in this classification are not performed exclusively in an administrative office environment. Travel may be necessary to perform work at an alternate work site for appointments with clients, patients, meetings, presentations, agency promotions, or other required out-of-office administrative type work. Work performed in this classification may include, but is not limited to (~~(, counselors or educators for various programs, medical, dental and nursing services; child care professionals or teachers, program coordinators and directors. Also included are estimators and project managers who do not supervise a work crew or perform any type of labor)~~):

- Child care professionals or teachers;
- Counselors or educators for various programs;
- Estimators and project managers who do not supervise a work crew or perform any type of labor;



- Medical, dental and nursing services;
- Program coordinators and directors.

Excluded from this risk classification is any manual labor or supervision of a work crew that performs manual labor, construction or maintenance work, work in a food bank, delivery, or other similar work which is to be reported in risk classification 1501-20; chore workers/home service workers who are to be reported in 6511-20; office employees who work exclusively in an administrative office environment who are to be reported in risk classification 4904-20; housing authorities which are to be reported in 1501-01 and 5306-26; welfare special works programs which are to be reported in 6505; work activity centers which are to be reported in 7309; and volunteers who are to be reported in risk classification 6901.

See classifications 1501-20 and 4904-20 for other community action operations.

**Note:** Businesses providing one of the services described in this class are to be assigned the classification applicable to the service provided. If all conditions of the general reporting rules have been met, standard exception classifications may apply.

**AMENDATORY SECTION** (Amending WSR 09-16-107, filed 8/4/09, effective 1/1/10)

**WAC 296-17A-6103 Classification 6103.**

**6103-01 Schools: Academic, K-12 - Clerical office, sales personnel, teachers, N.O.C. and administrative employees**

Applies to clerical office, sales personnel and administrative employees such as principals, assistant principals, receptionists, secretaries, counselors, school nurses, payroll and bookkeeping personnel, and teachers or teachers' aides of establishments engaged in operating public or private academic school facilities, K-12 (kindergarten level through grade 12) and the state schools for the blind and deaf.

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to, cooks, bus drivers, custodians, maintenance personnel and grounds keepers, and teachers or teachers' aides who are exposed to machinery hazards such as a wood shop, metal shop, print shop, auto shop, and driver training instructors who are to be reported separately in classification 6104.

**6103-02 Schools: Trade or vocational - Clerical office, sales personnel, teachers, N.O.C. and administrative employees**

Applies to clerical office, sales personnel and administrative employees such as deans, directors, assistant directors, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and professors or instructors of establishments engaged in operating trade or vocational school facilities. These types of schools provide specialized training and instruction to prepare students for occupations in the chosen fields. Often these facilities will coordinate on-the-job training with employers as well as assist students in finding employment.

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to,

cooks, drivers, custodians, maintenance personnel and grounds keepers, and professors or instructors who are exposed to machinery hazards such as a wood shop, metal shop, print shop and auto shop who are to be reported separately in classification 6104.

**6103-03 Libraries, N.O.C. - Clerical office, sales personnel, teachers, N.O.C. and administrative employees**

Applies to clerical office, sales personnel and administrative employees such as librarians, assistant librarians, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating library facilities not covered by another classification (N.O.C.). These types of facilities maintain a wide selection of reading materials such as books, journals, articles, magazines, publications, newspapers, and audio-visual or micrographic materials.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, drivers, and storage room workers who are to be reported separately in classification 6104.

**6103-04 Churches - Clerical office, sales personnel, teachers, N.O.C. and administrative employees**

**Bell ringers**

Applies to clerical office, sales personnel and administrative employees such as pastors, priests, reverends, clergymen, ushers, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and instructors of establishments engaged in operating church facilities for members of a religious congregation to meet and worship on a daily or weekly basis. Other services provided include, but are not limited to, sermons, rites, counseling, baptisms, weddings, funerals, bible school, and child care during church services and events. When a church is also operating a school facility, the church classifications are to be assigned for both operations. This classification also applies to bell ringers for charitable organizations.

This classification excludes all other types of employees in connection with the church facilities such as, but not limited to, custodians, maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

**6103-05 Museums, N.O.C. - Clerical office, sales personnel, teachers, N.O.C. and administrative employees**

Applies to clerical office, sales personnel and administrative employees such as directors, assistant directors, buyers, coordinators, tour guides, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating museum facilities not covered by another classification (N.O.C.). Museums maintain a wide variety of artifacts, art, statues, sculptures, and other exhibit works.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers (including exhibit set-up), drivers, packers, and warehousemen who are to be reported separately in classification 6104.

**6103-06 Day nurseries or child day care centers - Clerical office, sales personnel, teachers, N.O.C. and administrative employees**

Applies to clerical office, sales personnel, and administrative employees such as teachers, teachers' aides and nurses of establishments engaged in operating day nurseries or day care centers for infants, toddlers, and children, or in providing baby-sitting services. Employees will instruct children in activities designed to promote social, physical, and intellectual growth in preparation for primary school. Most day care centers provide breakfast and lunch.

This classification excludes all other types of employees such as, but not limited to, custodians, cooks (see special note below), maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

**Special note:** This classification allows preparation, service, and clean up associated with a snack menu in facilities with a refrigerator and/or microwave oven. Snacks, such as crackers, fruits, and prepackaged foods may be prepared and served. Preparation, service, and clean up associated with a full menu using ovens are to be reported in classification 6104-06. If required records are maintained, employees who have duties that fall into classifications 6103 and 6104 may split hours between the classifications. If these records have not been maintained, all hours must be reported in classification 6104.

**6103-10 Flight instructions - Clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees**

Applies to clerical office, sales personnel, classroom instructors, and administrative employees of establishments engaged in providing classroom instruction to student pilots in flight procedures and techniques. Flight instructors explain various aircraft components and instruments for controlling aircraft during maneuvers, and, using flight simulators, demonstrate procedures such as, but not limited to, take-offs and landings.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers and drivers who are to be reported separately in classification 6104 and in-air flight instructors outside the classroom who are to be reported separately in the classification 6803.

**Special note:** Reporting rules are outlined in the division of worker hours provision in the general rules.

**6103-11 Schools: N.O.C. - Clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees**

Applies to classroom instructors, clerical office, sales personnel and administrative employees such as directors and assistant directors, coordinators, instructors, receptionists, secretaries, counselors, payroll and bookkeeping personnel of establishments engaged in providing specialized classroom instruction to students in schools which are not covered by another classification (N.O.C.). Schools include, but are not limited to, dance, modeling, music, driving, cooking, first aid, and schools for coaches. Modeling and dance schools emphasize poise, balance, facial gestures, self-confidence, and counseling in wardrobe and make-up. Music schools

emphasize the disciplines of playing various instruments. Driving schools concentrate on the rules, principles, and coordination needed to drive safely, using textbooks, audio-visuals, and driving simulators.

This classification excludes all other types of employees in connection with the specialized school facilities such as, but not limited to, custodians, maintenance personnel, grounds keepers, and ballet dancers and instructors who perform activities not as part of a classroom environment who are to be reported separately in classification 6104 and driving instructors outside of the classroom who are to be reported separately in classification 6301.

**6103-12 Officials for amateur athletic or cultural events, N.O.C. (~~clerical office, teachers, N.O.C.~~) and administrative employees**

Applies to (~~clerical office employees,~~) administrative employees(=) and event officials of establishments engaged in providing officials such as, but not limited to, umpires or referees for amateur athletic or cultural events sponsored by schools or communities. Events include, but are not limited to, sports, spelling bees, debates, and musical competitions.

**6103-13 Longshore and stevedore trainees, N.O.C**

Applied to clerical office employees, administrative employees, and stevedore trainees of an establishment engaged in training longshore and stevedore trainees in a classroom environment.

**Special note:** Any longshore or stevedore activities conducted outside of the classroom on a dock, or ship, or adjacent to navigable waters will almost always be covered by the Longshore Harbor Workers' Compensation Act (LHWCA) and will not be covered by the state fund.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6104 Classification 6104.****6104-01 Schools: Academic, K-12 - All other employments, N.O.C.**

Applies to all other employees of public or private academic schools K-12 (kindergarten level through grade 12) and the state schools for the blind and deaf. All other in this classification is defined as employees such as, but not limited to, cooks, bus drivers, custodians, maintenance personnel and grounds keepers, and teachers or teachers' aides who are exposed to machinery hazards such as wood shop, metal shop, print shop, auto shop, and driver instructors.

This classification excludes clerical office, sales personnel and administrative employees such as principals, assistant principals, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and teachers or teachers' aides who have no exposure to machinery hazards who are to be reported separately in classification 6103.

**6104-02 Schools: Trade or vocational - All other employments, N.O.C.**

Applies to all other employees of trade or vocational schools. All other in this classification is defined as employees such as, but not limited to, cooks, drivers, driving instructors, custodians, maintenance personnel and grounds keepers,

and teachers and teachers' aides who are exposed to machinery hazards such as, but not limited to, those in wood shop, metal shop, automotive shops, and plumbing or electrical work. Vocational or trade schools provide specialized training and instruction to prepare students for occupations in their chosen field. Often these facilities will coordinate on-the-job training and assist students in finding employment.

This classification excludes clerical office, sales personnel and administrative employees such as deans, directors, assistant directors, receptionists, secretaries, counselors, payroll and bookkeeping personnel and teachers or teachers' aides who have no exposure to machinery hazards who are to be reported separately in classification 6103.

**6104-03 Libraries, N.O.C. - All other employments, N.O.C.**

Applies to all other employees of library facilities which are not covered by another classification (N.O.C.). All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, drivers, and storage room workers. Libraries maintain a wide selection of reading materials such as books, journals, articles, magazines, publications, newspapers, and audio-visual or micrographic materials.

This classification excludes clerical office, sales personnel and administrative employees such as librarians, assistant librarians, receptionists, secretaries, and payroll and bookkeeping personnel who are to be reported separately in classification 6103.

**6104-04 Churches - All other employments, N.O.C.**

Applies to all other employees of churches. All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel, grounds keepers, and drivers. Services offered by a church include, but are not limited to, providing a place for members of a religious congregation to meet and worship on a daily or weekly basis, sermons, rites, counseling, baptisms, weddings, funerals, bible school, child care during church services and events.

This classification excludes clerical office, sales personnel and administrative employees such as pastors, priests, reverends, clergymen, ushers, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and instructors who are to be reported separately in classification 6103.

**6104-05 Museums, N.O.C. - All other employments, N.O.C.**

Applies to all other employees of establishments engaged in operating museum facilities not covered by another classification (N.O.C.). All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel and grounds keepers (including exhibit set-up), drivers, packagers, and warehousemen. Museums maintain a wide selection of artifacts, art, statues, sculptures, and other exhibit works.

This classification excludes clerical office, sales personnel and administrative employees such as museum directors, assistant museum directors, buyers, coordinators, tour guides, receptionists, secretaries, and payroll and bookkeeping personnel who are to be reported separately in classification 6103.

**6104-06 Day nurseries or child day care centers - All other employments, N.O.C.**

Applies to all other employees of establishments engaged in operating day nurseries or day care centers for infants, toddlers, and children, which provide activities to promote social, physical, and intellectual growth in preparation for primary school. All other in this classification is defined as employees such as, but not limited to, custodians, cooks, maintenance personnel and grounds keepers, and drivers.

This classification excludes clerical office, sales personnel and administrative employees such as principals, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and teachers or teachers' aides who are to be reported separately in classification 6103.

**Special note:** This classification allows preparation, service, and clean up associated with a full menu using ovens. Preparation, service, and clean up associated with a snack menu (such as crackers, fruits, and prepackaged foods) using a refrigerator and/or microwave oven, may be reported in classifications 6103-06. If required records are maintained, employees who have duties that fall into classifications 6103 and 6104 may split hours between the classifications. If these records have not been maintained, all hours must be reported in classification 6104.

**6104-11 Schools: N.O.C. - All other employments, N.O.C.**

Applies to all other employees of establishments engaged in providing specialized classroom instruction to students in schools which are not covered by another classification (N.O.C.) such as, but not limited to, dance, modeling, music, cooking, first aid, and schools for coaches. All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, and instructors or teachers or dancers including ballet dancers who perform activities not as part of a classroom environment or who are exposed to machinery hazards.

This classification excludes administrative employees such as directors and assistant directors, coordinators, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and classroom instructors, who are to be reported separately in classification 6103 and driving instructors outside of the classroom who are to be reported separately in classification 6301.

**AMENDATORY SECTION** (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

**WAC 296-17A-6303 Classification 6303.**

**6303-00 Outside sales personnel, N.O.C.; messengers**

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering outside sales personnel, and who are not covered by another classification (N.O.C.) assigned to the employer's account. Duties of outside sales personnel contemplated by this classification are limited to soliciting new customers by telephone or in person, showing, selling, and explaining products or services in a showroom or other location, servicing existing accounts, completing correspondence, placing orders, performing public relations duties, and

estimating. Duties of messengers are limited to delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business.

This classification excludes the delivery of products or merchandise or the stocking of shelves which is to be reported separately as applicable; the demonstration or delivery of machinery or equipment which are to be reported separately as applicable, establishments engaged as collection agencies or public relations agencies which are to be reported separately in classification 5301; sales personnel engaged in home or door-to-door sales which are to be reported in classification 6309; establishments engaged in providing inspection and valuations exclusively for insurance companies which are to be reported separately in classification 4903; establishments engaged in process and legal messenger services which are to be reported separately in classification 6601.

**Special note:** When considering this classification care must be taken to look beyond titles of employees. Employees with occupational titles such as, but not limited to, collectors, counselors, consultants, or appraisers may or may not qualify for this classification. This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

### **6303-03 Insurance sales personnel and claims adjusters**

Applies to insurance sales personnel and claims adjusters with outside duties. Duties of employees subject to this classification are limited to selling insurance policies at their place of business or at the client's home, or going to the scene of an accident or catastrophe to assess damage. Work may be performed within an office or away from the employer's premises.

**Special note:** Individuals performing duties as an agent, broker, or solicitor (and who hold a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010(~~(48.17.020, and 48.17.030)~~). To elect voluntary coverage these individuals must submit a completed optional coverage form to the department.

### **6303-21 Home health care services: Social workers and dietitians**

Applies to social workers and dietitians employed by home health care service establishments who provide care for handicapped individuals. Duties of these employees include teaching physically or developmentally disabled individuals in their own home to manage daily living skills such as caring for themselves, dressing, cooking, shopping, and going to the doctor. This classification also includes dietitians, sometimes called nutritionists, who usually are referred to patients by their physicians. The dietitian assesses the patient's current nutritional status, including current food intake, medical background, family history, currently prescribed medications, and social and psychological needs, then develops(;) a food plan to meet the patient's needs. Employees subject to this classification do no cooking.

This classification excludes nursing and home health care services which are to be reported separately in classification 6110; therapy services which are to be reported separately

in classification 6109; domestic servants who are to be reported separately in classification 6510; and chore workers who are to be reported separately in classification 6511.

**Special note:** This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met. *This classification is not to be assigned to any account that does not also have classification 6110 and/or 6511.*

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

### **WAC 296-17A-6406 Classification 6406.**

This classification applies to specialty retail store operations engaged primarily in the sale of a wide variety of products ranging from collectibles such as stamps, coins, sports cards, and dolls to table top appliances such as portable televisions, blenders, mixers and toasters. This classification is comprised of subclassifications that cover a specific type of retail store operation. One of the subclassifications applies to the sale of products which are not covered by another classification. Although the products sold by establishments subject to this classification will vary by each subclassification, the overall operational activities are similar. Each business covered by this classification will generally employ cashiers and merchandise stockers, as well as other occupations of workers.

**Special note:** This classification excludes all repair operations unless it is specifically included in the classification, delivery service, outside installation work, and lunch counters and restaurants which are to be reported separately in the classification applicable to the work or service being performed.

Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

### **6406-00 Retail stores, N.O.C.**

Applies to establishments engaged in the retail sale of merchandise or services not covered by another classification (N.O.C.). Merchandise includes, but is not limited to, greeting cards, costume jewelry, scarves, tropical fish and birds and related fish or bird supplies, table top appliances such as mixers, blenders, microwave ovens, or table top satellite receiving units, (~~quick print~~) copy or fax services and related specialty items or services. This classification also applies to establishments that provide inventory services for other businesses.

This classification excludes pet stores that sell dogs or cats and establishments engaged in pet grooming services which are to be reported separately in classification 7308; pet food stores which are to be reported separately in classification 6403; and offset, cold press and similar printing operations which are to be reported separately in classification 4101.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-01 Stores: Camera or photography supply - Retail**

Applies to establishments engaged in the retail sale of cameras and photography and dark room supplies such as, but not limited to, batteries, film, processing trays, chemicals, print paper, enlargers, and timers. It is common for these establishments to offer film developing services which may be either a one-hour service or an overnight process. Both types of film developing services are included in this classification when conducted in connection with a camera and photography supply store. This classification is distinguishable from classification 6506 in that establishments covered in classification 6506 are not engaged in the sale of cameras or photo developing equipment.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-03 News and magazine stands - Retail**

Applies to establishments engaged in the retail sale of newspapers and magazines. Establishments subject to this classification may sell newspapers or magazines from various locations such as, but not limited to, stands at public markets, store operations in malls, or from a street corner.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-09 Arcades: Coin or token operated**

Applies to establishments engaged in operating coin- or token-operated arcades. This classification covers attendants, change makers, and security personnel who monitor the game rooms and make change. Attendants may remove tokens and money from machines and may perform minor adjustments such as resetting a jarred machine.

