

WSR 23-16-050  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 23-10—Filed July 26, 2023, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-081 on May 2, 2023.

Title of Rule and Other Identifying Information: Amending coastal and Puget Sound recreational and commercial fixed gear fishery and implementing electronic monitoring for the coastal commercial Dungeness crab fishery.

Hearing Location(s): On September 28-30, 2023, at 8:00 a.m., at the Yakima Convention Center, 10 North 8th Street, Yakima, WA 98901; in person and online. Visit our website at <https://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or email [commission@dfw.wa.gov](mailto:commission@dfw.wa.gov) for instructions on how to join the meeting.

Date of Intended Adoption: October 26-28, 2023.

Submit Written Comments to: Heather Hall, P.O. Box 43200, Olympia, WA 98501, email [crab-and-shellfish-rulemaking@PublicInput.com](mailto:crab-and-shellfish-rulemaking@PublicInput.com), website <https://publicinput.com/crab-and-shellfish-rulemaking>, phone comments 855-925-2801, project code 2872, by October 2, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), by September 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to regulations include both non-administrative and administrative amendments. The non-administrative changes are presented first followed by administrative changes. Each of the amended rules and their specific changes are listed below:

**Nonadministrative:**

**Installation and Use of Electronic Monitoring (WAC 220-340-420):** Proposed rule changes would require the installation and use of an electronic monitoring (EM) system on vessels participating in Washington's nontribal coastal commercial Dungeness crab fishery. The EM system is a tool that enables the collection of more accurate and timely fishing information, thereby improving the Washington department of fish and wildlife's (WDFW) ability to ensure fishing is not occurring within closed areas, confirm that participants are not fishing before the opening of the crab season, confirm adherence to license-based or seasonal pot limits, and gather additional information that may aid in identifying instances of gear tampering.

**Coastal Commercial Crab Logbook - Not Required with Operational EM (WAC 220-340-460):** Proposed rule changes would eliminate the requirement for an operator in the coastal Dungeness crab fishery to maintain a paper logbook when an EM system is installed and fully operational on the vessel. A paper logbook would only be required when an EM system has failed. The effect of this change is to reduce the reporting burden on vessel operators.

**Line Marking in Coastal Dungeness Crab Fishery (WAC 220-340-430):** Proposed rule changes would specify that line-marking must be sufficient to identify it as being exclusive to the coastal Dungeness crab fishery and that the two 12-inch red marks, an existing line-marking requirement for coastal Dungeness crab fishery participants, be con-

tinuous. These proposed changes standardize line markings in the coastal Dungeness crab fishery and clarify that the line itself is to be marked for the full extent of the 12-inch span. These changes advance the intended purpose of line-marking to increase gear visibility in marine mammal entanglements and thus fishery attribution.

**Prohibit Line Marks or Colors Required in Another Fishery** (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220): Proposed rule changes would prohibit the use of line marks or color combinations in Washington fixed gear fisheries that are required for other state or federal fisheries. The effect of the proposed rule changes is to disallow fishers that currently do not and are not required to mark the fishing line from the marking line in a manner that is consistent with another fishery and to further support fishery-specific attribution of line in marine mammal entanglements.

**Crab and Shrimp Buoys** (WAC 220-330-020): Proposed changes would allow buoys to be submerged by a director-issued permit in personal use (i.e., recreational) fisheries.

**Limit Line in Shellfish and Hagfish Fisheries to Amount Needed** (WAC 220-330-020, 220-340-430, 220-340-510, and 220-340-520): Proposed rule changes would allow no more than the amount of line required to compensate for tides, currents, and weather in commercial and recreational fisheries for Dungeness crab and shrimp, and commercial hagfish. The change is necessary to standardize and implement fishing best practices consistent with reducing gear entanglements with marine mammals.

**Standardize Crab and Shrimp Pot Buoy Colors** (WAC 220-330-020, 220-340-430, and 220-340-520): Proposed rule changes would standardize and clarify buoy colors for recreational and commercial crab and shrimp pot gear. These changes standardize that buoys in the Puget Sound and coastal commercial crab fisheries may not be both red and white unless at least 30 percent of the buoy is marked in additional color(s). The proposed rule changes clarify that for commercial shrimp fisheries in Puget Sound, buoy color, already required to be orange, must be *solid* orange and for Puget Sound recreational shrimp pots, already required to be yellow, must be *solid* yellow. These proposed changes are consistent with the intent to support attribution of marine mammal entangled gear to a specific fishery.

**Administrative Rule Changes:**

**Define a New Management Category for Nonspot Shrimp Species** (WAC 220-320-015): Proposed rule changes would define a new management "non-spot shrimp" or pandalid complex to include shrimp species other than spot shrimp. The purpose for the change is to eliminate the need to list each nonspot shrimp species individually, thereby improving the clarity and brevity of the rule.

**Require Annual Registration of Commercial Crab Buoy Color Schemes** (WAC 220-340-430): Proposed rule changes would align Puget Sound and coastal commercial Dungeness crab fishery requirements and specify that crab fishery participants must complete buoy registration annually using the WDFW online registration form. Existing rules require the creation and registration of a unique buoy color scheme for each commercial license but do not specify a frequency.

**Buoy Tags in Commercial Dungeness Crab Fisheries** (WAC 220-340-430): Proposed rule changes would cap the number of buoy tags issued in the Puget Sound commercial crab fishery, limit the number of potential pots deployed to the current maximum pot limit of 100 per license, with no pot replacement. The proposed rule changes also streamline the reporting of derelict gear and issuance of replacement

tags for commercial users, reduce waste, and reduce the possibility of issuing of a buoy tag for the wrong fishery.

**Puget Sound Commercial Pot Shrimp** (WAC 220-340-520): Proposed rule changes would clarify that the pot limit for commercial shrimp pot fisheries in Puget Sound are based on the fishery and gear type and are not per license limit. Additionally, the changes would limit fishing depth and align the rule with revised electronic fish ticket rules.

**Puget Sound Commercial Crab and Shrimp Fishery Boundary Designations** (WAC 220-320-120, 220-320-140, 220-340-455, and 220-340-530): Proposed rule changes would update Puget Sound commercial crab and shrimp fishery boundary designations. The purpose of the changes is to correct outdated boundary designations and add specially designated fishing areas.

**Shellfish Harvest Logs** (WAC 220-340-030): Proposed rule changes would correct and update logbook reporting requirements for Puget Sound and coastal commercial shellfish fisheries where logs are required by defining some rule elements separately either by fishery or region (i.e., Puget Sound or coast) and by deleting unnecessary requirements. The changes are needed to clarify rule language and align rule language with the implementation of mandatory electronic fish tickets and electronic monitoring.

**Fish Receiving, Transportation Ticket, and Quick Reporting Revisions** (WAC 220-352-060, 220-352-230, 220-352-340, and 220-340-420): Proposed rule changes would describe when and where electronic fish tickets must be submitted to the department, including provisions for when access to cellular broadband is not immediately available when the fish ticket is completed. The proposed changes would clarify applicability of transportation ticket requirements by including "shellfish" in the rule, improve transportation ticket information by requiring the WDFW-issued vessel identification number and date of harvest, and clarify transportation ticket requirements for crab removed from the vessel prior to landing in Puget Sound. Proposed rule changes clarify stored crab reporting and time frame, and sale reporting for stored crab.

Reasons Supporting Proposal: The adoption of these proposed rules will enhance fishery monitoring and clarify existing rules. Overall, these rule amendments will accomplish conservation objectives, advance achieving orderly fisheries, and improve the enforceability of current rules.

**Nonadministrative:**

**Installation and Use of Electronic Monitoring** (WAC 220-340-420); **Coastal Commercial Crab Logbook - Not Required with Operational EM** (WAC 220-340-460): The EM system is necessary to ensure fishing is not occurring within closed areas, to monitor adherence to license-based and seasonal pot limits, and to collect spatial and temporal fishing data to inform management of the fishery, including addressing marine mammal interactions, particularly endangered humpback whales.

WDFW comanages the nontribal coastal commercial Dungeness crab fishery with the tribal governments whose usual and accustomed (U&A) fishing grounds are located on the outer coast of Washington state. As a comanager of the fishery, WDFW must ensure accurate reporting of where and when state-licensed fishermen are fishing, and that nontribal fishery participants do not cross into areas that are reserved for tribal fishing only. WDFW must also implement actions to reduce the entanglement of whales in Dungeness crab fishing gear. The EM system will more accurately identify the locations in which fishing gear is

deployed thereby improving data inputs to models that estimate or predict the distribution and likelihood of cooccurrence. With this collected data, WDFW could consider management measures to reduce the amount of gear that could be deployed in areas of concern. Finally, implementation of EM systems will improve WDFW's ability to manage the fishery with respect to biotoxins (particularly domoic acid). With EM systems in place, WDFW would have the ability to manage biotoxin events using area closures to prohibit the fishery in discrete areas affected by biotoxins. Like other area management needs, the EM system ensures fishing around biotoxin restricted areas is enforceable and protects public health.

**Line Marking in Coastal Dungeness Crab Fishery** (WAC 220-340-430); **Prohibit Line Marks or Colors Required in Another Fishery** (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220); **Crab and Shrimp Buoys** (WAC 220-330-020); **Limit Line in Shellfish and Hagfish Fisheries to Amount Needed** (WAC 220-330-020, 220-340-430, 220-340-510, and 220-340-520); **Standardize Crab and Shrimp Pot Buoy Colors** (WAC 220-330-020 and 220-340-520): These regulatory changes enhance compliance with the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Large whales and marine turtles are among those species most affected by fishing gear entanglements, and these animals are federally protected. To address entanglement cases with marine mammals where the entangling gear is visible but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service has indicated that lines and buoys marked in a way that is unique to each fishery would aid in achieving compliance with the MMPA and ESA. Marking supports positive attribution of gear to the fishery. Attribution can be improved by prohibiting a fishery from using marks/line colors required in another fishery; other coastal states have implemented or intend to implement a similar rule. These proposed changes to the rules clarify the requirements for unique line marks or buoy colors for Washington fisheries that use line and buoys as part of the gear configuration. These proposed changes also support reducing the amount of fishing line in the water, thereby reducing entanglement risk.