This classification excludes the installation, removal or repair of machines which is to be reported separately in classification 0606.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-11 Stores: Office stationery and machinery - Retail**

Applies to establishments engaged in the retail sale of office stationery, supplies, and/or machinery. For purposes of this classification "office stationery and supplies" includes, but is not limited to, paper, writing tablets, computer software, pens, pencils, markers, staples, staplers, scissors, paper clips, and binders. "Office machinery or business machinery" includes, but is not limited to, calculators, typewriters, various types of copy machines, fax machines, and desk top and lap top computers.

This classification excludes service and repair of office/business machines which is to be reported separately in classification 4107 and establishments engaged in sale of office furniture which are to be reported separately in classification 6306.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-12 Stores: Fabric, yardage, yarn and needlework supplies - Retail**

Applies to establishments engaged in the retail sale of fabric, yardage, yarn and needlework supplies. It is common for establishments subject to this classification to have a small inventory of noncommercial/industrial sewing machines and sergers for sale in addition to fabric, sewing notions, patterns, and related supplies. Fabric and yarn stores may also offer sewing and craft classes which are included in this classification when taught by employees of an employer subject to this classification. This classification is distinguishable from sewing machine stores in classification 6309 in that the principle products sold in classification 6406 are fabric and sewing notions while sewing machine stores are not engaged in the sale of fabric or yardage.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-14 Stores: Wind or string musical instruments - Retail**

Applies to establishments engaged in the retail sale of musical instruments such as, but not limited to, drums, wind instruments, guitars, and banjos. This classification includes music lessons when provided by employees of an employer subject to this classification and includes minor adjustment services such as replacing a drum skin or a broken string on a guitar.

This classification excludes the repair of wind and string musical instruments which is to be reported separately in the applicable repair classification; establishments engaged in the repair of pianos which are to be reported separately in classification 2906; and establishments engaged in the sale of pianos and organs which are to be reported separately in classification 6306.

**Special notes:** Classification 6406 does not apply to any establishments that sell((s)) pianos or organs in addition to wind or string instruments. Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-16 Stores: Drug - Retail**

Applies to establishments engaged in the retail sale of prescription and nonprescription drugs and/or nutritional supplements such as, but not limited to, vitamins, herbal compounds, and energy bars. Drug stores subject to this classification may also carry a variety of personal care and grooming products and may rent crutches, canes, wheel chairs, and walkers.

This classification excludes establishments engaged in the sale and/or rental of hospital beds, motorized wheel chairs, and other patient appliances which are to be reported separately in classification 6306, and establishments engaged in the sale/rental and service (repair) of motorized mobility aids such as wheelchairs and 3-wheel scooters which are to be reported separately in classification 3309.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-17 Stores: Variety - Retail**

Applies to establishments engaged in the retail sale of a variety of consumer goods such as, but not limited to, housewares, linens, clothing, toys, and candy. In earlier years establishments subject to this classification were often referred to as "5 and 10 cent stores." Although these stores carry much of the same merchandise as a department store, they are distinguishable in that variety stores are not comprised of specialized departments and do not generally carry the quantity/assortment of products that department stores do.

*Special note:* Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-18 Private mail box; safety deposit box; computer tape storage facilities - Rent or lease**

Applies to establishments engaged in renting or leasing private mail boxes, safety deposit boxes, or computer and financial record storage facilities. Establishments subject to this classification will operate a secured facility where they receive and sort their customers' mail, parcels and packages from the U.S. Post Office or other parcel/package delivery companies, and package articles for shipment for their customers. They also provide a secured storage facility equipped with safety deposit boxes which they rent out on a short or long term basis. It is common for these establishments to offer additional services such as fax, and copying services.

*Special note:* Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-19 Stores: Coins, stamps, baseball cards, and comic books - Retail**

Applies to establishments engaged in the retail sale of coins, stamps, baseball cards, comic books, and similar collectibles. Establishments subject to this classification may be engaged exclusively in mail order sales, sell from browse tables at collectible or trade shows, through specialty auctions, or may sell from a store location. Coin and stamp stores routinely sell magazines, periodicals, and supplies that cater to collections or hobbies. Card shops routinely sell other sports memorabilia such as autographed baseballs, footballs and basketballs, framed pictures, POGS and buttons.

*Special note:* Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-20 Stores: Book, record, cassette, compact disc, and video - Retail**

Applies to establishments engaged in the retail sale or rental of new or used books, records, cassettes, compact discs or videos. Establishments subject to this classification may be engaged exclusively in mail order sales, sell from browse tables or trade shows, through specialty auctions or may sell from a store location.

*Special note:* Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-23 Stores: Candy - Retail**

Applies to establishments engaged in the retail sale of packaged and unpackage candy they have purchased from others.

This classification excludes establishments engaged in the on-premise manufacture of candy and the subsequent retail sale of these products which are to be reported separately in classification 3905; and establishments engaged in the manufacture of candy or confections for wholesale to retail establishments or distributors which are to be reported separately in classification 3906.

*Special note:* Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-24 Stores: Cigarette and tobacco - Retail**

Applies to establishments engaged in the retail sale of cigarettes, tobacco, and related products such as, but not limited to, pipes, pipe cleaning supplies, rolling machines, cigarette papers, lighters, lighter fluid, and cigarette cases.

*Special note:* Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-25 Stores: Telephones - Retail**

Applies to establishments engaged in the retail sale of telephones, pagers, and cell phones. Establishments subject to this classification are not a utility company in that they do not operate telephone exchanges and are not regulated by the utilities and transportation commission of Washington. Their operations are limited to the sale of communication hardware. Stores subject to this classification may arrange activation and service for their customer, or the customer may contact the service provider directly.

*Special note:* Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-27 Stores: Stereo components - Retail**

Applies to establishments engaged in the retail sale of stereo components. Establishments subject to this classification will sell a variety of audio and video appliances such as, but not limited to, video players, stereos and portable televisions. These establishments may also sell and install automobile stereo speaker systems and car phone systems; however, the installation is not covered in classification 6406-27.

This classification excludes the installation, service or repair of home or car stereos and car phone systems which are to be reported separately in classification 0607, and establishments engaged in the sale of stereo and television console sets, big screen televisions, or other major appliances which are to be reported separately in classification 6306.

*Special note:* Classification 6306 applies to any establishment that sells TV console sets or big screen TVs, even if the majority of their inventory is stereo components and/or portable TVs. Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

**6406-29 Stores: Toys - Retail**

Applies to establishments engaged in the retail sale of a variety of toys, games, and related items for persons of all

ages. Merchandise includes, but is not limited to, video games, tricycles or bicycles, books, dolls and stuffed animals, outdoor play equipment, and specialty clothing.

This classification excludes establishments engaged in the retail sale of sporting goods and bicycles which are to be reported separately in classification 6309. This classification is distinguishable from businesses in classification 6309 in that the principle products of stores subject to classification 6406 are toys and games, as compared to stores in classification 6309 which are primarily engaged in the sales of sporting goods and bicycles.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

#### **6406-30 Stores: Cosmetics - Retail**

Applies to establishments engaged in the retail sale of cosmetics and fragrances. Related services usually offered by these types of stores include consultations with clients regarding make-up techniques, styles, and colors.

This classification excludes hair and nail salons which are to be reported separately in classification 6501.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

#### **6406-31 Stores: Housewares - Retail**

Applies to establishments engaged in the retail sale of housewares such as, but not limited to, pots and pans, flatware, dishes, towels, canister sets, soap dishes, towel bars, waste baskets, plant stands, and curtains or draperies.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

#### **6406-33 Stores: Gift shops, N.O.C. - Retail**

Applies to establishments engaged in the retail sale of gift items not covered by another classification (N.O.C.) such as, but not limited to, crystal and silver serving pieces, china, cut glass, picture frames, wedding and shower books and invitations, special occasion cards, decorative statues, boxed candy, and ornaments. This merchandise tends to be of a finer selection than the everyday wares common in variety shops.

**Special note:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-6512 Classification 6512.**

#### **6512-00 Home care services/home care ((quality authority (HCQA))) referral registry (HCRR)**

Applies to persons who are employed by ill, disabled, or vulnerable individuals to provide home care services that enable those individuals to remain in their own homes. Services provided may include, but are not ((be)) limited to: ((Personal care such as assistance with dressing, feeding, personal hygiene to facilitate self-care;))

• Household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; and((~~(to)~~) delegated tasks of nursing under RCW 18.79.260 (3)(e)((-));

• Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care.

**Special note:** Premiums are paid by the home care ((quality authority (HCQA))) referral registry (HCRR) on behalf of the persons who provide the home care services.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-6708 Classification 6708.**

##### **6708-01 Jockeys**

Applies to jockeys riding horses in a race, or working with the horses in any way, during the dates of a scheduled race meet. Coverage during a race meet is through election of optional coverage and is to be reported at ten hours per mount per race or ten hours per day if not riding in a race. Coverage outside the dates of a race meet is mandatory. Jockeys will be considered exercise riders when employed by a trainer and/or owner at a time other than during the dates of a scheduled race meet and are then reportable in classification 6614, 6616, or 7302 as appropriate to their job duties.

##### **6708-02 Professional motor vehicle or watercraft race drivers**

Applies to professional motor vehicle/water craft race drivers during a competition. Coverage during a competition is mandatory and is subject to a division of hours as provided in the general exclusion section of the general reporting rules.

When not driving during competition, hours worked are reportable as appropriate to the work being performed((;));

• Maintenance of a racing motor vehicle and/or pit crew operations which ((~~(is)~~) are to be reported separately in classification 3411;

• Assembly of a racing motor vehicle which is to be reported separately in classification 3402; maintenance of a racing water craft and/or pit crew operations which ((~~(is)~~) are to be reported separately in classification 3414; assembly of a racing water craft which is to be reported separately in classification 2903, 3402 or 3511 as appropriate; and any other work usually done for this employer which is to be reported separately as appropriate to the employees usual job duties.

This classification excludes piloting an aircraft in a race which is to be reported separately in classification 6803 for a plane or 6801 for a hot air balloon.

**Special note:** Race car drivers are reported at ten hours for each race/heat.

AMENDATORY SECTION (Amending WSR 08-15-132, filed 7/22/08, effective 10/1/08)

#### **WAC 296-17A-7202 Classification 7202.**

##### **7202-00 Real estate agencies**

Applies to establishments engaged in buying, selling, renting, and appraising real estate for others. A real estate licensee will ((study property listings, accompany clients to property sites to show the property, and assist in the completion of real estate documents such as real estate contracts;

leases, and seller's disclosure documents. They will also hold open houses, conduct negotiations, and assist at the closing):

- Accompany clients to property sites to show the property:

- Assist at the closing:

- Assist in the completion of real estate documents such as real estate contracts, leases, and seller disclosure documents:

- Conduct negotiations:

- Hold open houses:

- Study property listings.

This classification includes clerical office and sales personnel. Real estate sales personnel, including ~~((agents))~~ brokers, are considered to be workers of the managing broker or real estate agency employing them.

This classification excludes building and/or property management services which are to be reported separately in classification 4910.

**Special note:** Real estate ~~((sales agents))~~ brokers are included in the industrial insurance definition of "worker" and ~~((should))~~ must NOT be treated as independent contractors. (RCW 51.08.180 and 51.08.195.)

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0504 Classification 0504.**

**0504-06 Waterproofing, N.O.C.: Buildings or structures**

Applies to contractors engaged in waterproofing buildings or structures not covered by another classification (N.O.C.). This classification includes the application ~~((and repair services))~~ of waterproofing or sealant material to surfaces or cracks and voids to eliminate leaks in all types of buildings or structures, regardless of height~~((, including))~~. Such structures may include, but are not limited to~~((;))~~: Foundations and foundation walls, walls, floors, decks, fences, walkways and driveways. Waterproof material is applied to a variety of surfaces such as wood, concrete, asphalt, steel, metal, plaster, or stone. There are several types of waterproof processes which may include: Membrane, which adheres long strips of rubber and pumice to exterior walls or foundations with the use of primer; pressure injection, which uses a long wand inserted into the ground to fill cracks; epoxy injection, which is performed on the interior or exterior with use of a caulk gun to inject a silicon material into cracks; or application with use of a brush, roller or spray directly onto the surface. ~~((This classification includes the application of asphalt sealant to driveways.))~~

This classification excludes: Excavation work performed in conjunction with a waterproofing contract which is to be reported separately in classification 0101; waterproofing operations performed in connection with roofing or sub-aqueous work which ~~((is))~~ are to be reported separately in the classification applicable to the work being performed; the application of asphalt sealant or waterproof materials to roadways and parking lots which is to be reported separately in classification 0219; filling cracks or voids with like materials which is to be reported separately in the classification applicable to the repair work being performed; and the application of waterproof materials performed by a concrete contractor

as part of the concrete construction project which is to be reported separately in the classification applicable to the work being performed.

**Special note:** ~~((Classification 0101 applies when))~~ If excavation work is performed (to remove dirt away from a foundation wall or to push it against the wall after the waterproofing material is applied) classification 0101 applies, regardless of the type of contractor performing the excavation work.

**0504-18 Pressure washing services or sandblasting, N.O.C.: Buildings or structures**

Applies to contractors engaged in pressure washing or sandblasting buildings or structures, not covered by another classification (N.O.C.). This classification includes cleaning, washing, pressure washing or sandblasting ~~((buildings or structures. These services are performed))~~ to remove dirt, moss, rust or old paint ~~((from buildings or structures))~~. Pressure washing involves a forced spray of air and water to remove unwanted surface materials~~((, whereas,))~~. Sandblasting, or abrasive blasting, involves a forced spray of sand, steel, or glass. This classification includes the cleaning of roofs, gutters, and downspouts, and the removal of moss or snow from multiple story buildings. ~~((Pressure washing and sandblasting systems include portable blast and pressure cleaning machines, hand-operated, cabinet-type sandblasting or pressure washing machines, automatic blast or pressure cleaning machines and wet blast cleaning machines.))~~

This classification excludes: Contractors engaged in multimedia blasting in shop which is to be reported separately in classification 3402; pressure washing or sandblasting by a painting contractor as a part of the preparation for painting exterior buildings, structures, or the interior/exterior of tanks which is to be reported separately in the classification 0504-21; pressure washing as a part of interior building painting contracts which is to be reported separately in classification 0521; cleaning or washing roofs, or removing snow from, single story buildings ~~((provided))~~ when the cleaning or washing is not part of a painting or roofing contract) which is to be reported separately in classification 6602; waterproofing buildings or structures, N.O.C. which is to be reported separately in classification 0504-06; and pressure washing or sandblasting operations performed in conjunction with and as a part of another type of business such as a foundry, metal goods manufacturer, auto body repair shop, etc., which is to be reported separately in the applicable classification.

**0504-20 Lead abatement**

Applies to contractors engaged in lead abatement which is performed on structures where there are significant amounts of lead-based paint and lead dust. Contractors must comply with various governmental regulations. The first step in all lead abatement projects is the preliminary testing of the site to determine the presence of lead and the extent of the contamination. If the ground surrounding the proposed worksite is contaminated, it will require remediation, which is done by a soil remediation contractor who is to be reported separately in the appropriate classification. The next step is deciding which abatement procedure is right for the project such as: Encapsulation which is used on interior surfaces to



seal the lead-based paint with a bonding material; enclosure which is used on interior and exterior surfaces and involves constructing special airtight enclosures made out of gypsum wallboard, plywood paneling, aluminum, vinyl or wood exterior sidings; component replacement which involves removing building components such as paneling, moldings, windows and doors which are coated with lead-based paint and replacing them with new components; and chemical removal, abrasive removal or (~~hand scraping~~) hand scraping which are methods to physically remove the lead paint. This classification includes all preparation work and all cleanup work.

This classification excludes: Soil remediation work which is to be reported separately in classification 0101; asbestos abatement which is to be reported separately in classification 0512; and lead abatement as part of a painting contract for interior/exterior of buildings or structures, or the interior/exterior of tanks which is to be reported separately in the applicable classification.

**0504-21 Painting: Exterior buildings or structures, N.O.C.; Cleaning: Interior/exterior of oil or gas storage tanks, beer vats, and sewage treatment tanks**

Applies to contractors engaged in painting the exterior of all types of buildings or structures not covered by another classification (N.O.C.), regardless of height. Buildings and structures include, but are not limited to(~~;~~): Bridges, towers, smokestacks, stadiums, factories, warehouses, stores, churches, and residential or commercial single or multiple story buildings. Paint is applied by brush, roller or spray to a variety of surfaces such as wood, concrete, steel, metal, plaster, stone, or other types of exterior surfaces. This classification includes all preparation work such as the set up of scaffolding or power lifts, pressure washing, removal of old paint or asbestos, sandblasting, taping or masking, and cleanup work. This classification also applies to cleaning, coating, or painting the interior/exterior of oil or gas storage tanks, beer vats, or sewage treatment tanks.

This classification excludes: Contractors engaged in waterproofing buildings or structures, N.O.C. which are to be reported separately in classification 0504-06; pressure washing services or sandblasting of buildings or structures which are to be reported separately in classification 0504-18; interior painting of buildings which is to be reported separately in classification 0521; painting of murals or other artwork on the interior of buildings which is to be reported separately in classification 4109; and painting of murals or other artwork on the exterior of buildings which is to be reported separately in classification 0403.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1103 Classification 1103.**

**1103-00 Coal and solid fuel dealers - Yard operations**

Applies to establishments engaged in the sale and delivery of coal, pressed wood fiber logs (fire logs), wood stove pellets, wood chips, and sawdust. Operations contemplated by this classification include all related store, yard and delivery operations when conducted by employees of employers having operations subject to this classification.

This classification excludes all manufacturing operations which are to be reported separately in the classification applicable to the material and process used, and all mining operations which are to be reported separately in the applicable classification.

**1103-02 Firewood dealers - Yard operations**

Applies to establishments engaged in the sale of firewood. This classification is limited to establishments operating a firewood sales lot where customers either pick up firewood or the dealer (~~will~~) makes deliveries from. Operations contemplated by this classification are limited to yard and delivery operations.

This classification excludes firewood cutting operations conducted in timber or forest lands and firewood sales lots conducted from a logging landing which are both to be reported separately in the applicable logging classification.

**Special note:** Establishments subject to this classification may purchase pre-cut firewood from other nonrelated businesses or may have a cutting crew. The only cutting operations allowed in classification 1103 are those conducted in the sales lot.

**1103-04 Composting**

Applies to establishments engaged in composting yard waste or other materials. Depending on the type of yard waste accepted, grinders may be used to reduce the size of the material for faster composting. Once the material is an acceptable size for composting, it may be placed in static curing piles, turned periodically to aerate until it is adequately decomposed, then sometimes screened. Another method of curing is to place the waste material in long rows, called "windrows" which are turned periodically. Other establishments, either operated privately or by municipalities, may use processed and dewatered sludge which is mixed with other materials such as shredded yard waste, sawdust, or other wood waste. The mixture must be designed to have the right degree of moisture and air to maintain a temperature of between 130 and 160 degrees Fahrenheit. The end product, in either instance, is a "Class A" pathogen product, meaning it can be used in soil for raising vegetables and is referred to as "manufactured" soil. This classification includes delivery when performed by employees of an employer having operations subject to this classification.

**1103-06 Top soil, humus, peat and beauty bark dealers - Yard operations**

Applies to establishments engaged in the sale of soils, humus, peat, and beauty bark to others. Operations contemplated by this classification are limited to the receipt of soils, peat, humus, bark and compost in bulk and the subsequent load out of bark, soil and related organic matter into customer vehicles. This classification includes: Custom mixing soils(~~;~~); incidental sales of landscaping rock, sand, gravel, and crushed rock(~~;~~); and delivery when performed by employees of an employer subject to this classification.

This classification excludes: Contract delivery by non-dealer employees who are to be reported separately in classification 1102(~~;~~); building materials dealers selling stone, brick, and concrete products which are to be reported separately in classification 2009; and digging of soils/humus/

peat/gravel or grinding of bark which are to be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-4905 Classification 4905.**

**4905-04 Hotels or motels**

Applies to establishments engaged in providing lodging and associated services to others. Accommodations included in this classification vary from a single room in a "bed & breakfast," to individual cabins, to luxury suites in a multi-story hotel. Hotel and motel operations may include a wide range of activities which are within the scope of this classification such as, but not limited to (~~housekeeping, laundry, bellhops, valets, shuttle service, maintenance personnel, and continental breakfast (if not in connection with a separate restaurant operation)~~):

- Bellhops;
- Continental breakfast (if not in connection with a separately licensed restaurant operation);

- Housekeeping;
- Laundry;
- Maintenance personnel;
- Shuttle service;
- Valets.

Hotel and motel desk clerks with no other duties can be reported separately in classification 4904. If no interchange of labor exists between operations, multiple classifications may be allowed for operations such as, but not limited to (~~shops, beauty salons, grocery stores, drug stores, newsstands, and service stations, provided no interchange of labor exists between operations~~):

- Beauty salons;
- Drug stores;
- Grocery stores;
- Newsstands;
- Service stations;
- Shops.

When an interchange of labor exists, the operations are to be assigned to classification 4905-04 without a division of hours.

This classification excludes restaurant and lounge employees which are to be reported separately in classification 3905 and other operations conducted by independent concessionaires which are to be reported separately in the applicable services or store classification.

**Special note:** If a lodging establishment has a separately licensed restaurant operation, they may qualify for classification 3905. With two basic classifications an employee's hours may be divided, see WAC 296-17-31017. Providing only a continental breakfast requires either a bed and breakfast or continental breakfast food-service license. These types of food service do not qualify for classification 3905.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7107 Classification 7107.**

**7107-01 Temporary staffing services: Retail bakery, restaurant, or food (~~sundry~~) preparation; musicians or entertainers**

This classification applies to employees of a temporary staffing company who are assigned on a temporary basis to a client customer and who are engaged in activities such as, but not limited to, baking, cooking, food preparation, waiting and bussing tables, and dishwashing. This classification also includes musician and entertainment employees assigned on a temporary basis to a client customer.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7109 Classification 7109.**

**7109-01 Temporary staffing services: Electronic, precision, and scientific equipment assembly; nonfield technician services**

This classification applies to employees of a temporary staffing company who are assigned on a temporary basis to a client customer and who are engaged in the assembly of electronic or biomedical equipment or engaged in printing and bindery work and temporary staffing employees assigned to work in a client company's mail room and who as a part of their duties operate bindery, labeling, mailing or sorting machines. This classification includes, but is not limited to, electronic assemblers, electro-mechanical assemblers, quality control inspectors, test technicians, kit pullers, storekeepers, upholsterers, seamstresses, tailors, laboratory technicians, printers, offset operators, lead typesetters, mail clerks who operate equipment, and bindery workers.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7112 Classification 7112.**

**7112-00 Temporary staffing services: Agricultural operations; animal care**

This classification applies to employees of a temporary staffing company who are assigned on a temporary basis to a client customer and who are engaged in any aspects of agricultural operations such as field crops, livestock, stables, dairies, nurseries, and greenhouses. This classification contemplates all agricultural employments including the operation of power driven farm machinery or equipment.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7113 Classification 7113.**

**7113-00 Temporary staffing services: Janitorial, plant or facility supplemental maintenance, excluding machinery and grounds keeping services**

This classification applies to employees of a temporary staffing company who are assigned on a temporary basis to a client customer and who are engaged in janitorial work, building preoccupancy cleanup, plant or facility maintenance, and/or grounds maintenance work on an existing landscape. Grounds keeping work contemplated by this classification.

cation means, but is not limited to, mowing lawns, pruning shrubs, and weeding, as compared to new landscape construction work. This classification includes landscape workers involved exclusively in hand labor work such as raking, digging, using a wheelbarrow to haul soil, beauty bark or decorative rock, whether performed as maintenance of existing landscape or new landscape work.

This classification excludes employees engaged in cleaning exterior windows, cleaning and removing debris or building material, and construction of new landscapes such as, but not limited to, clearing of land, installation of underground sprinkler systems, moving boulders, who are to be reported separately in classification 7118; and employees engaged in removing trees who are to be reported separately in classification 7121, and machinery maintenance which is to be reported in classification 7117. A division of worker hours is not permitted between this classification and any other classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7115 Classification 7115.**

**7115-00 Temporary staffing services: Cannery, bottling or food processing and manufacturing operations**

This classification applies all to employees of a temporary staffing company who are assigned on a temporary basis to a client customer and who are engaged in cannery, bottling or food processing operations such as, but not limited to, canning, freezing, or dehydrating, or in packing fresh fruits or vegetables. Cooking or otherwise preparing food prior to processing or packing is included in this classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7117 Classification 7117.**

**7117-00 Temporary staffing services: Manufacturing operations, N.O.C.; specialty trades**

This classification applies to employees of a temporary staffing company who are assigned on a temporary basis to a client customer engaged in a variety of manufacturing and processing operations. This classification includes employees who may operate power driven equipment or machinery such as, but not limited to, forklifts, table saws, drill presses, industrial packaging and processing equipment or machinery N.O.C. This classification includes occupations such as, but not limited to, machinists, mechanics, welders, tool and die makers, cabinet makers, painters, and fabricators. This classification also includes employees of a temporary staffing company who work in the specialty trades of plumbing, electrical wiring, or sheet metal work either at a plant or a construction site. Businesses or industries contemplated by this classification include, but are not limited to, cabinet shops, wood products manufacturers, plastic goods manufacturers, fiberglass goods manufacturers, glass manufacturers, foundries, metal goods manufacturers, brick, cement or masonry products manufacturers; lumber remanufacturers, amuse-

ment parks, sign painting shops, and laundries, but does not apply to shake or shingle mills.

This classification excludes all employees of a temporary staffing company assigned to work for a client customer at a construction site except the specialty trades described above. This classification also excludes employees of a temporary staffing company who are assigned to work in maritime trades subject to Washington workers' compensation laws who are to be reported separately in classification 7120(~~(; and employees assigned to do plant maintenance work in a customer's plant who are to be reported separately in classification 7113)~~).

**WSR 12-07-079**

**PROPOSED RULES**

**BOARD OF ACCOUNTANCY**

[Filed March 20, 2012, 2:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-04-047.

Title of Rule and Other Identifying Information: WAC 4-30-058 Does the board authorize the use of any other titles or designations?

Hearing Location(s): The Doubletree Hotel Seattle Airport, Cascade 13, 18740 International Boulevard, SeaTac, WA, on April 26, 2012, at 9:00 a.m.

Date of Intended Adoption: April 26, 2012.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail cheryls@cpaboard.wa.gov, fax (360) 664-9194, by April 18, 2012.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 19, 2012, TTY (800) 833-6384 or (360) 664-9194.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add language to the rule that will allow:

(1) The designation "CPA retired" for those certified public accounts (CPA) who:

(a) Have reached sixty years of age and hold an active license in good standing; or

(b) At any age, have held an active license in good standing, not suspended or revoked, to practice [practice] public accountancy in any state for a combined period of not less than twenty years.

(2) Use of designations or titles authorized by the American Institute of Certified Public Accountants.

Reasons Supporting Proposal: Currently, individuals who retire their CPA license cannot use the title "CPA." This leaves CPAs who have practiced for many years and are very proud of their profession with no formal way to acknowledge their lifetime of experience and knowledge. Allowing the use of the title "CPA retired" will accurately reflect the good standing of CPAs who have chosen to retire from the profession while making it clear to the public that they are no longer practicing accounting.

In the United States, at least twenty state accountancy boards offer a retired designation.

Statutory Authority for Adoption: RCW 18.04.350(13).

Statute Being Implemented: RCW 18.04.350(13).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington Society of Certified Public Accountants (WSCPAs), private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, P.O. Box 9131, Olympia, WA 98507-9131, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on "offices of certified public accountants."

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328.

March 19, 2012  
Richard C. Sweeney, CPA  
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

**WAC 4-30-058 Does the board authorize the use of any other titles or designations?** Yes. ~~((The board))~~ RCW 18.04.350(13), Practices not prohibited, authorizes the board to allow the use of ~~((the following))~~ other titles ~~((and))~~ (designations) ~~((, provided))~~ if the individual using the title or designation is ~~((so))~~ authorized ~~((to))~~ at the time of use by nationally recognized entity sanctioning the use of board authorized titles or designations. Accordingly, the board authorizes the use of the following titles ~~((or))~~ and designations:

(1) Designations or titles authorized by the American Institute of Certified Public Accountants (AICPA):

(2) Designations or titles authorized by the Accreditation Council for Accountancy and Taxation located in Alexandria, Virginia, or its successor:

- "Accredited Business Accountant" or "ABA";
- "Accredited Tax Preparer" or "ATP"; and
- "Accredited Tax Advisor" or "ATA."

~~((The board also authorizes the use of the title "Certified Financial Planner" or "CFP" provided the individual is so))~~

(3) Designations or titles authorized ~~((to use the title or designation))~~ by the Certified Financial Planner Board of Standards in Denver, Colorado, or its successor:

- "Certified financial planner" or "CFP."

~~((This authorization))~~ These authorized designations relate(s) to title use only, ((is)) are not limited to individuals who have held or are holding a license or certificate under the act, and ((does)) do not authorize these other designated individuals to use the title "certified public accountant" or "CPA(-)," or "CPA-inactive."

The board further authorizes the use of the designation "CPA retired" in this state by those individuals who, upon notice to the board to retire a license, meet the following criteria:

- Has reached sixty years of age and holds an active license in good standing; or

• At any age, has held an active license in good standing, not suspended or revoked, to practice public accounting in any state for a combined period of not less than twenty years.

## WSR 12-07-080

### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 20, 2012, 2:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-22-074.

Title of Rule and Other Identifying Information: WAC 388-106-0010, 388-106-0075, 388-106-0126, 388-106-0130, 388-106-0210, and 388-106-0213, children's CARE assessment.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 8, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 9, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on May 8, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 24, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The aging and disability services administration (ADSA) is amending rules in WAC 388-106-0010, 388-106-0075, 388-106-0126, 388-106-0130, 388-106-0210, and 388-106-0213 to revise the assessment process for allocating personal care hours to disabled children as a result of the Washington state supreme court decision regarding *Samantha A. v. DSHS*.

Additionally, effective February 1, 2012, the department eliminated the add-on hours for off-site laundry and add-on hours to those clients living more than forty-five minutes from essential services as a result of the department's need to stay within budget appropriations.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

Rule is necessary because of state court decision, *Samantha A. vs. Department of Social and Health Services*.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Geri-Lyn McNeill, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

March 13, 2012  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-08 issue of the Register.

**WSR 12-07-084**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
[Order 08-08—Filed March 21, 2012, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-169.

Title of Rule and Other Identifying Information: The department of ecology (ecology) proposes to adopt amendments to the underground storage tank (UST) regulations, chapter 173-360 WAC. These regulations are intended to prevent releases from UST systems containing petroleum and other regulated substances. Such releases pose serious threats to human health and the environment.

Hearing Location(s): 1. Department of Ecology, Eastern Regional Office, 4601 North Monroe Street, Spokane, WA 99205, on April 24, 2012, at 1:30 p.m.; 2. Department of Ecology, Central Regional Office, 15 West Yakima Avenue, Yakima, WA 98902, on April 25, 2012, at 1:30 p.m.; 3. Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, on April 26, 2012, at 1:30 p.m.; and 4. Department of Ecology, Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503, on April 27, 2012, at 1:30 p.m.

Date of Intended Adoption: June 27, 2012.

Submit Written Comments to: Michael Feldcamp, Department of Ecology, Toxics Cleanup Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail [USTrule@ecy.wa.gov](mailto:USTrule@ecy.wa.gov), fax (360) 407-7154, by May 4, 2012.

Assistance for Persons with Disabilities: Contact Ann McNeely at (360) 407-7205, by April 13, 2012. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to implement changes to the state's UST program specified by the legislature in 2007 in SSB 5475, which amended chapter 90.76 RCW. The changes are necessary to comply with the new federal requirements in the

Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). The changes:

1. Authorize ecology to prohibit the delivery of regulated substances to UST systems not in compliance with regulatory requirements;

2. Establish an operator training program for individuals who operate and maintain UST systems; and

3. Require secondary containment of tanks and pipes, and containment under dispenser systems.

Previously, ecology anticipated addressing several other issues as part of this rule proposal. However, because of an ongoing federal rule-making process that aims to address many of the same issues, ecology decided to limit the scope of this rule proposal. We are suspending rule making on issues related to the federal rule making and financial responsibility until after the federal rule-making process is complete.

Reasons Supporting Proposal: This rule proposal is necessary to:

1. Comply with the legislative directive in SSB 5475 (2007) to adopt rules that are consistent with and no less stringent than the requirements in the Underground Storage Tank Compliance Act of 2005;

2. Maintain federal funding for the state UST program. Such funding is contingent on state compliance with the requirements in the Underground Storage Tank Compliance Act of 2005; and

3. Reduce the number and severity of releases from regulated UST systems in this state, which pose a serious threat to human health and the environment, including drinking water.

Statutory Authority for Adoption: Chapter 90.76 RCW.

Statute Being Implemented: Chapter 90.76 RCW.

Rule is necessary because of federal law, Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B).

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Feldcamp, Headquarters, Lacey, Washington, (360) 407-7531; Implementation and Enforcement: Mike Blum, Headquarters, Lacey, Washington, (360) 407-6913.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

**Executive Summary:** Ecology is proposing amendments to chapter 173-360 WAC, Underground storage tank regulations (UST rule). The main features of these proposed rule amendments include conditions and requirements for:

- Delivery prohibition.
- Operator training and retraining.
- Secondary and under-dispenser containment.

The probable quantifiable compliance costs likely resulting from the proposed rule amendments are provided in the table below.

Ecology calculated costs of the overall program components to be able to compare them with likely benefits (in the associated cost-benefit analysis, ecology publication #12-09-043), in addition to the costs specifically associated with requirements in which ecology had sole discretion.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule amendments on small versus large businesses. Ecology also considered the impacts of the proposed amendments on local governments and other small public entities, to meet the requirements in the Governor's Executive Order 10-06.<sup>1</sup> Ecology was not able to get sufficient data for other measures (sales, hours of labor) often used to identify a business's ability to cope with compliance costs for the representative set of affected businesses.

When comparing the per-employee costs of compliance with the proposed rule amendments, for overall program costs, ecology found that, as expected, with a constant cost range per-facility, the largest businesses experience the lowest per-employee costs (twenty-four cents), and the smallest businesses experience the highest per-employee costs (nearly \$26,000). Adjusted for discretion-specific costs where possible, this cost range shifted to \$0.01 - \$25,000. These costs represent per-employee total costs over twenty years, i.e., they include current and future costs, in present values.

Grouping businesses by under versus over fifty employees allowed ecology to calculate that small businesses, on average, could pay \$256 – \$8,839 per employee, in compliance costs for the overall program, while large businesses could pay an average of \$6 – \$140 per employee. Adjusted for discretion-specific costs where possible, these ranges shift to \$6 – \$8,264 per employee at small businesses, and \$0.15 - \$340 per employee at large businesses. These costs represent per-employee total costs over twenty years, i.e., they are current and future costs, in present values.