**Administrative Rule Changes:**

To effectively manage commercial and recreational shellfish fisheries, WDFW utilizes a variety of management measures relating to fishing area, gear, and catch reporting. As part of the proposed rule package, to improve management and enforcement capabilities, WDFW is also proposing administrative rule changes for coastal and Puget Sound recreational and commercial shellfish fisheries.

**Define a New Management Category for Nonspot Shrimp Species** (WAC 220-320-015): This rule proposal simplifies regulatory language, supporting improved compliance and enforcement.

**Require Annual Registration of Commercial Crab Buoy Color Schemes** (WAC 220-340-430): The rule change to require annual registration would ensure commercial buoy color schemes remain unique to each license and records are up-to-date such that lost or entangled gear can be associated with the owner. This rule change improves current buoy color registration practices and incorporates the use of an electronic buoy registration form to ensure that licensed harvesters are compliant with conservation plan requirements. The rule change proposal would also create a data source for enforcement to identify gear with gear owners. The rule change would advance efforts to further improve gear marking and aid in achieving compliance with the MMPA and ESA.

**Buoy Tags in Commercial Dungeness Crab Fisheries** (WAC 220-340-430): The proposed rule changes streamline the reporting of derelict gear and issuance of replacement tags for commercial users, reduce waste and costs by limiting the number of replacement tags that can be obtained, and minimizes the possibility of issuing of a buoy tag for use in the wrong fishery.

**Puget Sound Commercial Pot Shrimp** (WAC 220-340-520): The proposed rule change implements depth restrictions to limit interaction with nontarget species in the nonspot shrimp fishery per Puget Sound manager shellfish agreements.

**Puget Sound Commercial Crab and Shrimp Fishery Boundary Designations** (WAC 220-320-120, 220-320-140, 220-340-455, and 220-340-530): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

**Shellfish Harvest Logs** (WAC 220-340-030): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

**Fish Receiving, Transportation Ticket, and Quick Reporting Revisions** (WAC 220-352-060, 220-352-230, 220-352-340, and 220-340-420): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA, 360-581-5611; Implementation: Coast - Matt George, 48 Devonshire Road, Montesano, WA 98563, 360-249-4648; or Puget Sound - Katelyn Bosley, 375 Hudson Street, Port Townsend, WA 98368, 360-302-3030; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328(5), a cost-benefit analysis is not required for this rule as WDFW is not implementing chapter 77.55 RCW with this rule.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement (SBEIS)

An evaluation by WDFW determined that the rule requirement of the EM system is the only element that would result in costs to businesses. The other elements of the rule package are not expected to result in costs to businesses. Therefore, this evaluation of whether the proposed rule is likely to result in more than minor costs is focused on the EM system requirement of the rule proposal. Based on a range of annual revenues in the coastal Dungeness crab fishery, the analysis estimates a minor cost threshold of between \$450 and \$1,500 for affected businesses. The likely cost of complying with the proposed rule ranges from \$1,830 to \$2,045. As the businesses in the coastal commercial Dungeness crab fishery are almost exclusively small businesses (fewer than 50 employees), this analysis finds that the proposed rule

would have a disproportionate cost impact on small businesses. WDFW has provided significant opportunities for stakeholder input during the development of the proposed rule making in over a period of four years. Based on stakeholder input, potential mitigation options to defray the costs to small businesses were identified. These include the cessation of the logbook requirements, allowing flexibility in the type of the EM unit purchased, coordinating EM unit purchases to take advantage of bulk pricing, and allowing fishermen to revert to use of paper logbooks in cases of EM system malfunction.

**Executive Summary:** WDFW is developing a proposed rule package that: (1) Would require the installation and use of an EM system on vessels participating in Washington's nontribal coastal commercial Dungeness crab fishery<sup>1</sup>; (2) clarifies existing line marking and buoy color requirements; (3) would prohibit fishing line color or marking in coastal and Puget Sound fixed gear fisheries in a manner that is specified in another fishery; and (4) proposes administrative clarifications to commercial and recreational shellfish fishery rules. This analysis considers whether the proposed rule would result in more-than-minor costs as defined by RCW 19.85.020; whether it would have a disproportionate cost impact on small businesses as identified by RCW 19.85.040; and options for reducing the costs to small businesses as directed by RCW 19.85.030.

**Background:** WDFW has identified a need for tools that can achieve accurate and timely accounting of effort (i.e., pots fished) by participants in the coastal commercial Dungeness crab fishery that include where, when, and how much fishing effort is occurring.<sup>2</sup> This need stems from WDFW's authority to manage this fishery within both state and federal waters off Washington's coast. WDFW's responsibility includes ensuring compliance with state regulations, obligations associated with comanagement of the fishery with tribal governments, and ensuring the fishery operates in compliance with MMPA and ESA. EM can improve WDFW's management of the fishery by enabling more accurate and timely information collection to ensure fishing is not occurring within closed areas or areas otherwise off-limits to nontribal fishermen. The technology also allows WDFW to confirm that participants are not fishing prior to the opening of the season, are adhering to license-based or seasonal pot limits, and to gather additional information that may aid in identifying instances of gear tampering.

Large whales and marine turtles are among those species most affected by fishing gear entanglements, and these animals are federally protected under the MMPA and/or ESA. To address entanglement cases with marine mammals where the entangling gear is visible but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service has indicated that lines marked in a way that is unique to each of the WDFW-managed crab fisheries would aid in achieving compliance with the MMPA and ESA. In 2020, the Washington fish and wildlife commission adopted a regulation that requires state coastal crab fishers to mark the lines associated with pots with 12 inches of red in at least two places; at the bottom within one fathom from the crab pot, and at the top within one fathom of the main buoy. Marking in this manner supports positive attribution of gear to the fishery. A long-term objective is to expand requirements for unique line marks or colors to other Washington fisheries that use line as part of the gear configuration. In the near-term, attribution can be improved by prohibiting a fishery from using marks/line colors required in another fishery; other coastal states have implemented or

intend to implement a similar rule. To effectively manage commercial and recreational shellfish fisheries, WDFW utilizes a variety of management measures relating to fishing area, gear, and catch reporting.

As part of the proposed rule package, to improve management and enforcement capabilities, WDFW proposes administrative rule changes for coastal and Puget Sound recreational and commercial shellfish fisheries.

**Summary of Proposed Rule:** WDFW is proposing a new rule for the Washington coastal commercial Dungeness crab fishery that would require installation and use of an EM system on all participating vessels. The proposed rule does not require use of a particular brand or model of system but identifies technical specifications that must be met by the system. These specifications include a data transmission "ping" rate of once every minute and use of a hydraulic pressure sensor set to record pressure readings once every 10 seconds. It further eliminates the requirement for maintaining and submitting paper logbooks, except in cases where someone is operating under a WDFW-approved exemption from the EM requirements due to system malfunction.

In addition, WDFW proposes modifications to existing rules across a suite of commercial and recreational shellfish fisheries in coastal waters and Puget Sound, and in the coastal commercial fishery for Pacific hagfish. These elements include a variety of other clarifications to simplify and enhance compliance with and enforcement of existing regulations and codify certain best practices that are already being implemented within fixed gear fisheries. These elements include the following:

- Clarifying that the existing requirement of two 12-inch red marks on coastal Dungeness crab lines must be *continuous*;
- Prohibiting the use of line marks or line color combinations in Washington fixed gear fisheries that are required for other state or federal fisheries<sup>3</sup>;
- Describing a management category of a "non-spot shrimp" complex to reduce the need to list each species in the complex individually;
- Specifying that the required creation and registration of a unique buoy color scheme for coastal and Puget Sound commercial Dungeness crab fishery participants must be completed annually;
- Clarifying that for commercial shrimp fisheries in Puget Sound, buoy color, already required to be orange, must be *solid* orange and for Puget Sound recreational shrimp pots, already required to be yellow, must be *solid* yellow;
- Standardizing recreational crab pot buoys color (red and white) for Puget Sound and the coast;
- Codifying the best practice across multiple fixed gear fisheries to use no more than the amount of line required to compensate for tides, currents, and weather; and
- Making several clarifying and simplifying changes for Puget Sound commercial crab and shrimp rules, including updates to outdated and/or incorrect boundary designations for commercial shellfish gear-specific management areas in Puget Sound, clarifying Puget Sound commercial logbook reporting requirements, updating commercial crab buoy tag replacement rules, and housekeeping clarifications stemming from electronic fish ticket implementation.

**Need for an SBEIS:** Chapter 19.85 RCW, Regulatory Fairness Act (RFA), requires that the relevant agency prepare an SBEIS if the pro-

posed rule "will impose more than minor costs on businesses in an industry."<sup>4</sup> "Minor cost" is defined in RCW 19.85.020 as a cost per business that is less than 0.3 percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.<sup>5</sup> This analysis relies on revenue data to define the minor cost threshold, as this information is more readily available than payroll data.

An evaluation by WDFW determined that the EM component of the proposed rule is the only element that would result in costs to businesses. The other elements of the rule package are not expected to result in costs to businesses. Therefore, this evaluation of whether the proposed rule is likely to result in more-than-minor costs is focused on the EM component of the rule package.

Data provided by WDFW indicates that the average annual exvessel revenues derived from coastal commercial crabbing for the past five years per license is \$277,060.<sup>6</sup> However, all fishery participants interviewed described that activity in other fisheries also contributes to their business revenues. Interviewees identified a range of annual revenues of between \$150,000 and \$500,000 for an average business participating in both Dungeness crabbing and other fisheries.<sup>7</sup> Based on this range of annual revenues, this analysis estimates a minor cost threshold of between \$450 and \$1,500 for affected businesses.<sup>8</sup> Given costs of compliance between \$1,830 to \$2,045 (see below), the proposed rule is expected to result in more-than-minor costs to businesses, necessitating the development of an SBEIS.

**Potentially Affected Businesses:** The businesses affected by the EM element of the proposed rule include those that own and operate vessels that participate in the coastal commercial Dungeness crab fishery. These businesses include those that own or lease/fish any of the 223 valid limited entry commercial crab licenses. This analysis finds that up to 223 individual businesses may incur costs due to the proposed rule, as typically businesses own or lease a single license, and that generally these businesses are small (99.6 percent are small by Washington state's definition).