Ecology performed this comparison because the largest ten percent of businesses possibly affected included a significant portion of small businesses (with fifty or fewer employees); the overlap complicated the interpretation of a comparison only of the largest ten percent to all small businesses, as required under the Regulatory Fairness Act (RCW 19.85.-070). Ecology made decisions in the course of rule making to reduce disproportionate impacts on small businesses, including:

- Requiring recordkeeping instead of reporting.
- Multiple instead of individual class designations per operator.
- Combined training for multiple operator types.
- A broad range of acceptable trainings.
- Reciprocity with other states' and federal government training.
- An internet tool facilitating creation of operations and maintenance plans.
- Allowing ecology discretion in identifying noncompliance and how to correct it.

While these rule components help to reduce costs for all businesses that take advantage of them within their other business decisions, they are likely to reduce small business costs by a larger percentage than for large businesses.

Based on the Washington state office of financial management's input-output model of the state economy, ecology calculated likely jobs outcomes under various scenarios, for overall program costs, and just those costs in which ecology used its discretion. All costs are lost from the state economy in the worst-case scenario, while money paid to service providers stays in the state under the best-case scenario, and contributes to the economy here. Table 1 summarizes these ranges of impacts.

**Table 1: 20-Year Jobs Impacts Under the Proposed Rule Amendments**

	Industries Impacted	Worst-Case Scenario	Best-Case Scenario
Program Costs	All UST	lose 3 to 86	lose 57 up to gain 26
	Gasoline Sector Only	lose 32 to 55	lose 3 to 25
Discretion-Specific	All UST	lose 3 to 74	lose 45 up to gain 27
	Gasoline Sector Only	lose 28 to 47	lose 18 up to gain 2

These job losses and gains occur across all industries in the state - not just those that have USTs. Across all of the possible industries directly impacted, on average 34.4 percent of jobs impacts are directly within the impacted industry. For service providers, 42.6 percent of jobs impacts stay within the industry. This means for the overall range of jobs impacts (losing eighty-six to gaining twenty-seven, depending on assumptions) could have direct impacts of losing twenty-nine direct positions in an industry complying with the proposed rule, to gaining twelve service provider jobs.

For context, there are two hundred fifteen thousand - five hundred forty-one thousand positions across all the industries that may need to comply with the proposed rule. The highest estimated direct job losses would reduce direct employment across these industries by up to 1/100th of one percent.

**Section 1: Introduction and Background:** Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined the proposed rule amendments to chapter 173-360 WAC are likely to have a disproportionate impact on small business. Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by ecology.

This document is intended to be read with the associated cost-benefit analysis (ecology publication #12-09-043), which contains more in-depth discussion of the analyses, as well as references and appendices.

A small business is defined as having fifty or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment - the way USTs would be regulated in the absence of the proposed rule amendments.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal, state, and local levels.

**Description of the proposed rule amendments:** The proposed rule amendments:

- Authorize ecology to prohibit the delivery of regulated substances to UST systems not in compliance with regulatory requirements.
- Establish an operator training program for individuals who operate and maintain UST systems.
- Require secondary containment of tanks and pipes, and containment under dispenser systems.

**Reasons for the proposed rule amendments:** The proposed rule amendments are necessary to:

- Comply with the legislative directive in SSB 5475 (2007) to adopt rules that are consistent with and no less stringent than the requirements in the Underground Storage Tank Compliance Act of 2005.
- Maintain federal funding for our state UST program. Such funding is contingent on state compliance with the requirements in the Underground Storage Tank Compliance Act of 2005.
- Reduce the number, duration, and severity of releases of petroleum and other hazardous substances from regulated UST systems in this state, which pose a serious threat to human health and the environment, including drinking water.

These reductions in releases would save UST owners money spent on cleanup, insurance, and prospective liability, as well as reduce property value impacts of soil and groundwater contamination. These reductions in releases would also reduce human and environmental exposure to petroleum and other hazardous substances stored in UST systems, reducing health and environmental costs.

**Regulatory baseline:** In most cases, the regulatory baseline is the existing rule. If there is no existing rule, the federal or local rule is the baseline. Sometimes, there is no baseline because there is no regulation at any level of government, and yet other times, the baseline is for changes to other regulations (e.g., federal regulation is expected to be enacted before or just after the proposed rule; or a regulatory program would otherwise change or expire in the absence of the proposed rule).

The baseline is complex for the proposed rule amendments to the UST rule because there are multiple factors involved. These factors are:

- The existing UST rule (chapter 173-360 WAC).
- The state law authorizing the UST rule (chapter 90.76 RCW), as amended by SSB 5475 in 2007. The state law requires the UST rule to be at least as stringent as federal law and restricts ecology's discretion otherwise allowed under federal law.
- The federal law establishing minimum requirements for state UST programs (the Underground Storage Tank Compliance Act of 2005, 42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). The federal law requires compliance with federal grant guidelines established by the United States Environmental Protection Agency (EPA).

Ecology determined the baseline for this analysis is the most stringent of following requirements:

- The federal grant guidelines established by EPA under federal law.
- The state law's limitations on ecology's discretion otherwise allowed under the federal grant guidelines.

**Section 2: Compliance Costs:** Ecology estimated the expected costs associate[d] with the proposed amendments to the UST rule, as compared to the baseline as described in Section 1 of this document. The costs analyzed in this document are associated with specific individual proposed amendments listed in section 2.4 of the cost-benefit analysis, in three general categories:

- Operator training.
- Secondary containment for tanks and pipes.
- Under-dispenser containment.

The proposed rule amendments were generally determined by law, but the specifics of how to administer them were determined by ecology. For example, the law requires ecology to have an operator training program. Ecology could not quantify the benefits of just the ecology discretion requirement to train all Class C operators at a facility, and so identified the benefits of the operator training program overall. For comparability, ecology estimated the costs of the operator training program overall (to compare costs and benefits of the proposed rule amendments), but also estimated the costs of just the ecology requirement to train all Class C operators at a facility.

Where possible, ecology estimated the subset of total program costs attributable to requirements in which it had discretion under the law (in the above example, requiring all Class C operators at a facility to be trained). However, in some cases, that was not possible. In addition, ecology was unable to estimate the subset of total program benefits attributable to those requirements.

So, to retain the ability to compare costs and benefits of the proposed rule amendments, ecology estimated the total costs and benefits of the program. Where it could, ecology also estimated the subset of those costs (although not benefits) attributable to ecology's exercise of discretion under the law to illustrate to the public the impacts of ecology's decisions.

Ecology estimated present value compliance costs over twenty years.

Ecology estimated the total program costs and the subset of discretion-specific costs as follows. For a full discussion of cost calculation methodologies and sources, see the cost-benefit analysis (ecology publication #12-09-043).

**Table 2: Estimated Compliance Costs Summary (millions of \$)**

	Program Cost	Discretion-Specific Cost (subset of program cost)
Operator Training	\$8.50	\$0.21
Delayed Training Deadline	-\$0.005	-\$0.005
Longer Allowed Training Time	-\$0.001	-\$0.001
Secondary Containment —Tanks and Pipes	\$42.40	\$42.40*
Under-Dispenser Containment	\$6.83	\$6.83*

**Table 2: Estimated Compliance Costs Summary (millions of \$)**

	Program Cost	Discretion-Specific Cost (subset of program cost)
Training Cost Mitigation <ul style="list-style-type: none"> <li>• Reciprocity for out-of-state training</li> <li>• Acceptance of prior in-state training</li> </ul>		(qualitative cost reduction)
Cost-mitigating multiple operator class designations <ul style="list-style-type: none"> <li>• Multiple class designation</li> <li>• Changes in scope of training requirements</li> </ul>		(qualitative cost reduction)
Required emergency response and signage <ul style="list-style-type: none"> <li>• At least one designated operator must be present at manned facilities</li> <li>• Emergency signage is required</li> </ul>		(qualitative)
<b>TOTAL QUANTIFIABLE COSTS</b>	<b>\$57.72</b>	<b>\$49.43</b>

\*The Discretion-specific Cost is ecology's best attempt to quantify the costs associated only with ecology's discretion (that is, those requirements not mandated by state or federal law). Where quantifying those costs was not possible, then the total program cost was used. It is likely an overestimate of actual costs associated only with ecology's discretion in this rule making.

**Section 3: Quantification of Cost Ratios:** Ecology calculated the estimated per-facility costs to comply with the proposed rule amendments. Based on available data, estimation and forecasting was possible on a facility-level or tank-level calculation. This means cost estimates and ranges are for the average or typical facility, tanks, and piping. This causes inherent estimation of disproportionate costs across differently-sized businesses. In this section, ecology summarizes compliance cost calculations (due to space constraints in this document, the full cost and benefit analyses are presented in the associated cost-benefit analysis, ecology publication #12-09-043).

**Operator training costs:** In its cost-benefit analysis of the proposed rule amendments, ecology calculated the per-facility costs based on subsections of its overall cost calculations. With the possibility of businesses entering the market during the twenty-year time horizon, ecology assessed a likely per-facility costs range based on the full range of business operations duration (one to twenty years).

**Program costs:** For operator training, ecology estimated the per-facility cost from its overall program cost calculations as up to \$2,360 (in current dollar value) over twenty years. Facilities entering the market over the course of the twenty-year time horizon would likely experience lower operator training costs, as they would still pay initial training costs, but pay fewer years of ongoing costs related to employee and operator turnover.

**Discretion-specific costs:** For operator training, ecology estimated the per-facility cost from its discretion-specific cost calculations as \$58 (in current dollar value) over twenty years. As with overall program costs, facilities entering the market over the course of this time period would likely experience lower training costs, since they would pay them for fewer years before the end of the relevant time period.

**Secondary containment:** In its cost-benefit analysis of the proposed rule amendments, ecology calculated the present value costs of the proposed secondary containment requirements.

**Program costs:** For the overall program requirements, ecology estimated a per-tank (and associated piping) cost of secondary containment (replacement of a single-walled system with a double-walled system) for the universe of single-walled tanks and piping existing, as \$8,989. This compliance cost number is based on smooth annual phasing-in of tank replacements (two hundred thirty-six tanks and piping each year, rather than all tanks and piping being replaced immediately, as this is not required by the proposed rule language - only replaced tanks and piping require secondary containment), and spreading tank and piping replacement costs over the following twenty years (e.g., through loan repayment).

Through its UST database, ecology found that there are 2.65 tanks at the average facility. This means the average cost per facility over the twenty year time horizon is \$23,821, if ecology assumes that single-walled tanks and piping are clustered at the same facilities. If facilities have a mix of single- and double-walled tanks and piping, a facility experiencing secondary containment compliance costs would experience as little as the \$8,989 for just one tank and piping replacement. If a theoretical large facility had a cluster of more tanks and piping, they would pay higher compliance costs. Ecology chose the average to reflect these possibilities.

**Discretion-specific costs:** Ecology could not confidently identify the number of tanks and piping that would be affected by only the areas of the proposed rule in which ecology had discretion. In particular, ecology could not identify those tanks and piping that would have otherwise chosen a type of secondary containment other than double-walled tanks and piping. Moreover, ecology could neither confidently identify a cost differential for other types of secondary containment, as all known hazardous substance UST systems (which are currently required to be secondarily contained) have voluntarily chosen double-walled tanks and piping. Ecology has, therefore, included this assessment qualitatively, and used the quantitative measure for overall program costs in calculations. Actual discretion-specific based costs are likely significantly lower.

**Under-dispenser containment:**

**Program costs:** In its cost-benefit analysis of the proposed rule amendments, ecology calculated that compliance with under-dispenser containment requirements would result in under-dispenser containment costs over twenty years of \$608 at the average facility.

**Discretion-specific costs:** Many of the proposed changes to the UST program are mandated by state and federal law, and therefore are not within ecology's discretion. In this case, state and federal law require under-dispenser containment to be installed whenever an entire dispenser system is installed or replaced. Under its statutory rule-making authority, ecology is also requiring under-dispenser containment when only a dispenser is replaced (as opposed to whole dispenser system) and when only underground piping is replaced (not the dispenser system connected to the piping).

However, of the total number of dispenser systems affected by the proposed rule amendments, ecology could not distinguish how many would be affected by each of the different applicability provisions. Therefore, ecology could not



quantify the portion of the program costs attributable only to ecology's discretion.

Thus, for the purposes of this analysis, ecology used the requirement mandated by law identical program and discretion-specific costs for under-dispenser containment, understanding that actual discretion-based costs are likely significantly lower.

**Total compliance costs:** Ecology summed the above types of compliance costs associated with the proposed rule amendments, for the overall program as well as only those choices in which ecology had discretion (see individual cost categories above for discussion).

**Program costs:** Ecology estimated total compliance cost estimates for the overall program requirements for operator training, secondary containment, and under-dispenser containment, of between \$2,360 (for businesses complying only with operator training requirements) to \$26,189 (for businesses complying with operator training requirements, replacing tanks and piping with secondary containment, and installing under-dispenser containment).

**Discretion-specific costs:** Ecology estimated total compliance cost estimates for the parts of the rule in which ecology used its discretion (where possible to estimate separately; otherwise program costs were used), of between \$58 (for businesses complying only with operator training requirements) to \$24,487 (for businesses complying with all three categories of requirement).

**Cost per employee:** While USTs are primarily expected to be located at gasoline and service stations, ecology identified eighty-seven industries that *might* have underground storage tanks. These are listed in Section 6, below. Ecology then identified the distribution of businesses across various employment-size categories.<sup>2</sup> Businesses were identified across the full range of categories, from one to four employees, through over 10,000 employees. Most businesses were in gasoline stations, retail automotive-related trades, and transportation and shipping fleets. Other businesses included those with large emergency power generators, such as hospitals.

In accordance with small business economic impact statement requirements in the Regulatory Fairness Act, ecology identified the largest ten percent of businesses that might have to comply with the proposed rule amendments. The largest ten percent of businesses encompasses 1,380 identified businesses, employing between twenty and over 10,000 people each. Most of the 1,380 businesses are at the low end of this employment scale, with only thirty-six businesses employing over 1,000 people each. Yet nearly 1,100 businesses employ fewer than fifty people each.

In this analysis, ecology is required to compare the costs per employee for small businesses (those employing fewer than fifty people) with the largest ten percent of all businesses complying. In the case of those businesses that might have to comply with the proposed rule amendments, those categories overlap. Therefore, ecology compared the per-employee costs for each business-size category, as well as per-employee costs for small versus large businesses (under fifty versus over fifty employees) as overall categories.

**Program costs:** In comparing the per-employee costs of compliance with the overall program requirements (those

required to be included broadly by federal or state law; which didn't necessarily allow ecology discretion in overall rule requirements) of the proposed rule amendments, ecology found that, as expected, with constant cost range per-facility, the largest businesses experience the lowest per-employee costs (twenty-four cents), and the smallest businesses experience the highest per-employee costs (nearly \$26,000).

Grouping businesses by under versus over fifty employees allowed ecology to calculate that small businesses, on average, could pay \$256 - \$8,839 per employee, in compliance costs, while large businesses could pay an average of \$6 - \$140 per employee, based on overall program requirements.

In these views, the proposed rule imposes disproportionate costs on small businesses. Ecology must then have included, in the proposed rule, elements mitigating costs to small businesses. These are discussed in Section 4 of this document, below.

**Discretion-specific costs:** In comparing the per-employee costs of compliance with those elements of the proposed rule amendments in which ecology used its discretion, ecology found that, as expected, with constant cost range per-facility, the largest businesses experience the lowest per-employee costs (one cent), and the smallest businesses experience the highest per-employee costs (nearly \$25,000).

Grouping businesses by under versus over fifty employees allowed ecology to calculate that small businesses, on average, could pay \$6 - \$8,264 per employee, in compliance costs, while large businesses could pay an average of \$0.15 - \$340 per employee. This is based on costs specific to ecology's discretion in the proposed rule making. As discussed above, actual discretion-specific based costs are likely significantly lower.

In either of these views, the proposed rule imposes disproportionate costs on small businesses. Ecology must then have included, in the proposed rule, elements mitigating costs to small businesses. These are discussed in Section 4 of this document, below.

**Caveats on business size and costs:** There are several confounding factors in UST regulation-compliant businesses sizes that were necessarily lost to averaging used to deal with the scope and quality of data. For example, if there is a correlation between business size and the number of USTs at its facility, then the disproportionate cost impact between small and large businesses is smaller. Further, for secondary containment of UST systems, if larger facilities are likely to have clusters of older, single-walled tanks, then the disproportionate cost impact also falls.

Smaller businesses also likely have fewer employees to train as operators of any class. They are also likely to take advantage of the ability to have the same person as a Class A and Class B operator.

Finally, employment security department data treats a business as a facility at one location, and does not account for chains of small facilities (as can be the case with retail and gasoline service stations), or larger interstate or international ownership of businesses by conglomerates. The more small business locations are owned by a single owner, the greater that owner's capacity to cope with compliance costs, and it is possible that these locations are part of a large (over fifty employees) business. The more businesses are owned by

larger corporations, the greater their capacity to cope with compliance costs.

**Section 4: Action Taken to Reduce Small Business**

**Impacts:** Ecology had limited ability in this rule making to reduce the impacts specifically to small business, but in choosing the least burdensome means of facilitating compliance and protecting human health and the environment, ecology provided options that can help small businesses reduce their compliance costs by greater percentages. Ecology could not exempt small businesses from the remaining requirements to reduce costs, as this would be contrary to the authorizing statute's requirement to have operator training and secondary and under-dispenser containment.

**Recordkeeping instead of reporting for operator training:** Compared to other means of ensuring all operators meet the proposed requirements, ecology chose the least-cost option of recordkeeping. For small businesses, this means avoiding the costs of reporting compliance for their employees. For each employee part of a small business, this is a larger percentage cost reduction than at a large business.

**Multiple operator class designations:** Ecology used the maximum discretion possible within the EPA's limits to allow an individual to carry multiple class designations. This means that one person can be, for example, a Class A and a Class B operator. At a small business, this can have a larger percentage reduction in costs by allowing minimal necessary staff to operate a facility or train Class C operators, and leaves a greater degree of choice in the hands of the business.

**Combined Class A and Class B operator training:** The proposed rule amendments allow training approaches that combine training for more than one class of operator. This, again, can help all businesses, but small businesses may benefit disproportionately in the following ways. First, small businesses can take advantage of the multiple-designation option to send fewer people to training, and thereby pay less in training costs and lost work hours. Second, small businesses can coordinate business operations with training in the most efficient way, depending on facility-specific business practices. For example, a small business may determine it is beneficial to train operators for multiple classes at separate times, to maintain operations, or shut down operations for the minimum time possible to train all operators at once. These cost reductions are likely to be a greater percentage of a small business's compliance costs, than a large business might experience.

**Types of operator training:** Ecology used the maximum discretion possible within the EPA's limits in determining acceptable operator training for Class A and Class B operators. For Class C operators, ecology used the highest discretion possible without allowing examination-only training, as ecology does not believe that would sufficiently help to prevent and limit releases. Allowing the broadest range of reasonable training will likely help small businesses comply with the proposed rule, as many of them are gasoline and service stations in retail and wholesale sectors that would otherwise have the most difficulty maintaining staffing levels and business practices if, for example, everyone had to attend an extensive course on all the requirements. Larger businesses are more able to deal with disruptions in staff and hours.

**Reciprocity for out-of-state training:** Ecology allows reciprocity in training, with other states and with the federal government. This allows businesses to avoid multiple trainings or types of training for businesses owned across multiple states, or operators at multiple interstate locations. This also facilitates entry into, and mobility within, the market, which is otherwise costly for small businesses to move or expand to multiple locations, or hire people from other states who carry other training. While reciprocity does prospectively benefit all businesses complying with the proposed rule amendments, small businesses are likely to benefit more from reduced costs relative to their income and size.

**Operations and maintenance plan tool:** Ecology is currently developing a free on-line tool to facilitate businesses developing operations and maintenance plans in cases where ecology does require one in response to a rule violation. This simplifies the process and reduces costs associated with creating the operations and maintenance plan. This cost reduction may be more meaningful for a small business (particularly in terms of operator time) than a large one.

**Ecology discretion and flexibility:** The proposed rule amendments allow ecology discretion in many compliance and enforcement areas. This allows ecology to consider the size of a business, available resources and staff, and other facility-specific factors when determining retraining requirements and the use of operations and maintenance plans. In this way, ecology will work with businesses to meet their needs in complying with the proposed rule amendments.

**Section 5: Small Business and Government Involvement:** Ecology has involved small businesses and local governments (as well as large businesses and other interested parties) during the rule-making process (as well as during the earlier legislative process).

- Web page. Ecology developed a dedicated web page that described the purpose and status of the rule making. Preliminary drafts of the proposed rule were also posted on the web page when they were submitted for public review.
- Preliminary drafts. As preliminary drafts of each part of the rule were developed, ecology provided the public an opportunity to review and comment on those drafts. We specifically notified small business associations and other interested persons of the opportunity. The drafts were included on the web page. Due to time constraints, this effort was suspended after ecology decided to reduce the scope of the rule making. Of the remaining parts, only the part governing operator training had been submitted for public review and comment. No comments were received on that part.
- Meetings and consultations. We consulted with stakeholders, including small business associations, individually or in groups at different points to discuss the issues addressed in the rule making and our general policy direction. These stakeholders included:
  - o Western States Petroleum Association (WSPA).
  - o Washington Oil Marketers (WOMA).
  - o Automotive United Trades Organization (AUTO).
  - o Association of Washington Business (AWB).
  - o Operator training providers.
  - o Service providers.

- **Development of training programs.** During the rule making, ecology also developed a voluntary operator training program, including guidelines for providers. Ecology worked with providers to develop the guidelines. Ecology developed the voluntary program to allow owners, including small businesses and local governments, more time to comply with the training requirements. Ecology created a web site and focus sheet. A post card was mailed to each registered UST system owner in the state.

Ecology has consulted with several associations representing small businesses (such as WOMA and AUTO) and local governments (such as the Association of Washington

Cities and Washington State Association of Counties) about how best to notify affected persons (such as through newsletters) of the proposed rule. To ensure that all UST system owners are notified, ecology is mailing notices to each UST system owner. Some business and local government associations have also agreed to include notices in [to] their members. Ecology will also translate the notice into Korean and provide it to outlets and business associations.

**Section 6: NAICS Codes of Impacted Industries:**

The table below lists NAICS codes for industries ecology expects could be impacted by the proposed rule amendments.<sup>3</sup>

**Table 3: NAICS Codes that Include Businesses Possibly Needing to Comply with the Proposed Rule Amendments**

211111	212325	221310	336120	441222	482111	485119	486110	488210	492110	622210
212111	212399	221320	423110	441229	483111	485210	486210	488310	532111	622310
212221	213111	324110	424710	447190	483113	485310	486990	488320	532120	623110
212311	213112	324121	424720	481111	484110	485320	487110	488330	562112	711212
212312	213114	324122	441110	481112	484121	485410	487210	488390	562119	713930
212319	221119	324191	441120	481211	484220	485510	487990	488490	562211	811191
212321	221122	336111	441210	481212	484230	485991	488119	488999	562212	928110
212322	221210	336112	441221	481219	485112	485999	488190	491110	622110	

**Section 7: Impact on Jobs:** Ecology used the Washington state office of financial management's 2002 Washington input-output model.<sup>4</sup> The model accounts for interindustry impacts and spending multipliers of earned income and changes in output.

The proposed rule will result in transfers of money between industries; businesses complying with the proposed rule amendments will pay businesses providing operator training, installation, and other service provision. These providers could be in-state or out-of-state. Ecology analyzed a range of scenarios including a "worst-case" scenario in which all compliance costs leave the state, and a "best-case" scenario, in which all compliance costs become revenues for service provider industries. (Ecology excluded operator training providers, as many of them are known as out-of-state.)

Ecology estimated long-term jobs impacts of the proposed rule amendments, considering the overall program requirements and just those requirements in which ecology used its discretion. These prospective losses are due to overall program costs, and are an overestimate of the costs associated specifically with the areas of the proposed rule amendments in which ecology could use its discretion. Ecology estimated both the worst-case (no money spent on training and service providers returns to the Washington state's economy) and best-case (money spent on service providers benefits their industry in the state) scenarios for jobs over the next twenty years. The numbers gained or lost represent employment positions for the full twenty years. Table 4 summarizes these jobs impact ranges.

**Table 4: Range of Job[s] Impacts from the Proposed Rule Amendments**

	<b>Industries Impacted</b>	<b>Worst-Case Scenario</b>	<b>Best-Case Scenario</b>
Program Costs	All UST	lose 3 to 86	lose 57 up to gain 26
	Gasoline Sector Only	lose 32 to 55	lose 3 to 25

**Table 4: Range of Job[s] Impacts from the Proposed Rule Amendments**

	<b>Industries Impacted</b>	<b>Worst-Case Scenario</b>	<b>Best-Case Scenario</b>
Discretion-Specific	All UST	lose 3 to 74	lose 45 up to gain 27
	Gasoline Sector Only	lose 28 to 47	lose 18 up to gain 2

These job losses and gains occur across all industries in the state - not just those that have USTs. Across all of the possible industries directly impacted, on average 34.4 percent of jobs impacts are directly within the impacted industry. For service providers, 42.6 percent of jobs impacts stay within the industry. This means for the overall range of jobs impacts (losing fifty-seven to gaining twenty-seven, depending on assumptions) could have direct impacts of losing nineteen direct positions in an industry complying with the proposed rule, to gaining twelve service provider jobs.

<sup>1</sup> [http://www.governor.wa.gov/news/Executive\\_Order\\_10-06.pdf](http://www.governor.wa.gov/news/Executive_Order_10-06.pdf).

<sup>2</sup> Employment size categories available from Washington employment security department: 1-4, 5-9, 10-19, 20-49, 50-99, 100-249, 250-499, 500-999, 1,000-4,999, 5,000-9,999, and 10,000+ employees. Data taken from Workforce Explorer, [www.workforceexplorer.com](http://www.workforceexplorer.com).

<sup>3</sup> North American Industry Classification System (NAICS) codes have largely taken the place of standard industry classification (SIC) codes in the categorization of industries.

<sup>4</sup> See the Washington state office of financial management's site for more information on the input-output model, <http://www.ofm.wa.gov/economy/io/2002/default.asp>.

A copy of the statement may be obtained by contacting Ann McNeely, Department of Ecology, Toxics Cleanup Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7205, fax (360) 407-7154, e-mail [ann.mcneely@ecy.wa.gov](mailto:ann.mcneely@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Ann McNeely, Department of Ecology, Toxics

Cleanup Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7205, fax (360) 407-7154, e-mail ann.mcneely@ecy.wa.gov.

March 20, 2012  
Polly Zehm  
Deputy Director

AMENDATORY SECTION (Amending WSR 95-04-102, filed 2/1/95, effective 3/4/95)

**WAC 173-360-120 Definitions.** For the purposes of this chapter, the following definitions shall apply:

"Abandoned" means left unused indefinitely, without being substantially emptied or permanently altered structurally to prevent reuse.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and/or to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Certified UST supervisor" means a person certified by the International Fire Code Institute or another nationally recognized organization, as approved by the department. Washington registered professional engineers who are competent, by means of examination, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

"Change-in-service" means to change the substances stored in an UST system from regulated substances to unregulated substances.

"Class A operator" means an individual designated by an UST system owner or operator as having primary responsibility for the operation and maintenance of the system. The Class A operator typically manages resources and personnel such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means an individual designated by an UST system owner or operator as having control of or responsibility for the day-to-day operation and maintenance of the system. The Class B operator typically performs or ensures the performance of operation and maintenance activities at an UST facility, maintains records of those activities, and reports those activities to the department.

"Class C operator" means an employee of an UST system owner or operator responsible for initially responding to alarms or other indications of emergencies caused by spills, overfills, leaks, or releases from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances from the system.

"Closure" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "decommissioning."

"Compatible" means the ability of two or more substances or materials to maintain their respective physical and chemical properties upon contact with one another such that the stored substance will not pass through the wall or lining of the tank and connected piping for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Corrosion expert" means a person who possesses a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Decommissioning" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "closure."

"Deferral" means a category of UST systems which are subject to certain, but not all, of the requirements of this chapter as specified in WAC 173-360-110(3).

"Delegated agency" means a state or local government agency which has been delegated responsibility by the department for administering any portion of an UST program.

"De minimis concentration" means either less than one inch of regulated substance, or less than a reportable quantity, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

"Department" means the department of ecology.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the department of ecology.

"Dispenser" means a device used to dispense and meter regulated substances from an UST system.

"Dispenser system" means a dispenser and the above-ground equipment necessary to connect the dispenser to an UST system, including check valves, shear valves, unburied risers, flexible connectors, and other transitional components.

"Double-walled tanks" and "double-walled piping" mean tanks and piping consisting of an inner wall and an outer wall with an interstitial space capable of being monitored for leaks.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Emergency power generator" means an engine that uses fuel to produce auxiliary electrical or mechanical energy for use in emergencies.

"Emergency power generator tank" means a tank that stores fuel solely for use by an emergency power generator.

"Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing UST system" means an UST system used to contain an accumulation of regulated substances or for which installation had commenced on or before December 22, 1988. Installation is considered to have commenced if: The owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

Either a continuous on-site physical construction or installation program had begun; or

The owner or operator had entered into contractual obligations—which cannot be (~~cancelled~~) cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Facility compliance tag" means a white-colored metal plate with a green-colored identification number issued by the department for display at an UST facility in a location clearly visible to the product deliverer and persons withdraw-

ing waste oil. Except as otherwise provided in this chapter, it is unlawful for regulated substances to be delivered or deposited into an UST system, or withdrawn from a waste oil UST system, at an UST facility without a valid and properly displayed facility compliance tag.

"False alarm" means indicating that an UST system is leaking when in fact it is tight.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property and used for farm purposes. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations. It does not include laboratories where animals are raised, land used to grow timber, pesticide aviation operations, retail stores or garden centers where nursery products are marketed but not grown, cemeteries, golf courses, or other facilities dedicated primarily to recreation or aesthetics, or other nonagricultural activities.

"Field-constructed tank" means an underground storage tank that is constructed in the field rather than factory built because of its large size.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: A 10-K report submitted to the SEC; an annual report of tangible net worth submitted to Dun and Bradstreet; or annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in performing tank services.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Groundwater" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils

(including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Immiscible" means largely incapable of blending or mixing.

"Installation" means the activity of placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

"Interstitial space" means the space between the primary and secondary containment systems (e.g., the space between the inner and outer walls of a tank or pipe).

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought: By the United States Environmental Protection Agency (EPA) or a state to require corrective action or to recover the costs of corrective action; by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or by any person to enforce the terms of a financial assurance mechanism.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing a regulated substance.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New UST system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988. (See also "existing tank system.")

"Noncommercial purposes" with respect to motor fuel means not for resale.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of WAC 173-360-400 through 173-360-499 and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under WAC 173-360-380 through 173-360-398.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means: In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use. In the event that the owner of an UST system cannot be physically located, the owner shall be the person who owns the property where the UST system is located, except any lien holder and any agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to a release or threatened release of a regulated substance from the UST system.

"Owner or operator," means, for the purposes of WAC 173-360-400 through 173-360-499, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.

"Party" means a person or group concerned or having or taking part in any affair, matter, transaction, or proceeding.

"Permanently closed" means: (1) In the case of an UST system taken out of operation before December 22, 1988, the UST system was substantially emptied of regulated substances or permanently altered structurally to prevent reuse; (2) in the case of an UST system taken out of operation after December 21, 1988, and before the effective date of this chapter, the UST system was closed in accordance with 40 CFR 280; and (3) in the case of an UST system taken out of operation on or after the effective date of this chapter, the UST system was closed in accordance with WAC 173-360-385.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonferrous materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Piping run" means all underground piping connecting an individual submersible pump or suction stub to associated dispenser systems or other end-use equipment.

"Product deliverer" means any person who delivers or deposits product into an UST system. This term includes major oil companies, jobbers, petroleum transportation companies, or other product delivery entities.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in WAC 173-360-413 through 173-360-436, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Red tag" means a red-colored tag or device on the fill pipe of an UST system that clearly identifies the system as ineligible for product delivery or waste oil withdrawal. The tag or device is tamper resistant and is easily visible to the product deliverer and persons withdrawing waste oil. The tag or device clearly states and conveys, as applicable, that it is unlawful for regulated substances to be delivered or deposited into an UST system or withdrawn from a waste oil UST system.

"Regulated substance" means:

Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and any other regulated substances); and

Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The term "regulated substance" does not include propane or asphalt or any other petroleum product which is not liquid at standard conditions of temperature and pressure.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system to groundwater, surface water or soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space

between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of a regulated substance from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes; such properties do not include dormitories, convents, mobile parks, apartments, hotels and similar facilities, unless the tank is used by the owner solely for his or her own personal use, rather than to maintain the overall facility.

"Retrofitting" means the repair or upgrading of an existing underground storage tank system including, but not limited to, installation of splash, spill and overflow protection, installing or replacing monitoring systems, adding cathodic protective systems, tank repair, replacement of piping, valves, fill pipes or vents and installing tank liners.

"Secondary containment" means a release prevention system for tanks and piping consisting of an inner barrier and an outer barrier with an interstitial space capable of being monitored for leaks.

"Septic tank" is a water-tight covered receptacle designed and used to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site assessment" means investigating an UST site for the presence of a release at the time of closure or change-in-service.

"Site check" means investigating an UST site for the presence of a release when evidence indicates that a release may have occurred.

"((Stormwater)) Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Structural defect" means a hole or crack in the tank portion of the UST system, which has either caused a release from the system or is being repaired to prevent a release from the system.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Supervisor" means a person certified by the International Fire Code Institute, or other nationally recognized organization, operating independently or employed by a contractor, who is responsible for directing and overseeing the performance of tank services at a facility.

"Surface impoundment" is a natural topographic depression, excavation, or diked area formed primarily of earthen

materials (although it may be lined with synthetic materials) that is not an injection well.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Tank permit" means a tank tag, as required by RCW 90.76.020(4).

"Tank services" include underground storage tank installation, decommissioning, retrofitting, and testing.

"Temporarily closed UST system" means an UST system that has been removed from service and will be returned to service in the future.

"Termination" under WAC 173-360-476 and 173-360-480 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Testing" means applying a method to determine the integrity of an underground storage tank.

"Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment or, intrusion of groundwater into a tank system.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser system from reaching soil or ground water.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any of the exempt UST systems specified in WAC 173-360-110(2), or any piping connected thereto.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of regulated substances.

"UST site" or "site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property within a contiguous ownership that is associated with the use of the tanks.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

**WAC 173-360-160 Enforcement.** (1) **Authority.** The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston County Superior Court or issuing such order as the director deems appropriate to:

(a) Enjoin any threatened or continuing violation of this chapter or chapter 90.76 RCW;

(b) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of any requirement of this chapter or chapter 90.76 RCW and is endangering or causing damage to public health or the environment;

(c) Require compliance with requests for information, access, testing, or monitoring under WAC 173-360-140 or RCW 90.76.060; ((or))

(d) Prohibit the delivery, deposit, or acceptance of a regulated substance to an UST system identified by the department to be ineligible for such delivery, deposit, or acceptance in accordance with WAC 173-360-165 and chapter 90.76 RCW; or

(e) Assess and recover civil penalties authorized under WAC 173-360-170 and RCW 90.76.080.