**Cost of Compliance:** The costs associated with installation and operation of an EM system include both start-up costs and costs that are incurred on a recurring basis (e.g., annually). These costs include the purchase and installation of the unit (start-up costs), the cost of a 5G cellular data plan, and the cost of maintenance (although maintenance costs would be covered by warranty in Year 1). The likely cost of complying with the rule ranges from \$1,830 to \$2,045 (Table 1) in start-up costs to purchase and install the equipment and pay for the first year of the data plan. In subsequent years, costs would be on the order of \$450 to \$600 for maintaining the system and the data plan. Differences between the low- and high-end estimates are based on three factors: (1) Whether the industry can organize to complete a bulk purchase of units to take advantage of bulk discount pricing; (2) whether the vessel owner elects to install the unit him/herself or pay a third party to complete the installation; and (3) whether the vessel owner signs on for a data plan covering only the crabbing season, or for a complete year of data service.

**Table 1. Costs of Compliance:**



Cost Element Per Unit	Cost in Year 1	Basis for Cost Range	Frequency of Cost
EM Unit	\$935 - \$975	Pricing provided by representative EM system manufacturer and vendor. Range represents individual unit price and price with bulk purchase discount.	Every 5-10 years
Installation	\$0 - \$300	Estimated based on industry interviews and estimate from representative EM system manufacturer and vendor. Range based on cost for vessel owner installation vs. use of a marine electrician/vendor-provided service technician (2-2.5 hours).	Every 5-10 years
Data Plan	\$295 - \$470	Pricing provided by representative EM system manufacturer and vendor. Range represents cost for crab season only vs. full year.	Annual
Maintenance	\$0	Routine maintenance covered by warranty during first year. After Year 1, recommended annual system checks estimated by representative EM system manufacturer and vendor at \$150.	Annual (after first year)
<b>Total Cost in Year 1</b>	<b>\$1,830 - \$2,045</b>		<b>Year 1</b>

Sources:

1. Interviews with industry representatives.
2. Price information provided by Archipelago Marine Research Ltd. via email to IEc, May 2, 2023.

**Summary Findings:** Given the minor cost threshold of \$450 to \$1,500, the compliance costs of the proposed rule are likely to be more than minor for businesses in the industry. As the businesses in the coastal commercial Dungeness crab fishery are almost exclusively small businesses (fewer than 50 employees), this analysis finds that the proposed rule would have a disproportionate cost impact on small businesses. Given this finding, this analysis identifies potential mitigation options to defray the costs to small businesses. These include identifying technical specifications that allow for the cessation of the logbook requirements, allowing flexibility in the type of unit purchased, coordinating unit purchases to take advantage of bulk pricing, and allowing fishermen to revert to use of paper logbooks in cases of EM system malfunction.

**CHAPTER 1 - Introduction:** This report evaluates the potential costs to businesses of compliance with WDFW proposed rule that codifies a requirement for installation and use of an EM system on all vessels participating in the nontribal coastal commercial Dungeness crab fishery<sup>9</sup>, implements a variety of other clarifications to simplify and enhance compliance with and enforcement of existing regulations, and codifies certain best practices that are already being implemented within fixed gear fisheries. This SBEIS was developed in accordance with RFA to determine whether the proposed rule would result in more-than-minor costs as defined by RCW 19.85.020; whether it would have a disproportionate cost impact on small businesses as identified by RCW 19.85.040; and options for reducing the costs to small businesses as directed by RCW 19.85.030. The primary sources of information for this analysis include the following:

- Information gathered through outreach to businesses that would incur costs under the proposed rule, including those that have participated in a pilot program to test EM systems, and others with no prior experience using EM systems;
- Pricing information from the manufacturer and vendor of one system that would meet WDFW's technical specifications laid out in the proposed rule;<sup>10</sup> and

- Dungeness crab fishery license and exvessel revenue data provided by WDFW.

**1.1 Need for the Rule:** WDFW has identified a need for tools that can achieve accurate and timely accounting of effort by participants in the coastal Dungeness crab fishery that include where, when, and how much fishing effort is occurring.<sup>11</sup> This need stems from WDFW's authority to manage this fishery within both state and federal waters off Washington's coast. This responsibility includes ensuring compliance with WDFW's own regulations, obligations associated with comanagement of the fishery with tribal governments, and ensuring the fishery operates in compliance with MMPA and ESA.

Management of this fishery requires that WDFW be able to effectively and efficiently enforce regulations that dictate where and when fishing can occur, and the level of effort in terms of number of pots fished. EM can improve WDFW's ability to enforce its regulations by enabling collection of more accurate and timely information to ensure fishing is not occurring within closed areas, confirm that participants are not fishing prior to the opening of the season, confirm adherence to license-based or seasonal pot limits, and gather additional information that may aid in identifying instances of gear tampering.

WDFW comanages the fishery with the tribal governments whose U&A fishing grounds are located on the outer coast of Washington. As a co-manager of the fishery, WDFW must ensure accurate reporting of where and when state-licensed fishermen are fishing, and that nontribal fishery participants do not cross into areas that are reserved for tribal fishing only.

WDFW must also implement actions to reduce the entanglement of whales in Dungeness crab fishing gear. The EM system will more accurately identify the locations in which fishing gear is deployed thereby improving data inputs to models that estimate or predict the distribution and likelihood of cooccurrence. With such information, WDFW could consider management measures to reduce the amount of gear that could be deployed in areas of concern.

Finally, implementation of EM systems will improve WDFW's ability to manage the fishery with respect to biotoxins (particularly domoic acid). Specifically, a biotoxin event could result in a complete closure of the fishery but biotoxins don't always affect the entire coast. With EM, WDFW would have the ability to manage biotoxin events using area closures to prohibit the fishery in discrete areas affected by biotoxins. Like other area management needs, EM ensures fishing around biotoxin-restricted areas is enforceable and protects public health.

WDFW is also proposing regulatory changes to enhance compliance with ESA and MMPA. Large whales and marine turtles are among those species most affected by fishing gear entanglements, and these animals are federally protected under the MMPA and/or ESA. To address entanglement cases with marine mammals where the entangling gear is visible but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service has indicated that lines marked in a way that is unique to each of the WDFW-managed crab fisheries would aid in achieving compliance with the MMPA and ESA. In 2020, the Washington fish and wildlife commission adopted a regulation that requires state coastal crab fishers to mark the lines associated with each of their pots with 12 inches of red in at least two places; at the bottom within one fathom from the crab pot, and at the top within one fathom of the main buoy. Marking in this manner supports positive attribution

of gear to the fishery. A long-term objective is to expand requirements for unique line marks or colors to other Washington fisheries that use line as part of the gear configuration. In the near-term, attribution can be improved by prohibiting a fishery from using marks/line colors required in another fishery; other coastal states have implemented or intend to implement a similar rule.

To effectively manage commercial and recreational shellfish fisheries, WDFW utilizes a variety of management measures relating to fishing area, gear, and catch reporting. As part of the proposed rule package, to improve management and enforcement capabilities, WDFW is also proposing administrative rule changes for coastal and Puget Sound recreational and commercial shellfish fisheries.

**1.2 Summary of the Proposed Rule:** The proposed rule requires installation and use of an EM system on vessels participating in the Washington coastal commercial Dungeness crab fishery. The proposed rule does not specify a particular brand or model of system that would be required, but instead, identifies technical specifications that must be met by the system. These specifications include a data transmission "ping" rate of once every minute, and use of a hydraulic pressure sensor set to record pressure readings once every 10 seconds. The proposed rule does not include a requirement for video monitoring, nor does it require the use of an electronic logbook. Finally, the proposed rule eliminates the requirement for completion and submission of a paper logbook, except where a vessel is operating under an exemption of the EM system requirements.

In addition, WDFW proposes modifications to existing rules across a suite of commercial and recreational shellfish fisheries in coastal waters and Puget Sound, and in the coastal trial commercial fishery for Pacific hagfish. For commercial and recreational fixed gear fisheries in Puget Sound and noncrab fixed gear fisheries in the Pacific Ocean, this includes a requirement to use only the length of line necessary to compensate for tides, currents, and weather.

As previously described, coastal Dungeness crab lines must include two 12-inch red marks. The proposed rule clarifies that the red mark must be *continuous*.<sup>12</sup> The proposed rule would also prohibit the use of line marks or line color combinations in Washington fixed gear fisheries that are required for other state or federal fisheries.<sup>13</sup>

To simplify rule making, WDFW is proposing a new definition that describes a management category of shrimp species. Currently, there are six species of "non-spot shrimp" classified in Washington regulations and one spot shrimp that support significant recreational and commercial fisheries. The rule would define a "non-spot shrimp" complex and thereby reduce the need to list each species in the complex individually.

Establishing fishery-specific colors for buoys is a common management tool for pot gear fisheries. Participants in the commercial Dungeness crab fishery are already required to create and register a unique buoy color scheme. However, the current rule is silent on the frequency with which buoy color schemes are to be registered. The proposed rule adds clarity by specifying an annual registration. The rule also clarifies that for commercial shrimp fisheries in Puget Sound, buoy color, already required to be orange, must be *solid* orange. A similar change for Puget Sound recreational shrimp pots specifies buoys must be *solid* yellow. The proposed rule also standardizes recreational crab pot buoy color (red and white) for Puget Sound and the coast.

The proposed rule package also includes several simplifying and clarifying rule changes for Puget Sound commercial crab and shrimp rules. These changes include updates to outdated and/or incorrect boundary designations for commercial shellfish gear-specific management areas in Puget Sound, clarifying Puget Sound commercial logbook reporting requirements, and updating Puget Sound commercial crab buoy tag replacement rules.

**1.3 Proposed Rule Elements Resulting in Costs to Businesses:** Of the elements included within the proposed rule package, the requirements for installation and use of an EM system in the coastal commercial Dungeness crab fishery alone are expected to result in costs to businesses. These costs are identified and evaluated in detail in Chapter 2. Other rule components generally consist of clarifying existing regulations or codifying commonly implemented best practices. Compliance with these rule components is unlikely to result in costs. Table 2 identifies those rule elements that are not expected to result in costs to businesses and describes the basis for that conclusion.