(2) **Procedures.** The department's enforcement procedures shall be consistent with and no less stringent than those required by 40 CFR 281.41 ((and amendments thereto)), as amended, and section 9012 of the Solid Waste Disposal Act (42 U.S.C. Sec. 6991k).

(3) **Appeals.** A person subject to an order issued under this chapter may appeal the order to the pollution control hearings board in accordance with RCW 43.21B.310.

#### NEW SECTION

**WAC 173-360-165 Delivery prohibition.** (1) **Authority.** If the department determines the owners and operators of an UST system are violating any requirement of this chapter or chapter 90.76 RCW, the department may prohibit the delivery, deposit, or acceptance of regulated substances to the system or the entire UST facility where the system is located.

(2) **Procedures.** The department's procedures for enforcing delivery prohibition shall be consistent with and no less stringent than those required by section 9012 of the Solid Waste Disposal Act (42 U.S.C. Sec. 6991k).

(3) **Identification.** The department may identify an UST system subject to delivery prohibition by either:

(a) Affixing a red tag to the fill pipe of the system; or

(b) Revoking the facility compliance tag of the UST facility where the system is located.

(4) **Prohibition.** Without the prior written authorization of the department, product deliverers may not deliver or deposit, and owners and operators may not accept the delivery or deposit of, regulated substances into an UST system if:

(a) A red tag is attached to the fill pipe of the system; or

(b) A valid facility compliance tag is not properly displayed at the UST facility where the system is located.



(5) **Withdrawal of waste oil.** Without the prior written authorization of the department, persons may not withdraw, and owners and operators may not allow the withdrawal of, regulated substances from a waste oil UST system subject to delivery prohibition.

(6) **Unauthorized removal of red tags.** No person may remove or alter a red tag without the prior written authorization of the department. The unauthorized removal or alteration of a red tag constitutes a violation of this chapter.

## PART VII OPERATOR TRAINING REQUIREMENTS

### NEW SECTION

**WAC 173-360-700 Purpose and applicability.** (1) This part establishes a mandatory operator training program for three distinct classes of individuals who operate and maintain UST systems. The program is designed to prevent and mitigate releases from UST systems by ensuring that those individuals know how to properly operate and maintain those systems and respond to any spills, overfills, leaks, or releases from those systems.

(2) Owners and operators of UST systems shall continuously comply with the requirements of this part from their installation until their permanent closure or change-in-service, including during any period of temporary closure.

### NEW SECTION

**WAC 173-360-710 Designation of operators.** UST system owners and operators shall designate individuals as Class A, Class B, and Class C operators in accordance with the requirements of this section.

(1) At least one Class A and one Class B operator must be designated for each UST system or group of systems at an UST facility.

(2) Each individual who meets the definition of Class C operator at an UST facility must be designated as a Class C operator. Class C operators must be employees of the UST system owner or operator.

(3) Separate individuals may be designated for each operator class or an individual may be designated to more than one operator class.

### NEW SECTION

**WAC 173-360-720 Timing of operator training.** UST system owners and operators shall ensure that each Class A, Class B, and Class C operator is trained in accordance with the requirements in WAC 173-360-730 by the dates specified in this section.

(1) Class A, Class B, and Class C operators must initially be designated and trained by December 31, 2012.

(2) Class A and Class B operators designated after December 31, 2012, must be trained within sixty days of assuming duties of the operator class.

(3) Class C operators designated after December 31, 2012, must be trained before assuming duties of the operator class.

### NEW SECTION

**WAC 173-360-730 Training requirements for operators.** UST system owners and operators shall ensure that each Class A, Class B, and Class C operator is trained in accordance with the requirements of this section. Individuals designated for more than one operator class must successfully complete the training required for each operator class that he or she is designated.

(1) **Class A and Class B operators.** Each Class A and Class B operator must successfully complete a classroom, computer, or field-based training program or examination that:

(a) Is developed and administered by the department or an independent third-party approved by the department;

(b) Covers the following subject areas and associated requirements in this chapter. Training programs and examinations may be facility-specific:

(i) Administrative requirements, including:

(A) Licensing and fees;

(B) Facility compliance tags;

(C) Authority to accept product delivery;

(D) Financial responsibility; and

(E) Reporting and recordkeeping;

(ii) Certification and use of service providers;

(iii) Compliance inspections and enforcement;

(iv) Overview of UST systems and components;

(v) Product and equipment compatibility;

(vi) Installation and repair requirements;

(vii) Spill and overfill prevention;

(viii) Release detection;

(ix) Corrosion protection and internal lining;

(x) Secondary and under-dispenser containment;

(xi) Operation and maintenance requirements;

(xii) Release reporting and confirmation requirements;

(xiii) Overview of site assessment requirements;

(xiv) Overview of cleanup requirements for releases, including the applicability of chapter 173-340 WAC;

(xv) Temporary closure, permanent closure, and change-in-service requirements;

(xvi) Operator training requirements, including training of Class C operators; and

(xvii) Any other subject areas specified by the department; and

(c) Includes an evaluation of operator knowledge, such as testing or practical examination, that reasonably determines whether the operator has the necessary knowledge and skills to meet the responsibilities of the class.

(2) **Class C operators.** Each Class C operator must successfully complete a classroom, computer, or field-based training program that:

(a) Is developed and administered by the department, a designated Class A or Class B operator at the UST facility, and/or an independent third party approved by the department;

(b) Provides facility-specific training and written instructions on how to respond to emergencies and alarms, including:

(i) Locating emergency response equipment;

(ii) Operating any emergency shut-off systems;

(iii) Identifying and responding to any alarms; and

(iv) Responding to and reporting any spills or releases; and

(c) Includes an evaluation of operator knowledge, such as testing or practical examination, that reasonably determines whether the operator has the necessary knowledge and skills to meet the responsibilities of the class.

(3) **Reciprocity for out-of-state training.** Class A and Class B operators previously designated in another state or at a tribal UST facility shall be deemed to meet the training requirements in subsection (1) of this section if:

(a) They successfully completed a training program or examination meeting the requirements of that state or 40 CFR Part 280, as applicable; and

(b) They possess the training records required under WAC 173-360-760(2) and the records identify the state where they were designated and trained.

(4) **Acceptance of prior in-state training.**

(a) Class A and Class B operators who successfully completed an applicable training program or examination approved by the department before (the effective date of this rule) and possess the training records required in WAC 173-360-760(2) shall be deemed to meet the training requirements in subsection (1) of this section.

(b) Class C operators who successfully completed a training program approved by the department or administered by a Class A or Class B operator before (the effective date of this rule) and possess the training records required in WAC 173-360-760(2) shall be deemed to meet the training requirements in subsection (2) of this section. However, Class C operators must still be retrained in accordance with WAC 173-360-740(2).

#### NEW SECTION

**WAC 173-360-740 Retraining requirements for operators.** UST system owners and operators shall ensure that Class A, Class B, and Class C operators are retrained, as applicable, in accordance with the requirements of this section.

(1) **Class A and Class B operators.**

(a) **Applicability.** If the department determines the owners and operators of an UST system are not in compliance with the requirements of this chapter, the department may require the Class A and Class B operators of that system to be retrained in accordance with (b) of this subsection. However, this provision does not apply to Class A and Class B operators who are retrained annually using a training program or examination meeting the requirements in WAC 173-360-730(1).

(b) **Requirements.** Within sixty days of receipt of the department's determination of noncompliance, Class A and Class B operators requiring retraining must successfully complete a training program or comparable examination meeting the requirements in WAC 173-360-730(1) and submit a copy of the certificate of completion to the department. At a minimum, the retraining must cover the areas determined to be out of compliance.

(2) **Class C operators.**

(a) **Frequency.** Class C operators must be retrained at least annually and whenever the emergency response proce-

dures at an UST facility are changed. Class C operators must also be retrained before assuming the duties of a Class C operator at a different UST facility.

(b) **Requirements.** Class C operators requiring retraining must successfully complete a training program meeting the requirements in WAC 173-360-730(2).

#### NEW SECTION

**WAC 173-360-745 Operation and maintenance plans.** UST system owners and operators shall ensure that operation and maintenance plans are developed and maintained, as applicable, in accordance with the requirements of this section.

(1) **Applicability.** If the department determines the owners and operators of an UST system are not in compliance with the requirements of this chapter, the department may require the owners and operators to develop an operation and maintenance plan for each UST system at the UST facility where the noncompliant system is located. The department may require the development of such a plan in place of or in addition to any retraining of Class A or Class B operators required under WAC 173-360-740.

(2) **Development.** Operation and maintenance plans for UST systems must be developed and a copy submitted to the department within sixty days of receipt of the department's determination of noncompliance.

(3) **Updates.** The operation and maintenance plan for an UST system must be updated within sixty days of any modification of the system that changes how the system must be operated and maintained under this chapter.

(4) **Content.** At a minimum, the operation and maintenance plan for an UST system must include the actions required under this chapter to operate and maintain the system, including:

- (a) Release detection;
- (b) Spill and overflow prevention;
- (c) Corrosion protection, if applicable; and
- (d) Internal lining, if applicable.

(5) **Recordkeeping.** Operation and maintenance plans for UST systems must be maintained and made available to the department in accordance with WAC 173-360-210(3). Plans must be maintained until UST systems are permanently closed or undergo a change-in-service.

#### NEW SECTION

**WAC 173-360-750 Emergency response requirements.** (1) **Presence of operators.** While an UST facility is manned, UST system owners and operators shall ensure at least one of the individuals manning the facility is a properly trained Class A, Class B, or Class C operator.

(2) **Signage.** At each UST facility, UST system owners and operators shall post and maintain signage providing emergency response information. The signage must:

- (a) Be posted in prominent areas of the facility that are easily visible to individuals who dispense or deliver regulated substances;
- (b) Identify the location of fire extinguishers and any emergency shut-off devices at the facility; and

(c) Provide instructions on what to do in case of an emergency at the facility. At a minimum, the instructions must include the following or equivalent wording:

(Name and address of facility)

IN CASE OF FIRE, SPILL OR RELEASE

(Insert if applicable: Use emergency shut off)

Call the fire department: (911 or local fire department telephone number)

Call the facility operator: (24-hour telephone number)

#### NEW SECTION

**WAC 173-360-760 Documentation and recordkeeping.** UST system owners and operators shall maintain records documenting all currently designated Class A, Class B, and Class C operators at an UST facility and the training received by those operators. The records must be maintained and made available in accordance with WAC 173-360-210(3).

(1) **Designated operators.** Records documenting Class A, Class B, and Class C operators at an UST facility must include the following information:

(a) The facility's name, address, and compliance tag number; and

(b) For each individual designated at the facility:

(i) The name of the individual;

(ii) The UST systems and operator classes to which the individual has been designated;

(iii) The date the individual assumed the duties of each operator class; and

(iv) The date the individual completed initial training and any required retraining for each operator class.

(2) **Training of designated operators.** Records documenting the initial training and any required retraining of Class A, Class B, and Class C operators must include a certificate of completion. Certificates must include the following information:

(a) The name of the trainee;

(b) The date the trainee completed the training;

(c) The operator class or classes covered by the training;

(d) The name of the company providing the training;

(e) For classroom and field-based training, the printed name and signature of the trainer or examiner; and

(f) For Class C operator training, the printed name and signature of a Class A or Class B operator.

### PART VIII

#### SECONDARY AND UNDER-DISPENSER CONTAINMENT REQUIREMENTS

#### NEW SECTION

**WAC 173-360-800 Purpose and applicability.** (1) This part establishes requirements for secondary containment of tanks and piping and for under-dispenser containment.

(2) The applicability of the requirements in this part does not affect the applicability of any other requirements in this chapter.

(3) In the event of any conflict between the provisions in this part and the other provisions in this chapter, the provisions in this part shall govern.

(4) UST system owners and operators shall ensure compliance with the applicable requirements in this part.

#### NEW SECTION

#### **WAC 173-360-810 Secondary containment of tanks.**

(1) **Applicability.** Tanks installed or replaced after July 1, 2007, must be secondarily contained and monitored for releases in accordance with the requirements in this section.

(2) **Secondary containment.** In addition to meeting the requirements in WAC 173-360-305(1), tanks must meet the secondary containment requirements in this subsection.

(a) **Performance standards.** Tanks must be double-walled. Double-walled tanks must be designed, constructed, and installed to:

(i) Contain any regulated substances leaking from the primary space (through the inner wall) within the interstitial space until they are detected and removed;

(ii) Prevent the release of regulated substances into the environment throughout the operational life of the UST system; and

(iii) Allow for interstitial monitoring.

(b) **Codes of practice.** Double-walled tanks must be designed and constructed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The following codes of practice may be used to meet this requirement:

(i) Underwriters Laboratories, Standard 58, "Standard for Safety for Steel Underground Tanks for Flammable and Combustible Liquids";

(ii) Underwriters Laboratories, Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures";

(iii) Underwriters Laboratories, Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";

(iv) Steel Tank Institute, Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or

(v) Steel Tank Institute, Specification F922, "Specification for Permatank®."

(3) **Release detection.** Double-walled tanks must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i). Methods that continuously monitor the interstitial space using a vacuum, pressure, or a liquid must be able to detect a breach in both the inner and outer walls.

#### NEW SECTION

#### **WAC 173-360-820 Secondary containment of piping.**

(1) **Applicability.** Piping installed or replaced after July 1, 2007, routinely containing regulated substances and in contact with the ground must be secondarily contained and monitored for releases in accordance with the requirements in this section. However, the requirements in this section do not apply to:

(a) Suction piping meeting the standards in WAC 173-360-350 (2)(b)(i) through (v); or

(b) Piping replacing less than fifty percent of a single-walled piping run.

(2) **Replacement of piping.** Unless otherwise approved or directed by the department, if fifty percent or more of a single-walled piping run is replaced after (the effective date of this rule), then the entire piping run must be replaced.

(3) **Secondary containment.** In addition to meeting the requirements in WAC 173-360-305(2), piping must meet the secondary containment requirements in this subsection.

(a) **Performance standards.** Piping must be double-walled. Containment sumps may also be used as part of the secondary containment and interstitial monitoring system for piping.

(i) **Piping.** Double-walled piping must be designed, constructed, and installed to:

(A) Contain any regulated substances leaking from the primary space (through the inner wall) within the piping's interstitial space or a containment sump until they are detected and removed;

(B) Prevent the release of regulated substances into the environment throughout the operational life of the UST system; and

(C) Allow for interstitial monitoring within either the piping's interstitial space or a containment sump.

(ii) **Containment sumps.** Containment sumps used as part of the secondary containment and interstitial monitoring system for piping must be designed, constructed, and installed to:

(A) Be liquid-tight on its sides, bottom, and at any penetrations;

(B) Allow for visual inspection and access to the components in the sump; and

(C) Allow for interstitial monitoring of the piping. The piping's interstitial space must be exposed within the sump. Sensors must be placed within the sump where they are able to detect any leak of regulated substances.

(b) **Codes of practice.** Double-walled piping must be designed and constructed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The following codes of practice may be used to meet this requirement:

(i) Underwriters Laboratories, Standard 971, "Standard for Non-metallic Underground Piping for Flammable Liquids"; or

(ii) Underwriters Laboratories, Standard 971A, "Outline of Investigation for Metallic Underground Fuel Pipe."

(4) **Release detection.** Double-walled piping must be monitored for releases using the methods specified in this subsection.

(a) Pressurized piping must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i) and be equipped with an automatic line leak detector in accordance with WAC 173-360-350 (3)(a).

(b) Suction piping must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i).

(c) Methods that continuously monitor the interstitial space using a vacuum, pressure, or a liquid must be able to detect a breach in both the inner and outer walls.

## NEW SECTION

**WAC 173-360-830 Under-dispenser containment.** (1) **Applicability.** UST systems must be equipped with under-dispenser containment meeting the requirements of this section under:

(a) Any dispenser system installed or replaced after July 1, 2007;

(b) Any dispenser replaced after (the effective date of this rule); or

(c) Any dispenser system connected to underground piping installed or replaced after (the effective date of this rule).

(2) **Performance standards.** Under-dispenser containment must be designed, constructed, and installed to:

(a) Be liquid-tight on its sides, bottom, and at any penetrations; and

(b) Allow for visual inspection and access to the components in the containment system.

(3) **Installation and reporting.** Installation of under-dispenser containment must be:

(a) Performed by an UST supervisor certified to install UST systems under Part 6 of this chapter;

(b) Performed in accordance with the manufacturer's instructions; and

(c) Certified and reported in accordance with WAC 173-360-630 (2)(a).

## WSR 12-07-088

### PROPOSED RULES

### DEPARTMENT OF EARLY LEARNING

[Filed March 21, 2012, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-076 and 09-01-184.

Title of Rule and Other Identifying Information: Chapter 170-06 WAC, Background check; amending WAC 170-06-0010 Purpose and scope, 170-06-0020 Definitions, 170-06-0040 Background clearance requirements, 170-06-0050 Department action following completion of background inquiry, 170-06-0060 Additional information the department may consider, 170-06-0070 Disqualification and reconsideration, 170-06-0080 Notification of disqualification, 170-06-0090 Administrative hearing to contest disqualification, 170-06-0100 Request for administrative hearing, 170-06-0110 Limitations on challenges to disqualifications and 170-06-0120 Director's list; new WAC 170-06-0041 Licensee requirements, 170-06-0042 Departmental investigation and redetermination, 170-06-0043 Failure to report conviction and nonconviction information, 170-06-0044 Background check fees, 170-06-0045 Noncriminal background checks for individuals under sixteen years of age and 170-06-0115 Reconsideration of disqualification; and repealing WAC 170-06-0030 Reason for background checks.