The rule proposal requiring commercial Dungeness crabbers to register their buoy color schemes annually potentially affects crabbers that have previously only had to register buoys infrequently to maintain a unique color scheme associated with their license. However, to offset the impact of annual reporting, WDFW has developed an electronic form that replaces the more cumbersome existing process of attaching a photo to an email or mailing in a hard copy picture, resulting in no net costs associated with this element. Likewise, the rule elements specifying buoy colors across several recreational and commercial fisheries aligns regulations with long-standing practice in these fisheries and WDFW expects very few if any participants would need to replace existing gear to comply with the proposed rule. The proposed logbook rule reduces reporting requirements, and the buoy tag replacement rule shifts reporting from paper to an electronic form. Thus, the cost of compliance is either reduced or neutral for affected commercial fishers.

**Table 2. Rule Elements Not Expected to Generate Costs to Businesses:**

Proposed Rule Elements	Relevant Fisheries	Costs to Businesses
Fishers must use only the amount of line necessary to compensate for tides, currents, and weather.	Recreational Crab, Shrimp, and Crawfish Fisheries Puget Sound Commercial Dungeness Crab Fishery Commercial Shrimp Pot Fishery—Puget Sound Commercial Ocean Shrimp Pot Fishery Trial Commercial Hagfish Fishery	Rule element aligns regulations with long-standing practice in these fisheries.
It is unlawful to use gear that has one or more line marks consistent with requirements for any state or fed managed commercial fishery (in the United States) in the state waters of Washington, Oregon, or California.	Recreational Crab, Shrimp, and Crawfish Fisheries Coastal Commercial Dungeness Crab Fishery Commercial Shrimp Pot Fishery—Puget Sound Commercial Ocean Spot Shrimp Pot Fishery Trial Commercial Hagfish Fishery	Rule element intended to preemptively prevent future conflicts when state line marking regulations are implemented.

Proposed Rule Elements	Relevant Fisheries	Costs to Businesses
There must be at least 12 inches of continuous red marks on every line in at least two places no more than one fathom from the main buoy and from the pot.	Coastal Commercial Dungeness Crab Fishery	Rule element clarifies existing regulation and is intended to correct future misinterpretation. Fishers are generally in compliance with the intent of the current regulation.
Recreational shrimp buoys must be solid yellow or solid fluorescent yellow. Commercial shrimp pot fishery in the Puget Sound buoys must be solid orange.	Recreational Crab, Shrimp, and Crawfish Fisheries Commercial Shrimp Pot Fishery—Puget Sound	Rule element aligns regulations with long-standing practice in these fisheries and WDFW expects very few if any participants would need to replace existing gear to comply with the proposed rule.
Buoys in the Puget Sound or coastal commercial crab fisheries can't be both red and white in color unless a minimum of 30 percent of the surface is also marked with another color(s) other than red or white.	Coastal Commercial Dungeness Crab Fishery Puget Sound Commercial Dungeness Crab Fishery	No additional costs as red and white buoys are not widely used in these fisheries.
The license holder must register the buoy brand and buoy color(s) to be used with the license annually.	Coastal Commercial Dungeness Crab Fishery Puget Sound Commercial Dungeness Crab Fishery	Crabbers that have previously only had to register buoys infrequently to maintain a unique color scheme will have to increase the frequency of their registration. However, costs will be offset by implementation of a mobile app that replaces the more cumbersome existing process of attaching a photo to an email or mailing in a hard copy picture. The net costs of this rule element are zero.
Clarifying and simplifying changes including updates to outdated and/or incorrect boundary designations for commercial shellfish gear-specific management areas in Puget Sound, clarifying Puget Sound commercial logbook reporting requirements, and updating commercial crab buoy tag replacement rules.	Recreational Crab, Shrimp, and Crawfish Fisheries Coastal Commercial Dungeness Crab Fishery Puget Sound Commercial Dungeness Crab Fishery Commercial Shrimp Pot Fishery—Puget Sound Commercial Ocean Spot Shrimp Pot Fishery	Rule element clarifies and simplifies existing regulations and would not result in changes in behavior or associated costs.

**1.4 Requirement for Developing an SBEIS:** RFA requires that the relevant agency prepare an SBEIS if the proposed rule "will impose more than minor costs on businesses in an industry."<sup>14</sup> "Minor cost" is defined in RCW 19.85.020 as a cost per business that is less than 0.3 percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.<sup>15</sup> This analysis relies on revenue data to define the minor cost threshold, as this information is more readily available than payroll data.

As described previously, WDFW has found that the EM component of the proposed rule is the only element that would result in costs to businesses; the other rule proposals in the package are not expected to result in costs to businesses. Therefore, the evaluation of whether the proposed rule is likely to result in more-than-minor costs is focused on the EM component of the rule package and the industry expected to incur costs as a result of the rule.

The estimate for average annual revenues for businesses in the coastal commercial Dungeness crab industry is based on exvessel revenue data provided by WDFW and information provided by industry representatives. Data provided by WDFW indicates that the average annual exvessel revenues derived from coastal commercial crabbing only for

the past five years per license is \$277,060.<sup>16</sup> However, all fishery participants interviewed described that fishing activity in other fisheries also contributes to the revenues of their business. Interviewees identified a range of annual revenues of between \$150,000 and \$500,000 for an average business participating in both Dungeness crabbing and other fisheries.<sup>17</sup> Based on this range of annual revenues, this analysis estimates a minor cost threshold of between \$450 and \$1,500 for affected businesses (Table 3).<sup>18</sup> As described in Section 2.2, the likely cost of complying with the proposed rule ranges from \$1,830 to \$2,045. These costs are identified as more than minor, requiring development of an SBEIS.

**CHAPTER 2 - Small Business Impacts:** This chapter evaluates the potential economic impacts of the proposed rule on small businesses in Washington state. The requirements for the SBEIS are included in RCW 19.85.30 [19.85.030] and 19.85.040.<sup>19</sup> This analysis also utilizes the guidance and resources provided by Washington state's office for regulatory innovation and assistance (ORIA).<sup>20</sup> Per the SBEIS *Frequently Asked Questions* guidance, agencies are required to consider "costs imposed on businesses and costs associated with compliance with the proposed rules."<sup>21</sup> Agencies are not required under RFA to consider indirect costs not associated with compliance with the rule.<sup>22</sup>

As outlined in RFA and in accordance with other guidance and best practices, this SBEIS addresses the following questions:<sup>23,24,25</sup>

- What are the industries and universe of businesses that may incur costs as a result of this rule?
- What are the likely costs of the rule to those businesses?
- Are the costs resulting from the rule anticipated to be more than minor?
- Will the rule disproportionately affect small businesses?
- What steps has the agency taken to reduce the costs of the rule on small businesses?
- How has the agency involved small businesses in the development of the rule?
- How many jobs may be created or lost as a result of compliance with the rule?

The sections that follow address each of these questions.

**2.1 Potentially Affected Small Businesses:** As described in Chapter 1, the proposed rule includes minor changes and clarifications to existing rules which will help stakeholders better understand regulations. These other rule elements are not expected to result in additional costs. As such, this section focuses on the EM element of the proposed rule.

The universe of businesses affected by the proposed rule include those engaged in the nontribal commercial harvest of Dungeness crab on the Washington coast. These businesses fall within the North American Industry Classification System (NAICS) code 114112, Shellfish Fishing.<sup>26</sup> However, as this code includes a substantial number of other types of fisheries and businesses (e.g., oyster, clam, shrimp), the number of businesses identified under this code is not representative of the affected industry. A more accurate identification of potentially affected small businesses considers more specifically those businesses participating in the coastal nontribal Dungeness crab fishery.

The coastal Dungeness crab fishery is a limited entry fishery with a hard cap of 223 licenses.<sup>27</sup> Some of these licenses are fished

by the license holder while others are leased to other individuals who generally fish the license using their own vessel.<sup>28</sup> Industry representatives identified that it is most likely the vessel owner, rather than the license owner, that would incur the costs of installation, maintenance, and operation of an EM system.<sup>29</sup>

Identification of the number of small businesses affected by the proposed rule is complicated by the fact that data are not available to identify the number or ownership of vessels that participate in the fishery. As such, we rely on license data provided by WDFW and information provided by industry representatives to make a conservative assumption regarding the number of businesses potentially affected by the rule. Interviews with industry participants suggest that most businesses within the industry that own or lease a Dungeness crab license own a single vessel that would require the EM system described in the proposed rule.<sup>30</sup> As such, this analysis assumes that each license is associated with a single vessel that represents a business affected by the rule, and that each license is likely to be fished at some point in the years following regulation. Accordingly, we anticipate 223 businesses would be affected by the rule, as shown in Table 3.<sup>31</sup>

Small businesses are defined as those that employ less than 50 people. Industry representatives indicate that affected businesses (i.e., vessel owners) may employ between one and three crew seasonally and, therefore, all would be considered small businesses, with one exception. Pacific Seafood is the owner of at least one vessel that participates in this fishery and would be a business affected by the proposed rule. As a company with upwards of 3,000 employees, Pacific Seafood is defined as a large business by the state's definition.<sup>23,33</sup>

**Table 3. Number of Affected Small Businesses and Minor Cost Threshold:**

	Number of Licenses <sup>1</sup>	Number of Businesses <sup>2</sup>	Number of Businesses that are Small	Percent of Businesses that are Small	Average Annual Revenues	Minor Cost Threshold
Total	223	223	222	99.6%	\$150,000 - \$500,000	\$450 - \$1,500

Notes:

1. License data provided by WDFW via secure server on April 25, 2023.
2. Number of businesses based on assumption that each license is associated with a single vessel and single business.

**2.2 Cost of Compliance:** Consistent with RCW 19.85.030 (1) (a), this analysis evaluates the relevance of the following potential categories of costs to comply with the proposed rule:

- Reporting, recordkeeping, and other compliance requirements.
- Professional services that a small business is likely to need in order to comply with such requirements.
- Costs required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs.
- Based on input received, determine whether compliance with the rule will cause businesses to lose sales or revenue.

The costs associated with installation and operation of an EM system include both start-up costs, and costs that are incurred on a recurring basis (e.g., annually). As such, costs of the EM system will differ depending on which year is being observed for cost estimates. This analysis considers the costs that would be incurred during the first year of operation which is expected to be the year of greatest

compliance costs. The costs of the proposed rule are summarized in [no further information supplied by agency].

**Table 4. Cost of Compliance:**

Cost Element Per Unit	Cost in Year 1	Basis for Cost Range	Frequency of Cost
EM Unit	\$935 - \$975	Pricing provided by representative EM system manufacturer and vendor. Range represents individual unit price and price with bulk purchase discount.	Every 5 - 10 years
Installation	\$0 - \$300	Estimated based on industry interviews and estimate from representative EM system manufacturer and vendor. Range based on cost for vessel owner installation vs. use of a marine electrician/Archipelago service technician (2-2.5 hours).	Every 5-10 years
Data Plan	\$295 - \$470	Pricing provided by representative EM system manufacturer and vendor. Range represents cost for crab season only vs. full year.	Annual
Maintenance	\$0	Routine maintenance covered by warranty during first year. After Year 1, recommended annual system checks estimated by representative EM system manufacturer and vendor at \$150.	Annual (after first year)
<b>Total Cost in Year 1</b>	<b>\$1,830 - \$2,045</b>		<b>Year 1</b>

Sources:

1. Interviews with industry representatives.
2. Price information provided by Archipelago Marine Research Ltd. via email to IEc, May 2, 2023.

**2.2.1 Start-Up Costs:** Start-up costs associated with compliance with the proposed rule are the purchase of the EM system itself and the cost of installation. The estimate of the unit cost is based upon a low-cost existing product that currently meet all requirements set forth through the proposed rule. This system has been tested by industry participants and confirmed by WDFW to be a sound option for regulated businesses.<sup>34</sup>

The cost of the EM system could range from \$895 to \$975. Costs of an individual EM unit are currently \$975.<sup>35</sup> The low-end cost derives from the possibility of a bulk purchase, which would decrease the cost per unit resulting in a price as low as \$895 if over 300 units were purchased. A bulk order of between 200 and 299 units would result in a cost per unit of \$935.

The installation cost will range from \$0 to \$300. The low end of \$0 assumes that vessel owners install both the EM unit and the hydraulic transducer themselves.<sup>36</sup> Other vessel owners may hire a marine electrician or manufacturer to install the unit at an hourly rate. Given a likely installation time of between two and 2.5 hours,<sup>37</sup> and a per-hour cost of \$120,<sup>38</sup> this analysis estimates a high-end cost for installation of \$300.

These costs represent the expected costs for the first year in which the EM system is required. In years in which the system would need to be replaced (estimated to be approximately five to 10 years from initial installation<sup>39</sup>), costs would be similar to the initial start-up costs quantified in this analysis.

**2.2.2 Recurring Costs:** Recurring costs are costs incurred each year for continued compliance with the proposed rule and would include the monthly data plan charges and any necessary maintenance. The cost of the monthly 5G data plan has a range that will depend on the situation of the vessel and their use of the EM. One manufacturer, Archipelago Marine Research Ltd., will offer a month-to-month subscription at a cost of \$69/month. Another plan option would include use only during the Dungeness crab fishing season at a cost of \$295 for the season.



Lastly, for any vessel that wishes to have access to the EM system and its capabilities year-round, the annual cost is \$470. This analysis assumes most participants would choose a plan that covers the complete Dungeness crab fishing season or entire year, resulting in a cost range of \$295 to \$470/year.

Any EM system maintenance costs in the initial year are most likely covered by product warranty.<sup>40</sup> In later years, maintenance costs would be dependent upon the issue being addressed. One manufacturer recommends that the unit undergo an annual routine check to make sure that the system is performing properly at an estimated cost of about \$150 per year for this optional service.

**2.2.3 Other Identified Potential Costs:** In addition to the costs identified above, industry interviewees identified several other costs they believe could result from the proposed rule. However, for the reasons described below, the analysis finds that these types of costs are unlikely to result from the proposed rule.

- **Potential for lost time fishing/revenue associated with system malfunction.** Interviewees expressed concern that in the event of a system malfunction, fishing activity might need to cease until system function could be restored. WDFW has expressed that in the event of an inoperable system, the captain could receive an exemption permit from WDFW revert to completion of a paper logbook to track fishing activity, allowing fishing to continue.<sup>41</sup> As a result, we do not identify this factor as a cost of the proposed rule.
- **Potential for lost time fishing/revenue associated with operating out of cellular coverage.** Several interviewees identified that they often fish in areas outside of cellular coverage. They expressed concern that operating in these areas could be considered out of compliance with the proposed regulations if data were not being transmitted in real time to WDFW. One manufacturer, Archipelago Marine Research Ltd., confirmed that the EM system is designed to store data and transmit them when the unit reenters cellular service range. WDFW has confirmed that this situation would be in compliance with the proposed rule.<sup>42</sup> As a result, we do not anticipate these types of costs to result from the proposed rule.
- **Potential for lost time fishing/revenue associated with limited availability of marine electricians in certain areas.** At least one interviewee expressed concern that the limited availability of marine electricians in certain areas could mean that wait times for unit installation could be long, which might delay the start of the fishing season for some vessels. One EM system manufacturer, Archipelago Marine Research Ltd., confirmed that their own technicians are made available to install any purchased units, and that there would not be significant wait times for installation. We anticipate it is unlikely for these types of costs to result from the proposed rule.

**2.3 Cost Mitigation Strategies:** When a rule is expected to disproportionately impact small businesses, RCW 19.85.030 requires the agency to consider methods for reducing the impact of the rule on small businesses. These methods may include decisions that were made in determining the provisions of the rule itself, or opportunities to reduce the costs of implementing the rule as written. This section outlines existing and proposed opportunities for offsetting compliance

costs, as well as the steps WDFW has taken to limit the costs of the proposed rule to businesses.

- **Required Technical Specifications.** In identifying the technical specifications for an EM system that would be required by the proposed rule, WDFW designed the specifications to allow for discontinuation of current logbook requirements.
- **Choice in Systems.** Rather than dictate a requirement that a specific brand/type of system be installed on each vessel, WDFW instead has identified technical specifications the system must meet, providing each business with flexibility in selecting from several possible systems from different suppliers across a spectrum of price points.
- **Costs of System Malfunction.** Interviewees expressed concern about the potential for lost revenues should a malfunction of the EM system require suspension of fishing activities. It is WDFW's intent to allow fishermen to revert to use of paper logbooks via a WDFW-approved exemption permit in the event of an EM system failure, allowing fishing activity to continue assuming appropriate action is being taken to get the EM system back online.
- **Bulk Pricing.** The cost analysis assumes that each business would individually purchase the EM unit and annual data plan. However, coordinated purchase of the units (e.g., by crab industry associations) would result in a bulk purchase discount. For example, Archipelago Marine Research Ltd. offers a discounted pricing option for purchases of between 100 and 199 units (\$955 plus \$470 data plan), or for between 200 and 299 units (\$935 plus \$470 data plan).
- **Financial Support.** Interviewees expressed that WDFW should consider grant or financial aid opportunities to the fleet to offset the costs of the proposed rule.

RCW 19.85.030(2) specifies options that the agency must consider in mitigating rule costs. Table 5 specifies each type of cost mitigation opportunity identified in the RCW and how WDFW considered them during the rule-making process.

**Table 5. Assessment of Cost Mitigation Opportunities Outlined in RCW 19.85.030:**

RCW 19.85.030(2) Requirements	Cost Mitigation Opportunities
(a) Reducing, modifying, or eliminating substantive regulatory requirements	WDFW is not including video monitoring at this time as a system requirement, reducing costs of the system itself and associated with implementing new technology (e.g., more complex technology such as video monitoring could mean increased opportunity for technical problems that could be costly and time-intensive to resolve).  EM system specifications designed to allow fishery participants to discontinue the presently required use of paper logbooks.
(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements	EM system specifications designed to allow fishery participants to discontinue the presently required use of paper logbooks.  Relative to buoy color scheme registration requirements, WDFW has developed a mobile application that replaces the more cumbersome process of attaching a photo to an email or mailing in a hard copy picture to WDFW.
(c) Reducing the frequency of inspections	Not applicable.
(d) Delaying compliance timetables	WDFW is delaying the implementation date for EM beyond the implementation date for other proposed rule elements.
(e) Reducing or modifying fine schedules for noncompliance	WDFW Enforcement will use reasonable discretion in issuing fines for noncompliance as the EM program gets underway.

RCW 19.85.030(2) Requirements	Cost Mitigation Opportunities
(f) Any other mitigation techniques, including those suggested by small businesses or small business advocates.	<p>Should a vessel experience technical difficulties with its EM system, WDFW will allow the vessel via an exemption permit to continue fishing using a paper logbook. This will avoid costs in the form of reduced revenue resulting from system failure.</p> <p>Coordination of EM system purchases to take advantage of bulk pricing opportunity.</p> <p>Grant or other financial aid opportunities to offset costs of the rule.</p>

**2.4 Involvement of Small Businesses in Rule-Making Process:** This section describes how WDFW sought to engage affected parties, including small businesses, in the rule-making process, including in the development of the SBEIS.

**2.4.1 Involvement in Rule Making:** The proposed rule would affect businesses engaged in the coastal commercial Dungeness crab fishery. For nearly 10 years, WDFW has worked closely with the industry to discuss the potential for an EM program for the fishery. The concept of an EM program was first introduced to the Washington coastal dungeness crab advisory board (advisory board), an advisory body comprising fishermen from across the industry, around 2010. WDFW and Quinault Indian Nation (QIN) shellfish management staff had attended a presentation by the Canadian Crab Fishermen's Association at Nanaimo, British Columbia regarding the implementation of EM in their fishery. WDFW managers noted the potential of EM to support regulatory measures such as pot limits, season delays, and area closures being undertaken to achieve harvest sharing under tribal-state comanagement agreements. WDFW presented the concept to the advisory board, but it was not well received. Objections to EM included excessive government oversight, costs, and potential for equipment malfunction. The QIN proceeded to implement EM for their fleet in 2015.

In the meantime, EM became a frequent topic at both advisory board meetings and state-tribal meetings. With the QIN EM program in place, state crab fishers began to recognize possible benefits including the potential to investigate or dispel allegations of gear tampering, the potential to lessen the need for reliance on special management areas open exclusively to tribal participants thereby allowing more in-common fishing opportunity between state and tribal fleets, and the potential to manage area closures associated with biotoxin events. Responsive to this interest, WDFW sought grant funding for a pilot project to test EM in 2016 and 2017 without success. WDFW continued to pursue funding options and in 2020 received a grant from the National Fish and Wildlife Foundation to begin a collaborative pilot project working with volunteers from coastal crab fishery participants. For the initial phase of the project, two vessels were outfitted with EM equipment; later, the project expanded to include 10 vessels.