Hearing Location(s): Department of Early Learning (DEL), Yakima Office, Ahtanum Room, 111 South 2nd Avenue, Yakima, WA 98902, on Tuesday, April 24, at 5 p.m.; and at the Department of Early Learning Tumwater Office,

Point Plaza East, Nisqually Room, 6860 Capitol Boulevard S.E., Tumwater, WA 98501, on Thursday, April 26, at 5 P.M.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing:

**The deadline for sending written comments on the proposed rules is midnight on Thursday, April 26, 2012.** See the "Submit Written Comments to" section of this notice about how to submit written input on this proposal.

DEL encourages the public to use the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department's combined written response, called a *concise explanatory statement*. This statement is also available to anyone who requests it, by writing to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, or by e-mailing Rules@del.wa.gov.

Date of Intended Adoption: Not earlier than April 30, 2012.

Submit Written Comments to: Department of Early Learning, Rules Coordinator, P.O. BOX 40970, Olympia, WA 98506-0970, on-line at <https://apps.del.wa.gov/Policy-ProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 413-3482, by April 26, 2012.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by April 16, 2012, (360) 725-4421.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DEL is proposing new, amended and repealed rules establishing procedures for background checks conducted by DEL. DEL conducts background checks to find and evaluate any history of arrests, convictions, negative actions, or other information that raises concern about an individual's character, suitability, or competence to care for or have unsupervised access to children in care. The proposed rules are intended to update the rules for several purposes, including to:

- Implement applicable provisions of SSHB [2SHB] 1903 that requires DEL to establish and maintain individual-based or portable background check registry.
- Add requirements for disclosure of conviction and non-conviction information and add a requirement for a non-criminal background check for individuals fourteen to sixteen years of age. The proposed rules also clarify disqualification requirements and reconsideration processes.
- Improve clarity of DEL background check requirements.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, and 43.43.832; chapters 43.215 and 43.43 RCW.

Statute Being Implemented: 2SHB 1903, 2011.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administrator, State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4692; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on child care businesses that would be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

March 21, 2012  
Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0010 Purpose and scope.** (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL or department). ~~((The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are certified by DEL. Background checks are conducted to find and evaluate any history of criminal convictions, pending charges, negative actions, or other information that raises concerns about an individual's character, suitability and competence to care for or have unsupervised access to children in child care.~~

~~(2) This chapter applies to all individuals who are applying for a new or renewal license or certification, applying for authorization to care for or have unsupervised access to children in child care and to persons who are licensed, certified by DEL or authorized to care for or have unsupervised access to children in child care.~~

~~(3) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.~~

~~(4) These rules implement chapters 43.215 and 43.43 RCW, including DEL responsibilities in RCW 43.215.200, 43.215.205, 43.215.215, 43.43.830, and 43.43.832.~~

~~(5) Effective date: These rules are initially effective July 3, 2006, and apply prospectively.)~~ (2) The department conducts background checks on subject individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are licensed or certified by the department.

(3) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

(4) The department's rules and state law require the evaluation of background information to determine the character, suitability, or competence of persons who will care for or have unsupervised access to children in child care.

(5) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(6) These rules implement chapters 43.215 and 43.43 RCW, including DEL responsibilities in RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, and 43.43.832.

(7) Effective date: These rules are initially effective July 3, 2006, and apply prospectively. Effective July 1, 2012, these rules are amended to allow for increased and continued portability of background check clearances for subject individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are licensed or certified by the department.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0020 Definitions.** The following definitions apply to this chapter:

~~((1))~~ **"Agency"** has the same meaning as "agency" in RCW ~~((43.215.020))~~ 43.215.010(2).

~~((2))~~ **"Appellant"** means only those with the right of appeal under this chapter.

~~((3))~~ **"Applicant"** means an individual who is seeking a DEL background check authorization as part of an application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children in child care.

~~((4))~~ **"Authorized"** or **"authorization"** means approval by DEL to care for or have unsupervised access to children in child care or to work in or reside on the premises of a child care agency or certified facility.

~~((5))~~ **"Certification"** or **"certified by DEL"** means an agency that is legally exempt from licensing that has been certified by DEL as meeting minimum licensing requirements.

~~((6))~~ **"Conviction information"** means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

**"DEL"** or **"department"** means the department of early learning.

~~((7))~~ **"Director's list"** means a list of crimes, the commission of which disqualifies ~~((a))~~ a subject individual from being authorized by DEL to care for or have unsupervised access to children in child care, WAC 170-06-0120.

~~((8))~~ **"Disqualified"** means DEL has determined that a person's background information prevents that person from being licensed or certified by DEL or from being authorized by DEL to care for or have unsupervised access to children in child care.

~~((9))~~ **"Negative action"** means a court order, court judgment or an adverse action taken by an agency, in any

state, federal, tribal or foreign jurisdiction, which results in a finding against the ~~((applicant))~~ subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children in child care. This may include but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

~~((10))~~ **"Nonconviction information"** means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual.

**"Nonexpiring license"** or **"nonexpiring full license"** means a full license that is issued to a licensee following the initial licensing period, as provided in WAC 170-151-087, 170-295-0095, or 170-296A-1450, as appropriate.

**"Subject individual":**

(1) Means an individual who:

(a) Is seeking a background check authorization or upon whom the department may conduct a background check authorization;

(b) Is sixteen years of age or older;

(c) Is employed by, contracted with, or volunteering for a licensed child care agency or certified facility; and

(d) Will care for or have unsupervised access to children in child care; and

(2) Includes, but is not limited to, the following:

(a) Personnel, including employees and staff;

(b) Contractors, including contracted providers;

(c) Temporary workers;

(d) Assistants;

(e) Volunteers;

(f) Interns;

(g) Each person residing on, or moving into, the premises of a licensed family home child care who is sixteen years of age or older;

(h) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children in child care;

(i) All owners, operators, lessees, or directors of the agency or facility, or their designees;

(j) Applicants. As used in this definition, "applicant" means an individual who is seeking a DEL background check authorization as part of:

(A) An application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children in child care; or

(B) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DEL's authorization to care for or have unsupervised access to children in child care, with respect to an individual who is a currently licensed or certified child care provider; and

(k) Licensees. As used in this definition, "licensee" means the individual, person, organization, or legal entity named on the child care license issued by DEL and responsible for operating the child care facility or agency.

**"Unsupervised access"** means:

(a) ~~((A))~~ A subject individual will or may have the opportunity to be alone with a child in child care at any time for any length of time; and

(b) Access that is not within constant visual or auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child in child care.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0040 Background clearance requirements.** ~~((1) At the time of application for a license or certification or for authorization to care for or have unsupervised access to children in child care, the applicant shall submit to the department a completed background check form and fingerprint card, if required. A fingerprint card is required for a Federal Bureau of Investigation check if the applicant has resided in the state of Washington for less than three years. This requirement applies to:~~

~~(a) Each individual applicant for a license or certification;~~

~~(b) All staff of the licensed child care agency or certified facility, whether they provide child care or not, including but not limited to:~~

~~(i) Primary staff persons;~~

~~(ii) Assistants;~~

~~(iii) Volunteers;~~

~~(iv) Interns;~~

~~(v) Contracted providers;~~

~~(vi) Each person residing on the premises of a licensed facility who is sixteen years of age or older; and~~

~~(vii) All individuals who are sixteen years of age or older who will care for or have unsupervised access to children in child care.~~

~~(2) Each person identified in this section must complete a DEL background check form, disclosing:~~

~~(a) Whether he or she has been convicted of any crime;~~

~~(b) All pending criminal charges; and~~

~~(c) Negative actions, to which he or she has been subject, as defined by WAC 170-06-0020(9).~~

~~(3) An agency, licensee, or certified facility shall require an applicant to submit to the licensee or facility a completed background check form:~~

~~(a) By the date of hire of new staff, assistants, volunteers, interns or contracted providers;~~

~~(b) By the date a person age sixteen or older moves onto the premises; or~~

~~(c) By the date a person who resides on the premises turns sixteen years old.~~

~~(4) The licensee or certified facility must submit the background check form to the department within seven days of the staff, assistant, volunteer, intern or contracted provider's first day of employment, date the person moves on the premises or turns sixteen years old, as applicable.~~

~~(5) An individual shall not have unsupervised access to children in child care unless he or she has obtained a DEL authorization under this chapter.~~

~~(6) Agencies, licensees and facilities shall not permit any individual to care for or have unsupervised access to children in child care, unless the individual has been authorized by DEL to care for or have unsupervised access to children in child care.~~

~~(7) An individual who has been disqualified by DEL shall not be present on the premises of a licensed or certified facility.)~~ (1) Effective July 1, 2012, all new subject individuals applying for a first-time background check must complete the background check application process through DEL to include:

(a) Completion of the required fingerprint process; and

(b) Payment of all required fees as provided in WAC 170-06-0044.

(2) All other subject individuals who have been qualified by the department to have unsupervised access to children in care, prior to July 1, 2012, must submit a new background check application no later than July 1, 2013. The subject person must:

(a) Submit the new background check application through DEL;

(b) Submit payment of all required fees as provided in WAC 170-06-0044;

(c) Complete the required fingerprint process if the subject individual has lived in Washington state for fewer than three consecutive years prior to July 1, 2013;

(d) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed.

(3) Each subject individual completing the DEL background check process must disclose:

(a) Whether he or she has been convicted of any crime;

(b) Whether he or she has any pending criminal charges; and

(c) Whether there is any negative actions, to which he or she has been subject, as defined by WAC 170-06-0020.

(4) A subject individual must not have unsupervised access to children in care unless he or she has obtained DEL authorization under this chapter.

(5) A subject individual who has been disqualified by DEL must not be present on the premises of a licensed or certified facility.

#### NEW SECTION

**WAC 170-06-0041 Licensee requirements.** (1) An agency, licensee, or certified facility must require a subject individual to complete the DEL background check application process:

(a) Within seven days of the date of hire;

(b) By the date a subject individual age sixteen or older moves onto the premises; or

(c) By the date a subject individual who lives on the premises turns sixteen years old.

(2) The licensee must keep on-site a copy of each subject individual's background check clearance authorization.

(3) The licensee must update the provider portal in the DEL system to verify the subject individuals associated with their program.

(4) The licensee must verify annually that each subject individual who is required to have a background check has either obtained a department clearance or has applied for a department background check through the DEL system. The verification must be submitted with the licensee's annual license fee and declarations.

#### NEW SECTION

**WAC 170-06-0042 Departmental investigation and redetermination.** (1) The department will investigate and conduct a redetermination of the background clearance of a subject individual if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency.

(2) Subject to the requirements in RCW 43.215.215, the department may immediately suspend or modify the subject individual's background clearance.

(3) Subject to the requirements in RCW 43.215.300 and 43.215.305, and based on a determination that a subject individual lacks the appropriate character, suitability, or competence to provide child care or early learning services to children, the department may disqualify the subject individual from having any unsupervised access to children in child care agencies or in facilities that are licensed or certified by the department.

#### NEW SECTION

**WAC 170-06-0043 Failure to report nonconviction and conviction information.** (1) A licensee must report to the department within twenty-four hours if he or she has knowledge of the following with respect to a subject individual working in that child care agency or who resigns or is terminated with or without cause:

(a) Any nonconviction and conviction information for a crime listed in WAC 170-06-0120;

(b) Any other nonconviction and conviction information for a crime that could be reasonably related to the subject individual's suitability to provide care for or have unsupervised access to children in care; or

(c) Any negative action as defined in WAC 170-06-0020.

(2) A subject individual who has been issued a background check clearance authorization pursuant to WAC 170-06-0040 must report nonconviction and conviction information to the department involving a disqualifying crime under WAC 170-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information.

(3) A subject individual who intentionally or knowingly fails to report to the department as provided in subsection (1) or (2) of this section may have his or her background check clearance suspended. This penalty will be in addition to any other penalty that may be imposed as a result of a violation of this chapter or chapter 170-151, 170-295, or 170-296A WAC.

#### NEW SECTION

**WAC 170-06-0044 Background check fees.** (1) Subject individuals must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the WSP, FBI, and the DEL fingerprint contractor;

(b) The DEL administrative fee of:

(i) The cost of administration of the portable background check clearance based upon electronic submission has been determined to be twelve dollars for any background check application received in the period after June 30, 2012, therefore the fee for an electronic submission is twelve dollars for the described period;

(ii) The cost of administration of the portable background check clearance based upon a manual paper submission has been determined to be twenty-four dollars for any background check received after June 30, 2012, therefore the fee for a manual paper-based submission is twenty-four dollars for the described period.

(2) Fee payments may be:

(a) In the form of a personal check, cashier's check, or money order, which shall be sent by mail; or

(b) By electronic funds transfer (when available). As used in this section, "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) The department will not issue a background check clearance authorization to a subject individual:

(a) Who fails to pay the required fees in subsection (1) of this section; or

(b) Whose check, money order, or electronic funds transfer is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

An additional processing fee of twenty-five dollars will be charged by the department for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.

#### NEW SECTION

**WAC 170-06-0045 Noncriminal background checks for individuals under sixteen years of age.** (1) When applicable within Title 170 WAC, an agency, licensee, or certified facility must have subject individuals complete the required DEL noncriminal background check application process for subject individuals:

(a) Fourteen to sixteen years of age, within seven days after the subject individual starts to work in the licensed or certified child care.

(b) Thirteen to sixteen years of age residing in a licensed or certified family home child care.

(c) Thirteen to sixteen years of age, within seven days after moving into the licensed family home child care.

(2) A subject individual identified in subsection (1)(a), (b) or (c) of this section must not have unsupervised access to children in child care.



(3) The licensee must verify annually that each subject individual who is required to have a noncriminal background check has either obtained a department clearance or has applied for a department noncriminal background check. The verification must be submitted with the licensee's annual license fee and declarations.

(4) When conducting a noncriminal background check, the department:

(a) Requires the minor's parent or guardian to sign the noncriminal background check application;

(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC 170-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and

(c) Does not immediately disqualify an individual for a conviction under WAC 170-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult.

**AMENDATORY SECTION** (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0050 Department action following completion of background inquiry.** ~~((After))~~ As part of the background check process the department ~~((receives the background information it))~~ will conduct a character, suitability ~~((and))~~ or competence assessment as follows:

(1) Compare the background information with the DEL director's list, WAC 170-06-0120, to determine whether the ~~((applicant))~~ subject individual must be disqualified under WAC 170-06-0070 (1) and (2). In doing this comparison, the department will use the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and ~~((shall))~~ may include convictions or dispositions for crimes committed as either an adult or a juvenile. It ~~((shall))~~ may also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the defendant's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) The crime will not be considered a conviction for the purposes of the department when the conviction has been the subject of an expungement, pardon, annulment, certification

of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(2) Evaluate any negative action information to determine whether the ~~((applicant))~~ subject individual has any negative actions requiring disqualification under WAC 170-06-0070(3).

~~((3))~~ ~~((If the applicant is not disqualified under WAC 170-06-0070 (1), (2) or (3).))~~ Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 170-06-0070 (4), (5) or (7).

~~((4))~~ ~~((Notify the child care agency, licensee, or certified facility whether or not the department is able to authorize the applicant to care for or have unsupervised access to children in child care.~~

~~((5))~~ The department ~~((will))~~ may discuss the result of the criminal history and background check information with the licensee ~~((or management staff of a licensed or certified facility, when applicable))~~ upon request, except for protected contents of the FBI record of arrest and prosecution (RAP) sheet subject to federal regulation.

**AMENDATORY SECTION** (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0060 Additional information the department may consider.** (1) If DEL has reason to believe that additional information is needed to determine the character, suitability ~~((and))~~ or competence of the ~~((applicant))~~ subject individual to care for or have unsupervised access to children in child care, additional information will be requested. Upon request, the ~~((applicant))~~ subject individual must provide to the department any additional reports or information requested. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

(2) Any evaluation requested under this section must be conducted by an evaluator who is licensed or certified under RCW 18.130.040. The evaluation will be at the expense of the person being evaluated.

(3) The ~~((applicant))~~ subject individual must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to evaluation, to establish the need for and scope of the evaluation, and after the evaluation to discuss the results.

**AMENDATORY SECTION** (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0070 Disqualification ~~((and reconsideration)).~~ Background information that will disqualify ~~((an applicant))~~ a subject individual.**

(1) ~~((An applicant))~~ A subject individual who has a background containing any of the permanent convictions on the director's list, WAC 170-06-0120(1), ~~((shall))~~ will be perma-

nently disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care.

(2) ~~((An applicant))~~ A subject individual who has a background containing any of the nonpermanent convictions on the director's list, WAC 170-06-0120(2), ~~((shall))~~ will be disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care for five years after the conviction date.

(3) ~~((An applicant shall))~~ A subject individual will be disqualified when their background contains a negative action, as defined in WAC 170-06-0020~~((9))~~ that relates to:

(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC.

(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.

**Background information that may disqualify ~~((an applicant))~~ a subject individual.**

(4) ~~((An applicant))~~ A subject individual may be disqualified for other negative action(s), as defined in WAC 170-06-0020~~((9))~~ which reasonably relate to ~~((the applicant's))~~ his or her character, suitability ~~((and))~~ or competence to care for or have unsupervised access to children in child care.

(5) ~~((An applicant))~~ A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(6) ~~((An applicant))~~ A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.

(7) The department may also disqualify ~~((an applicant))~~ a subject individual if ~~((the applicant))~~ that person has other nonconviction background information that renders ~~((the applicant))~~ him or her unsuitable to care for or have unsupervised access to children in child care. Among the factors the department may consider are:

(a) The ~~((applicant))~~ subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.

(b) The ~~((applicant))~~ subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child in child care.

(c) The ~~((applicant))~~ subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, ~~((an applicant))~~ a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.

(d) The ~~((applicant))~~ subject individual lacks sufficient physical or mental health to meet the needs of children in child care.

(e) The ~~((applicant))~~ subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.