Besides the EM benefits crab fishers began to acknowledge, in a tandem process, WDFW managers identified EM as a component of the coastal fishery's conservation plan (CP). Spurred by incidences of whale entanglements with Dungeness crab gear along the United States west coast, WDFW notified the National Marine Fisheries Service of its intent to apply for an ESA Section 10 Incidental Take Permit (ITP) for the Washington coastal commercial Dungeness crab fishery in 2018. The CP is the first step in achieving an ITP. Given the complexity of this effort, WDFW held numerous advisory board and public meetings to engage with and keep fishery participants apprised of CP development. These meetings afforded opportunity to share findings on the EM

project and to receive input on technical as well as practical considerations. Comment and feedback at these meetings were used to guide and refine development of the proposed EM system specifications, regulations, and timing for implementation.

Key outreach activities and points of involvement of the industry in the rule-making process to date are summarized in Table 6.

The elements of the proposed rule that are not expected to result in costs for the coastal commercial Dungeness crab fishery and other coastal commercial fixed gear fisheries were presented at many of the same meetings listed in Table 5 and in the Washington coastal dungeness crab newsletter. Similarly, all but some minor elements of the proposed rules that are not expected to result in costs for Puget Sound shellfish fisheries were communicated by WDFW via email and discussed with industry representatives at multiple public industry meetings since Spring 2022.

**Table 6. WDFW Outreach Activities for Development of Electronic Monitoring System Program and Proposed Rule:**

Date	Activity
March 19, 2019	Presentation on EM options at WDFW workshop with crab industry
April 24, 2019	WDFW workshop with crab industry agenda included further discussion on EM
August 15, 2019	Coastal crab advisory board meeting agenda included discussion on EM pilot project
April 30, 2020	Conservation plan update, agenda included discussion on EM program, coastal crab industry webinar
July 29, 2020	Coastal crab advisory board webinar agenda included discussion on EM program
December 3, 2020	Coastal crab advisory board webinar agenda included update on EM pilot project
December 10, 2020	Presentation: "Conservation Plan Update" at the coastal crab industry meeting included EM in presentation
February 19, 2021	Letter to coastal crab fishery participants providing information on the February 26, 2021, Washington fish and wildlife commission meeting
February 26, 2021	Presentation: "Update: Coastal Commercial Dungeness Crab Conservation Plan Progress" to Washington fish and wildlife commission, public meeting, EM addressed in presentation
May 13, 2021	Coastal crab advisory board webinar agenda included update on EM pilot project
October 28, 2021	Coastal crab advisory board webinar agenda included update on EM pilot project
September 21, 2022	Presentation "Electronic Monitoring for Coastal Dungeness Crab Fishery Management" at the coastal crab industry meeting
November 22, 2022	Presentation of the 2023 rule package to the coastal commercial Dungeness crab advisory committee meeting
February 2023	Update on development of the EM program in the first edition of the Washington coastal dungeness crab fishery newsletter
March 23, 2023	Coastal crab advisory board webinar agenda included update on EM
May 11, 2023	Industry meeting to discuss rule making and implementation of EM in the coastal commercial Dungeness crab fishery

**2.4.2 Involvement in SBEIS Development:** To collect information to inform development of this SBEIS, IEC reached out to 15 individuals representing businesses that would incur costs as a result of the proposed rule. Each prospective interviewee received an email followed by a text message in cases where the potential interviewee did not respond to the email. For individuals that were unresponsive to the first two contact attempts, IEC made one final attempt to reach them by text. Ultimately, IEC conducted interviews directly with eight industry representatives (including the one large business license holder), as well as two other individuals identified as having information potentially relevant to the analysis.<sup>42</sup> One interviewee subsequently

discussed the proposed rule and interview questions with two additional industry representatives and provided the results of those conversations to IEC, effectively bringing the total number of individuals from whom information was collected to 12. Targets for outreach represented a distribution of businesses across multiple variables including geographic area of operation, participation in other fisheries (e.g., Oregon Dungeness crab, black cod), and whether or not they participated in the EM pilot program. It also included individuals representing varied business arrangements, including individuals that own both their vessel and a crab license and fish in the fishery, those that own a vessel but lease a crab license, and those that own both licenses and vessels but employ crew and captains to operate those vessels/fish those licenses. Following the interview guide provided as Attachment A, IEC sought input from affected businesses and others, as appropriate, regarding the nature and magnitude of costs that could result from the proposed rule, the structure of the industry and identification of entities that would likely incur the costs of the rule, and ideas and opportunities that WDFW might consider to mitigate rule costs.

**2.5 Jobs Created or Lost:** Compliance costs are relatively low compared to average annual revenues, and interviewees identified that the costs associated with the rule were not expected to be substantial from a business perspective. The small businesses in this industry may have between approximately two and five seasonal employees that work as crew on the fishing vessels, and the proposed rule is unlikely to influence jobs in the industry.

Compliance with the proposed rule may result in a temporary uptick in business for marine electricians operating in coast ports. However, as the need for this service would only be one-time, and businesses may complete the unit installation themselves, it is unlikely this element of the proposed rule would result in job creation.

**2.6 Summary Conclusions:** The likely cost of complying with the rule ranges from \$1,830 to \$2,045 in start-up costs to purchase and install the equipment and pay for the first year of the data plan. In subsequent years, costs would be on the order of \$450 to \$600 for maintaining the system and the data plan. The start-up costs of the rule could represent up to one percent of annual revenues (assuming the lowest end of the revenue range and highest end of the cost range). Given the minor cost threshold of \$450 to \$1,500, the costs of the proposed rule are expected to generate more-than-minor costs to businesses in the industry. As over 99 percent of businesses affected by the proposed rule are small, the proposed rule would disproportionately affect small businesses.

As the potential exists for more-than-minor costs to be incurred by businesses as a result of the proposed rule, and because small businesses are expected to be disproportionately impacted in cases where costs are incurred, WDFW has identified several potential mitigation options to defray the impacts to small businesses. These include allowing flexibility in the type of unit purchased to comply with the proposed rule, coordinating unit purchases to take advantage of bulk pricing, and allowing fishermen to revert to use of paper logbooks in cases of EM system malfunction.

<sup>1</sup> The waters surrounding Washington state also support other Dungeness crab fisheries, including tribal fisheries, a nontribal recreational fishery, and a commercial fishery in Puget Sound. The subject proposed rule applies only to the nontribal commercial crab fishery occurring in the Pacific Ocean off Washington's outer coast.

<sup>2</sup> WDFW. 2022. Electronic Monitoring for Coastal Dungeness Crab Fishery Management. September 21. Downloaded from <https://wdfw.wa.gov/fishing/commercial/crab/coastal/letters-notices>, April 19, 2023.

<sup>3</sup> Fixed gear fisheries in Washington include any fisheries using lines to tether surface buoys to bottom deployed hooks, pots, or traps, such as sablefish longline, crab pot, shrimp pot, and hagfish pot.