~~((Reconsideration of disqualification.~~

~~(8) If an applicant who has been disqualified can demonstrate by clear and convincing evidence that he or she has the character, suitability and competence to care for or have unsupervised access to children in child care, the department may consider authorizing the applicant to care for or have unsupervised access to children in child care.))~~

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0080 Notification of disqualification.**

(1) The department will notify the ~~((applicant))~~ subject individual in writing if ~~((the applicant))~~ he or she is disqualified by the background check.

(2) If the department sends a notice of disqualification, the ~~((applicant))~~ subject individual will not be authorized to care for or have unsupervised access to children in child care; to include being on-site where children are in care.

(3) Any decision by the department ~~((disqualifying an applicant))~~ to disqualify a subject individual under this chapter is effective immediately upon receipt of notice ~~((by))~~ from the department to the ~~((applicant))~~ subject individual.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0090 Administrative hearing to contest disqualification.** (1) ~~((An applicant))~~ A subject individual may request an administrative hearing to contest the department's disqualification decision under WAC 170-06-0070.

(2) The ~~((employer))~~ licensee or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.

(3) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings, pursuant to chapter 34.05 RCW, and chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0100 Request for administrative hearing.** (1) Any ~~((person who))~~ subject individual has a right to contest the department's disqualification decision under ~~((this chapter))~~ WAC 170-06-0070 and must request a hearing within twenty-eight days of receipt of the disqualification decision, regardless of whether the subject individual requests that the licensing supervisor review the disqualification.

(2) A request for a hearing must meet the requirements of chapter 170-03 WAC.

(3) Any decision by the department ~~((disqualifying))~~ to disqualify a ~~((person))~~ subject individual under this chapter ~~((shall))~~ will remain in effect pending the outcome of the administrative hearing or review under chapter 170-03 WAC, notwithstanding any provision of chapter 170-03 WAC to the contrary.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0110 Limitations on challenges to disqualifications.** (1) If the disqualification is based on a criminal conviction, the ~~((appellant))~~ subject individual cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the ~~((appellant))~~ subject individual cannot contest the finding if:

(a) The ~~((appellant))~~ subject individual was notified of the finding by the department of social and health services (DSHS) and failed to request a hearing to contest the finding; or

(b) The ~~((appellant))~~ subject individual was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the ~~((applicant's))~~ subject individual's child to be dependent as defined in chapter 13.34 RCW, the ~~((applicant))~~ subject individual cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based ~~((upon))~~ on a negative action as defined in WAC 170-06-0020~~((9))~~ the ~~((appellant))~~ subject individual cannot contest the underlying negative action in the administrative hearing if the ~~((appellant))~~ subject individual was previously ~~((afforded))~~ given the right of review or hearing right and a final decision or finding has been issued.

NEW SECTION

**WAC 170-06-0115 Reconsideration of disqualification.** (1) Subject to the requirements contained in chapter 170-06 WAC the department may reconsider an earlier decision to disqualify a subject individual.

(2) The disqualified subject individual must submit with his or her request for reconsideration a current and complete background check form and fingerprint card pursuant to WAC 170-06-0040.

(3) For a disqualification based on WAC 170-06-0070(4), 170-06-0070 (7)(a), (c), or (e), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children in child care. For purposes of (3) of this subsection a disqualification based on a "negative action," WAC 170-06-0070(4), 170-06-0070 (7)(c) or (e) does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:

(a) The commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC; or

(b) The commission of abuse or neglect of a vulnerable adult as defined in chapter 74.34 RCW.

(4) For a disqualification based on any of the circumstances described in WAC 170-06-0070(3), 170-06-0070 (7)(b) or (d) a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.

(5) The department will not reconsider qualifying a subject individual that was disqualified under WAC 170-06-0120(1).

(6) The department will not reconsider qualifying a subject individual that was disqualified under WAC 170-06-0120(2) for a period of five years from the date of the disqualifying conviction.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

**WAC 170-06-0120 Director's list.** (1) ~~((An applicant's))~~ A subject individual's conviction for any crimes listed in column (a) in the table below ~~((shall))~~ will permanently disqualify ~~((the applicant))~~ him or her from authorization to care for or have unsupervised access to children in child care.

(2) ~~((An applicant's))~~ A subject individual's conviction for any crime listed in column (b) in the table below ~~((shall))~~ will disqualify ~~((the applicant))~~ him or her from authorization to care for or have unsupervised access to children in child care for a period of five years from the date of conviction.

<b>(a) Crimes that permanently disqualify <del>((an applicant))</del> a subject individual</b>	<b>(b) Crimes that disqualify <del>((an applicant))</del> a subject individual for five years from date of conviction</b>
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
Carnal knowledge	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft

<b>(a) Crimes that permanently disqualify <del>((an applicant))</del> a subject individual</b>	<b>(b) Crimes that disqualify <del>((an applicant))</del> a subject individual for five years from date of conviction</b>
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	

<b>(a) Crimes that permanently disqualify <del>((an applicant))</del> a subject individual</b>	<b>(b) Crimes that disqualify <del>((an applicant))</del> a subject individual for five years from date of conviction</b>
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 170-06-0030 Reason for background checks.

**WSR 12-07-092  
PROPOSED RULES  
OFFICE OF  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2011-17—Filed March 21, 2012, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-071.

Title of Rule and Other Identifying Information: Property and casualty insurance rate capping rules, transition rating rules, rate stability formulas, and other rating methods.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on April 24, 2012, at 1:30 p.m.

Date of Intended Adoption: April 30, 2012.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by April 23, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by April 23, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will:

1. Specify situations in which these rating rules, formulas and other rating methods would or would not result in rates that are unfairly discriminatory;
2. Clarify the meaning of RCW 48.19.040 as it applies to these rating rules, formulas and other rating methods and the rate manuals which they involve; and
3. Establish processes and procedures that insurers must use when implementing rate capping rules, transition rating rules, rate stability formulas, and other rating methods.

Reasons Supporting Proposal: Using advanced information technology and predictive modeling methods, property and casualty insurers are implementing increasingly sophisticated systems for calculating insurance premiums. When new rating factors are inserted into premium formulas and then applied to an existing book of business, many policyholders may see significant premium changes. A similar situation occurs when a book of business is being moved from one insurer to another. To mitigate this effect, insurers often propose rating rules or formulas that reduce the magnitude of the premium changes for certain policyholders. These rating rules or formulas, however, may result in different premiums being charged to similarly situated policyholders, which may be contrary to RCW 48.18.480. The proposed rule specifies the situations in which these rating rules or formulas would or would not result in rates that are unfairly discriminatory. The propose[d] rule specifies [and] also clarifies how the requirements of RCW 48.19.040 apply to these situations. The proposed rule would provide the commissioner with objective standards by which to evaluate and approve or disapprove insurers' proposed rating rules or formulas, and consumers would be better protected from unfairly discriminatory rates.

Statutory Authority for Adoption: RCW 48.02.060, 48.15.040(4), and 48.15.090(2).

Statute Being Implemented: Chapter 31, Laws of 2011 (HB 1694).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Lee Barclay, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7115; Implementation and Enforcement: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule directly affects only issuers of personal lines of property and casualty insurance. None of the current domestic issuers of personal lines insurance meets the definition of a small busi-

ness under the law. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

March 21, 2012

Mike Kreidler

Insurance Commissioner

#### NEW SECTION

**WAC 284-24-130 Rate stability rules.** (1) This section prescribes standards that apply to insurers' rate stability rules, which are also sometimes called "transition rules" or "premium-capping rules." For the purposes of this section, a "rate stability rule" means a rating rule created by an insurer to limit premium changes experienced by policyholders due to the insurer's:

- (a) Revision of its own rating plan;
- (b) Acquisition or planned acquisition of a book of business from an unaffiliated insurer; or
- (c) Moving or receiving business from an affiliated insurer.

(2) Insurers must file rate stability rules with the commissioner under RCW 48.19.040(1) and 48.19.043(2). If an insurer has a rate stability rule, it must be included in its filed manual of rates and rules.

(3) Subsections (4) through (13) of this section apply only to personal lines of property and casualty insurance and only to rate stability rules filed on or after the effective date of this section.

(4) Rate stability rules that do not satisfy the requirements of this section are considered to be unfairly discriminatory and in violation of RCW 48.19.020.

(5) Insurers must not use rate stability rules as:

(a) A means of extending the applicability of a previously filed rate stability rule; or

(b) A substitute for multiple filings of base rate changes or other rate changes that have similar premium effects on all policyholders. For example, if an insurer desires a twenty-one percent rate increase across the board, it cannot file a rate stability rule that has the effect of implementing two ten percent changes one year apart.

(6) In each rate filing that proposes a rate stability rule the insurer must describe the circumstances, under subsection (1) of this section, that make a rate stability rule necessary.

(7) Each rate stability rule must specify the class or classes of risks to which it applies. Only policyholders affected by one of the situations described in subsection (1) of this section may be subject to a rate stability rule.

(8) Each rate stability rule must apply only to that portion of the premium change that results from one of the situations described in subsection (1) of this section. A rate stability rule must not apply to premium changes resulting from changes in coverage, exposure, classification, normal variation in rating due to changes in policyholder characteristics over time, or subsequent rate changes by the insurer.

(9) Each rate stability rule must state the date or number of renewals after which the rule will no longer be in effect. A rate stability rule may not continue to affect premiums for new or renewal policies having effective dates that are more than three years after the effective date of the rate stability rule.

(10) A rate stability rule must affect only policyholders who would otherwise experience a premium change of more than ten percent for an annual policy, or five percent for a six-month policy, due to one of the situations described in subsection (1) of this section. The rate stability rule must not limit the policyholder's premium change to less than ten percent for an annual policy, or five percent for a six-month policy, at each renewal.

(11) In each rate filing after the implementation of a rate stability rule, the insurer must take into consideration, in an actuarially sound manner, the effect of the rate stability rule on the indicated rate level.

(12) At least twenty days before a rate stability rule first affects a policyholder's premium, the insurer must disclose in writing to the policyholder:

- (a) The fact that a rate stability rule is being applied;
- (b) The reason for applying a rate stability rule;
- (c) How long the policyholder's premium will be affected by the rate stability rule;
- (d) What the premium for the upcoming policy term will be; and
- (e) What the premium for the upcoming policy term would be in the absence of the rate stability rule.

(13) When an insurer files a rate stability rule, it must include in its rate filing a sample copy of the disclosure notice it proposes to use to meet the requirements of subsection (12) of this section.

**WSR 12-07-093**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**  
 [Filed March 21, 2012, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-04-020.

Title of Rule and Other Identifying Information: New section in chapter 314-02 WAC, Requirements for retail liquor licensees.

Hearing Location(s): Washington State Liquor Control Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on April 25, 2012, at 10:00 a.m.

Date of Intended Adoption: May 2, 2012.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by April 25, 2012.

Assistance for Persons with Disabilities: Contact Karen McCall by April 25, 2012, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are needed to create a responsible vendor program as directed in Initiative 1183 that passed on November 8, 2011. These rules clarify the process to become a responsible vendor, program

standards and content, and sanctions for violations under a responsible vendor program.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.630.

Statute Being Implemented: RCW 66.24.630.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has a positive impact on businesses or individuals who wish to sell spirits in the state of Washington.

A cost-benefit analysis is not required under RCW 34.05.328.

March 21, 2012

Sharon Foster

Chairman

NEW SECTION

**WAC 314-02-108 Responsible vendor program. (1) What is the purpose of this chapter?** The purpose of this section is to establish standards and procedures for a responsible vendor program for spirits retail licensees.

**(2) What is the responsible vendor program?** This program is free, voluntary, and self-monitoring. Spirits retail licensees who hold a responsible vendor certificate and maintain all requirements are eligible for reduced sanctions on their first public safety violation within any period of twelve calendar months.

**(3) How do you become a responsible vendor?** Any spirits retail licensee who meets the program standards may participate. To apply for a responsible vendor certificate, the licensee must have no public safety violations within the last two years and must complete and submit a board-provided application form. Board staff will review the application for completeness, and will:

(a) Certify the completed application clearly indicates the licensee has all program standards in place and send a certificate to the licensee; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will notify the licensee of the reason(s) the application is being returned.

**(4) To qualify as a responsible vendor, a licensee must:**

(a) Post their responsible vendor program certificate for public viewing at the main entrance of the premises;

(b) Train each employee supervising or selling alcohol in responsible liquor sales. Licensees may require employees to obtain a mandatory alcohol server training permit from a board certified provider or train employees themselves using the training criteria specified in subsection (5) of this section; and

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(i) A list of acceptable forms of identification which are accepted at the premises;

(ii) Directions for checking identification for customers; and

(iii) The consequences for selling spirits to a minor or apparently intoxicated person.

(d) In an area visible to patrons, post signs to deter illegal purchases of alcohol. Examples of information include, it is illegal to purchase alcohol under twenty-one years of age or while apparently intoxicated. Other information may include acceptable forms of identification at the premises.

(e) Have an on-going training plan for employees, to include annual training at a minimum. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, training must cover the topics listed in subsection (5) of this section; and

(f) Retain employee training records and signed house policies for three years and must be able to present employee training records upon request.

**(5) What are the program standards, program content, and other requirements for the responsible vendor program?** All training must include, at a minimum, the following:

(a) Guidelines for recognizing minors and apparently intoxicated persons;

(b) Forms of identification for purchasing alcohol;

(c) How to check identification and how to recognize false or altered identification;

(d) A requirement to check identification in accordance with house policies;

(e) Recommended actions for refusing sales of alcohol to minors or apparently intoxicated persons;

(f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or apparently intoxicated persons;

(g) A review of house policies on alcohol sales. Each licensee must ensure that his/her employees receive training that covers the licensee's own house policies; and

(h) The standards and requirements for the mandatory alcohol server training stipulated in WAC 314-17-060 are deemed sufficient for employee's initial training for the responsible vendor training.

**(6) What are the sanctions when a licensee violates liquor laws or regulations?** For public safety violation, as outlined in WAC 314-29-020, involving the sales of spirits, the prescribed penalty is doubled. If a licensee has a certified responsible vendor program having all program standards in place, the board will impose the standard penalty detailed in WAC 314-29-020 for that violation. Any subsequent public

safety violation involving spirits within any period of twelve calendar months will be double the standard penalties. Regardless of the type of alcohol sold; beer, wine, or spirits, WAC 314-29-020 is applicable.

## WSR 12-07-094

### PROPOSED RULES

### TRANSPORTATION COMMISSION

[Filed March 21, 2012, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-03-103.

Title of Rule and Other Identifying Information: Tacoma Narrows Bridge toll rate setting.

Hearing Location(s): Gig Harbor Civic Center, 3510 Grandview Street, Gig Harbor, WA, on May 21, 2012, at 6:00 p.m.

Date of Intended Adoption: May 21, 2012.

Submit Written Comments to: Reema Griffith, P.O. Box 47308, Olympia, WA 9804-7308 [98504-7308], e-mail [tranc@wstc.wa.gov](mailto:tranc@wstc.wa.gov), fax (360) 705-6802 by May 14, 2012.

Assistance for Persons with Disabilities: Contact Reema Griffith by May 14, 2012, at (360) 705-6802.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is required to establish toll rates and fees for vehicles using the Tacoma Narrows Bridge (TNB) that are adequate to cover debt, operations, insurance and maintenance costs. The purpose of the proposed rules is to amend the transportation commission WAC 468-270-070 establishing new toll rates on the Tacoma Narrows Bridge.

Reasons Supporting Proposal: State statute requires rates be sufficient to meet maintenance and operational costs, insurance costs, and make principal and interest payments on the debt. In order to meet the requirements in state law, Tacoma Narrows Bridge toll rates need to be adjusted.

Statutory Authority for Adoption: Chapter 47.46 RCW and RCW 47.56.165.

Statute Being Implemented: RCW 47.46.100.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Reema Griffith, Olympia, Washington, (360) 705-7070; Implementation and Enforcement: Craig Stone, Seattle, Washington, (206) 464-1220.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not apply to "business in an industry," as described in RCW 19.85.030 (1)(a), but rather the rules apply to vehicles using the Tacoma Narrows Bridge.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to subsection (5) of RCW 34.05.328, RCW 34.05.328 does not apply to the transportation commission and it is not required to develop a cost-benefit analysis.

March 21, 2012  
 Reema Griffith  
 Executive Director

AMENDATORY SECTION (Amending WSR 11-04-070, filed 1/28/11, effective 12/3/11)

**WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge?** The toll charges for the Tacoma Narrows Bridge are shown in Table 1.

**Table 1  
 Tacoma Narrows Bridge Toll Rates**

<del>(Vehicle Axles</del>	<del>Good To Go!™ Pass</del>	<del>Cash</del>	<del>Pay By Mail</del>
2	\$2.75	\$4.00	\$5.50
3	\$4.15	\$6.00	\$8.25
4	\$5.50	\$8.00	\$11.00
5	\$6.90	\$10.00	\$13.75
6 or more	\$8.25	\$12.00	\$16.50))

<u>Vehicle Axles</u>	<u>Good to Go!™ Pass</u>	<u>Cash</u>	<u>Pay By Mail</u>	<u>Pay by Plate<sup>1</sup></u>	<u>Customer-Initiated Payment<sup>2</sup></u>
2	\$4.00	\$5.00	\$7.00	\$4.25	\$6.50
3	\$6.00	\$7.50	\$10.50	\$6.25	\$10.00
4	\$8.00	\$10.00	\$14.00	\$8.25	\$13.50
5	\$10.00	\$12.50	\$17.50	\$10.25	\$17.00
6	\$12.00	\$15.00	\$21.00	\$12.25	\$20.50

Notes: <sup>1</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>2</sup>For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.