4 RCW 19.85.030 Agency rules—Small Business economic impact statement—Reduction of costs imposed by rule. Accessed May 3, 2023, at  
 5 <https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.  
 6 RCW 19.85.020 Definitions. Accessed May 3, 2023, at <https://app.leg.wa.gov/rcw/default.aspx?cite=19.85.020>.  
 7 Annual exvessel revenues for individual licenses range from \$4,505 to \$1.7 million over that time period.  
 8 One individual identified an upper end revenue estimate of \$3 million for a small business in the industry. However, this estimate is  
 9 substantially outside of the range provided by all other interviewees and is considered an outlier.  
 10 The minor cost threshold used in this analysis is 0.3 percent of average annual revenues. The reported range represents 0.3 percent of \$150,000  
 11 (\$400) as a low end and 0.3 percent of \$500,000 (\$1,500) as a high end.  
 12 The waters surrounding Washington state also support other Dungeness crab fisheries, including tribal fisheries, a nontribal recreational  
 13 fishery, and a commercial fishery in Puget Sound. The subject proposed rule applies only to the nontribal commercial crab fishery occurring in  
 14 the Pacific Ocean off Washington's outer coast.  
 15 As the lowest cost system tested by WDFW that would meet the technical specifications laid out in the proposed rule, this analysis assumes it  
 16 is the system most fishery participants would purchase to comply with the rule.  
 17 WDFW. 2022. Electronic Monitoring for Coastal Dungeness Crab Fishery Management. September 21. Downloaded from [https://  
 18 wdfw.wa.gov/fishing/commercial/crab/coastal/letters-notices](https://wdfw.wa.gov/fishing/commercial/crab/coastal/letters-notices), April 19, 2023.  
 19 This element is intended to ensure that individuals are not skirting the intent of the existing rule by, for example, using a single 12-inch zip tie  
 20 attached to the line as a gear marking approach.  
 21 Fixed gear fisheries in Washington include any fisheries using lines to tether surface buoys to bottom deployed hooks, pots or traps, such as  
 22 sablefish longline, crab pot, shrimp pot, hagfish pot.  
 23 RCW 19.85.030 Agency rules—Small Business economic impact statement—Reduction of costs imposed by rule. Accessed May 3, 2023, at  
 24 <https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.  
 25 RCW 19.85.020 Definitions. Accessed May 3, 2023, at <https://app.leg.wa.gov/rcw/default.aspx?cite=19.85.020>.  
 26 Exvessel revenues for individual licenses range from \$4,505 to \$1.7 million over that time period.  
 27 One individual identified an upper end revenue estimate of \$3 million for a small business in the industry. However, this estimate fell  
 28 substantially outside of the range provided by all other interviewees and was excluded from the analysis.  
 29 The universe of affected businesses does include a single business, Pacific Seafood, that represents a different industry than those primarily  
 30 affected by this rule (NAICS code 424460 – Fish and Seafood Merchant Wholesalers). Given annual revenues of over \$1 billion, the minor  
 31 cost threshold for businesses affected in this industry would be substantially higher (personal communication with Pacific Seafood  
 32 representative in May 2023). However, this single affected business within this industry is not small given employment of over 3,000 people  
 33 (Pacific Seafood. 2023. Pacific Seafood Homepage. Viewed at <https://www.pacificseafood.com/>, April 22, 2023; Interview with Pacific  
 34 Seafood representative, April 26, 2023).  
 35 RCW 19.85.040 Small business economic impact statement—Purpose—Contents. Accessed May 3, 2023, at [https://app.leg.wa.gov/RCW/  
 36 default.aspx?cite=19.85.040](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040).  
 37 ORIA. 2021. Regulatory Fairness Act Support. Accessed May 3, 2023, at [https://www.oria.wa.gov/site/alias\\_oria/934/regulatory-fairness-act-  
 38 support.aspx](https://www.oria.wa.gov/site/alias_oria/934/regulatory-fairness-act-support.aspx).  
 39 Washington Attorney General Office. 2021. Small Business Economic Impact Statements – Frequently Asked Questions. Accessed May 3,  
 40 2023, at [https://www.oria.wa.gov/Portals/\\_oria/VersionedDocuments/RFA/Regulatory\\_Fairness\\_Act/DRAFT\\_SBEIS\\_FAQ.pdf](https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/DRAFT_SBEIS_FAQ.pdf).  
 41 ORIA. Undated. "Regulatory Fairness Act: 19.85 RCW." Presentation provided to IEc by ORIA staff on August 19, 2021.  
 42 RCW 19.85.040 Small business economic impact statement—Purpose—Contents. Accessed October 13, 2022, at [https://app.leg.wa.gov/RCW/  
 43 default.aspx?cite=19.85.040](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040).  
 44 ORIA. 2021. Regulatory Fairness Act Support. Accessed October 13, 2022, at [https://www.oria.wa.gov/site/alias\\_oria/934/regulatory-  
 45 fairness-act-support.aspx](https://www.oria.wa.gov/site/alias_oria/934/regulatory-fairness-act-support.aspx).  
 46 WA Attorney General Office. 2021. Small Business Economic Impact Statements – Frequently Asked Questions. Accessed October 13, 2022  
 47 at [https://www.oria.wa.gov/Portals/\\_oria/VersionedDocuments/RFA/Regulatory\\_Fairness\\_Act/DRAFT\\_SBEIS\\_FAQ.pdf](https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/DRAFT_SBEIS_FAQ.pdf).  
 48 The universe of affected businesses does include a single business, Pacific Seafood, that represents a different industry than those primarily  
 49 affected by this rule (NAICS code 424460 – Fish and Seafood Merchant Wholesalers). However, this single affected business within this  
 50 industry is not small given employment of over 3,000 people (Pacific Seafood. 2023. Pacific Seafood Homepage. Viewed at [https://  
 51 www.pacificseafood.com/](https://www.pacificseafood.com/), April 22, 2023; Interview with Pacific Seafood representative, April 26, 2023).  
 52 License data provided by WDFW via secure server on April 25, 2023.  
 53 Interviews with industry representatives conducted during April 2023.  
 54 The requirement to install EM systems on commercial crab vessels would increase the cost of fishing for affected businesses. In theory, this  
 55 increased cost could result in individuals ceasing to fish, ceasing to lease licenses, or decrease the amount they are willing to pay to lease a  
 56 license. However, the value of Dungeness crab fishing licenses and demand for them indicate these outcomes are unlikely (interviews with  
 57 industry representatives conducted during April 2023).  
 58 Although interviewees identified that at least one business, Pacific Seafood, may be the owner of multiple vessels fishing within the fishery, a  
 59 representative of the business confirmed only a single vessel owned by the company is currently participating in this fishery (Interview with  
 60 representative of Pacific Seafood, May 3, 2023).  
 61 To the extent that a business owns more than one vessel, this analysis underestimates the costs of the proposed rule to that business. However,  
 62 the best available information suggests that the substantial majority if not all businesses in this industry own only one vessel and would thus  
 63 incur costs associated with installation of an EM system on a single vessel.  
 64 Pacific Seafood. 2023. Pacific Seafood Homepage. Viewed at <https://www.pacificseafood.com/>, April 22, 2023; Interview with Pacific Seafood  
 65 representative, April 26, 2023.  
 66 License data provided by WDFW indicate that at least one other business identified as large by WDFW standards owns a license to participate  
 67 in this fishery. However, available information did not suggest that this business owns vessels operating within the fishery. We therefore  
 68 conclude it would not incur costs as a result of this rule.  
 69 Email communication from WDFW to IEc, April 6, 2023.  
 70 The pricing for the unit hardware is based on estimates provided by Archipelago Marine Research Ltd., and includes the FishVue LIME  
 71 control center, a 5,000 PSI hydraulic pressure transducer, BRNKL security and monitoring features, shipping, and a one-year warranty.  
 72 Several industry participants interviewed indicated they would likely install the unit themselves, and one representative system vendor  
 73 confirmed that many of their past customers are able to and choose to do so.  
 74 Interview with representative of Archipelago Marine Research Ltd. on April 28, 2023.  
 75 Interviews with industry representatives conducted during April 2023.  
 76 Interview with representative of Archipelago Marine Research Ltd. on April 28, 2023.  
 77 This would be true for the representative system considered in this analysis from Archipelago Marine Research Ltd.  
 78 Personal communication with WDFW staff, March 29, 2023.  
 79 Written communication from WDFW staff, May 19, 2023.  
 80 In addition to interviews with affected businesses, IEc also conducted data collection interviews with a representative of the Quinalt Indian  
 81 Nation, which has had previous and ongoing experience using EM with its Dungeness crab fishery, and with Archipelago Marine Research  
 82 Ltd., the creator and distributor of one representative EM system that would meet the technical specifications laid out in the proposed rule.

## References :

D&B Hoovers business database. Queried April 20, 2023.

Interviews with industry representatives conducted by IEC, April 2023.

Personal and email communication with Archipelago Marine Research Ltd. representative, May 1 and 3, 2023.

Personal and email communication with WDFW staff, March, April, and May 2023.

Chapter 19.85 RCW; RCW 19.85.020, 19.85.030, and 19.85.040.

WDFW coastal commercial dungeness crab license data provided by WDFW via secure server on April 25, 2023.

WDFW exvessel revenue data provided by WDFW via secure server on April 25, 2023.

A copy of the statement may be obtained by contacting Lorna Wargo, 1111 Washington Street S.E., Olympia, WA, phone 360-581-5611, email Lorna.Wargo@dfw.wa.gov.

July 26, 2023

Scott Bird

Rules Coordinator

#### OTS-4648.1

#### NEW SECTION

**WAC 220-320-015 Definitions—Shellfish species complexes.** "Non-spot shrimp" are defined as a species complex composed of the following species of pandalid shrimp classified in WAC 220-320-010: Dock shrimp (*Pandalus danae*), coonstripe shrimp (*Pandalus hypsinotus*), humpy shrimp (*Pandalus goniurus*), Ocean pink shrimp (*Pandalus jordani*), pink shrimp (*Pandalus eous*), and side stripe shrimp (*Pandalus (Pandalopsis) dispar*).

#### OTS-4646.1

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-320-120 Puget Sound Crustacean (crab and shrimp) Special Management Areas.** The following areas shall be defined as Puget Sound Crustacean (crab and shrimp) Special Management Areas (CSMA):

(1) Discovery Bay:

(a) Crustacean Special Management Area: All waters of Marine Fish-Shellfish Management and Catch Reporting Area 25E - Discovery Bay south of a line from Diamond Point (48.0945°, -122.9152°) to Cape George (48.1034°, -122.8847°).

(b) Shrimp District: All waters of Catch Area 25E and those waters of Catch Area 25A south of a line from McCurdy Point (48.1358°, -122.8374°) on the Quimper Peninsula to the northern tip of Protection

Island (48.1327°, -122.9285°), then to Rocky Point (48.0964°, -122.9754°) on the Miller Peninsula.

(2) Dungeness Bay CSMA: All waters of Dungeness Bay west of the ((-123.1010°)) -123.1103° (123°06.6') longitude line originating from the New Dungeness Light (48.1818°, -123.1103°) ((extending southward to the cul-de-sac at the end of 3 Crabs Road on the mainland (48.1509°, -123.1212°))).

(3) Everett Flats CSMA: That portion of Catch Area 26A-E (see WAC 220-320-110) east of a line from western edge of Howarth Park (47.9619°, -122.2441°) true north to the southern tip of Gedney (Hat) Island (48.0048°, -122.3060°) and that portion of 24B east of a line from the northern tip of Gedney (Hat) Island (48.0215°, -122.3274°) to Camano Head (48.0570°, -122.3580°) and south of a line drawn from Camano Head to Hermosa Point (48.0620°, -122.2935°) on the Tulalip reservation.

(4) Port Angeles Harbor CSMA: That portion of Marine Fish-Shellfish Catch Area 23D west of a line from the Ediz Hook Light (48.1400°, -123.4025°) to the site of the ITT Rayonier Dock (48.1169°, -123.4083°).

(5) Port Townsend Bay CSMA: Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island (48.0853°, -122.7303°), thence to Kala Point (48.0575°, -122.7674°) and thence following the shoreline to the point of origin.

(6) Sequim Bay CSMA: All waters of Sequim Bay south of Travis Spit and a line west from the western tip of Travis Spit (Klapot Point) to the dock at the Pacific Northwest National Laboratory (48.0793°, -123.0452°).

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-320-140 Commercial shrimp geographical management units—Puget Sound.** Puget Sound commercial shrimp harvest management utilizes a hierarchy of geographical management units consisting of region, subregion, Marine Fish-Shellfish Management and Catch Reporting Area (catch area), and subarea. This section defines these units.

(1) **The following areas are defined as Puget Sound Shrimp Management Regions and subregions:**

(a) Region 1 - Trawl fishery: All waters of Catch Areas 20A, 20B, 21A, 21B, 22B, and 22A;

Region 1 - Pot fishery: All waters of Catch Areas 20A, 20B, 21A, 21B, 22B, and Catch Area 22A, except the southwesterly portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shoreline of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point (48.4559°, -122.9355°) on Lopez Island, and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°; see (d) of this subsection—Region 3).

(i) Subregion 1A: All waters of Catch Area 20B west of a line from Point Doughty (48.7117°, -122.9492°) on Orcas Island to the bell buoy (48.7649°, -123.0145°) at the International Boundary and all wa-



ters of Catch Area 22A west of a line projected true north and south from the western tip of Crane Island (48.5975°, -123.0078°), west of a line projected from the number 4 marker (48.5223°, -122.9173°) at the entrance to Fisherman Bay to the southern tip of Shaw Island (48.5466°, -122.9487°), and north of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary.

(ii) Subregion 1B: All waters of Catch Area 20B east of a line from Point Doughty (48.7117°, -122.9492°) on Orcas Island to the bell buoy at the International Boundary (48.7649°, -123.0145°), and waters of Catch Area 22A east of a line projected true north and south from the western tip of Crane Island (48.5975°, -123.0078°), east of a line projected from the number 4 marker (48.5223°, -122.9173°) at the entrance to Fisherman Bay to the southern tip of Shaw Island (48.5466°, -122.9487°), and east of a line projected true south from Point Colville (48.4217°, -122.8131°), and all waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) at the southern tip of Lummi Island.

(iii) Subregion 1C: All waters of Catch Areas 20A, 21B, 22B, and those waters of Catch Area 21A not included in Subregion 1B.

(b) Region 2-East (2E): All waters of Catch Areas 24A, 24B, 24C, 24D, and Subarea 26A-E (east; subareas defined in subsections (2) and (3) of this section).

(c) Region 2-West (2W): Waters of Catch Areas 25B, 25C, 25D, and Subarea 26A-W (west).

(d) Region 3 - Trawl fishery: All waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.

Region 3 - Pot fishery: All waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, 29, and the southwesterly portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shoreline of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point (48.4559°, -122.9355°) on Lopez Island, and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°).

(e) Region 4: All waters of Catch Area 26C and 26B, which is divided into Subareas 26B-1 and 26B-2 (subareas defined in subsection (2) of this section).

(f) Region 5: All waters of Catch Areas 27A, 27B, and 27C.

(g) Region 6: All waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.

(2) **The following areas are defined as Puget Sound Commercial Shrimp Subareas, shrimp pot harvest:** For purposes of Puget Sound shrimp pot harvest allocation, fishing season, and catch reporting, catch areas (WAC 220-301-040) are modified as follows:

(a) That portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shores of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point on Lopez Island (48.4559°, -122.9355°), and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°) shall be considered to be part of Catch Area 23A.

(b) Catch Area 23A is divided into four subareas:

(i) Subarea 23A-E (east): All waters of Catch Area 23A east of  $-122.9500^{\circ}$  ( $122^{\circ}57'W$ ) longitude and north of  $48.3750^{\circ}$  ( $48^{\circ}22.5'N$ ) latitude.

(ii) Subarea 23A-W (west): All waters of Catch Area 23A west of  $-122.9500^{\circ}$  ( $122^{\circ}57'W$ ) longitude and north of  $48.3750^{\circ}$  ( $48^{\circ}22.5'N$ ) latitude.

(iii) Subarea 23A-C (central): All waters of Catch Area 23 south of  $48.3750^{\circ}$  ( $48^{\circ}22.5'N$ ) latitude and east of a line projected  $335^{\circ}$  true from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ).

(iv) Subarea 23A-S (south): All waters of Catch Area 23A west of a line projected  $335^{\circ}$  true from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ).

(c) Catch Area 26A is divided into two subareas:

(i) Subarea 26A-E (east): All waters of Catch Area 26A north and east of a line projected  $110^{\circ}$  true from the southern tip of Possession Point ( $47.9061^{\circ}$ ,  $-122.3846^{\circ}$ ) on Whidbey Island to the shipwreck located 0.8 nautical miles north of Picnic Point ( $47.8931^{\circ}$ ,  $-122.3286^{\circ}$ ) on the opposite shore.

(ii) Subarea 26A-W (west): All waters of Catch Area 26A south and west of a line projected  $110^{\circ}$  true from the southern tip of Possession Point ( $47.9061^{\circ}$ ,  $-122.3846^{\circ}$ ) on Whidbey Island to the shipwreck located 0.8 nautical miles north of Picnic Point ( $47.8931^{\circ}$ ,  $-122.3286^{\circ}$ ) on the opposite shore.

(d) Catch Area 26B is divided into two subareas:

(i) Subarea 26B-1: All waters of Catch Area 26B westerly of a line projected from West Point ( $47.6619^{\circ}$ ,  $-122.4348^{\circ}$ ) to Alki Point ( $47.5763^{\circ}$ ,  $-122.4199^{\circ}$ ).

(ii) Subarea 26B-2: All waters easterly of a line projected from West Point ( $47.6619^{\circ}$ ,  $-122.4348^{\circ}$ ) to Alki Point ( $47.5763^{\circ}$ ,  $-122.4199^{\circ}$ ).

(3) **The following areas are defined as Puget Sound Shrimp Subareas, shrimp trawl harvest:** For the purpose of Puget Sound shrimp trawl harvest allocation and catch reporting, catch areas (WAC 220-301-040) are modified as follows:

(a) Trawl Subarea 23A East: That portion of Catch Area 23A, east of a line projected true north from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ) to the International Boundary.

(b) Trawl Subarea 23A West: That portion of Catch Area 23A, west of a line projected true north from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ) to the International Boundary.

(4) The following areas are defined as shrimp beam trawl harvest areas of special designation:

(a) South Lopez Sound is defined as those waters of Lopez Sound within Subregion 1B that are south of a line projected true east-west from the northern tip of Trump Island ( $48.5064^{\circ}$ ,  $-122.8369^{\circ}$ ).

(b) Rosario Box is defined as that portion of Catch Area 22A within Subregion 1B that are east of a line projected along  $-122.7833^{\circ}$  longitude (east of Blakely Island) and west of a line projected along  $-122.7167^{\circ}$  longitude (west of Cypress Island) in Rosario Strait.

(c) Lummi-Sinclair Triangle is defined as those waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island ( $48.6097^{\circ}$ ,  $-122.6572^{\circ}$ ) to Carter Point ( $48.6404^{\circ}$ ,  $-122.6088^{\circ}$ ) on Lummi Island.

(5) In shrimp Subregions 1A, 1B, and 1C, all catch must be reported by catch area and subregion combined (for example 22A-1A).

OTS-4779.1

AMENDATORY SECTION (Amending WSR 20-04-058, filed 1/30/20, effective 7/1/20)

**WAC 220-330-020 Crab, shrimp, crawfish—Gear and gear-related unlawful acts. General gear requirements:**

(1) It is unlawful to take, fish for, or possess crab, shrimp, and crawfish except by hand or with hand dip nets, ring nets, shellfish pots, or any hand-operated, nonmechanized instrument. It is unlawful to harvest shellfish in any manner that penetrates the shell.

(2) It is unlawful to set, fish, or pull more than 2 units of gear per person per day, unless otherwise provided in this subsection. A unit of gear is defined as a hand dip net, shellfish pot, ring net or any other instrument used to capture crab, shrimp, or crawfish. A violation of this subsection is punishable under RCW 77.15.160, 77.15.380, or 77.15.370, depending on the circumstances of the violation.

(a) In Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13 (Puget Sound), it is unlawful to set, fish, or pull more than 2 units of crab gear and 2 additional units of shrimp gear per person per day.

(b) In Marine Areas 4, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled to have on board or to fish more than 4 shrimp pots.

(c) In the Columbia River, it is unlawful to set, fish, or pull more than 3 units of crab gear per person.

(d) In fresh water, it is permissible to use up to 5 units of gear per person to fish for crawfish.

(3) It is unlawful to violate the following provisions regarding unattended shellfish gear:

(a) (i) Unattended shellfish gear must be marked with a buoy that permanently, visibly, and legibly lists the first and last name and permanent mailing address of the owner.

(ii) Only one person's name and address may appear on a marker buoy.

(b) All buoys must consist of durable material. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy.

(c) Buoys must remain visible on the surface at all times, except during extreme tidal conditions, or unless otherwise authorized under a permit issued by the director.

(d) Fishers shall use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(e) The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the line from floating on the water's surface.

~~((e))~~ (f) It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

(g) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(4) It is unlawful to have more than one unit of unattended gear attached to a buoy line and buoy, or to fail to have a separate buoy for each unit of gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal-use purposes—Penalty.

(5) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.180 Unlawful interference with fishing or hunting gear—Penalty.

(6) It is unlawful to fish for or possess shellfish taken for personal use with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(a) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated, 100 percent cotton twine, hemp, jute, or sisal no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken.

(b) An opening in the pot mesh no less than 3 inches by 5 inches which is laced or sewn closed with untreated, 100 percent cotton twine, hemp, jute, or sisal no larger than thread size 120. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

(c) Attachment of pot lid or one pot side serving as a pot lid with no more than 3 single loops of untreated 100 percent cotton, hemp, jute, or sisal no larger than thread size 120 so that the pot lid or side will open freely if the twine or fiber is broken.

(d) Use of gear in violation of this subsection is an infraction, punishable under RCW 77.15.160.

(7) It is unlawful to set shellfish pots in a manner that they are not covered by water at all times. Use of gear in violation of this subsection is an infraction, punishable under RCW 77.15.160.

**(8) Gear setting and retrieval:**

(a) It is unlawful to fish, or place or retrieve gear outside of open days and hours.

(b) It is unlawful to fail to remove gear prior to the closure of a fishery.

(c) It is unlawful to fail to remove gear from the water within one hour after sunset if fishing is not allowed on the next calendar day.

(d) In waters that are open continuously, shellfish gear may be left in the water overnight, but may not be set or pulled from a vessel from one hour after official sunset to one hour before official sunrise in Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13.

**(9) Crab pot gear requirements:**

(a) All buoys attached to crab gear must be half red or half fluorescent red in color and half white in color. Flags and staff, if attached, may be any color. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) It is unlawful to fish for crab using shellfish pot gear greater than 13 cubic feet in volume.

(c) It is unlawful to fish for or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless the gear is equipped with 2 or more escape rings located in the upper half of the pot and escape rings are 4 1/4 inches inside diameter or larger,

except in the Columbia River where escape ring minimum size is 4 inches inside diameter.

(d) It is unlawful to use mesh size smaller than 1 1/2 inches for crab pots.

(e) Unless otherwise designated, a violation of this subsection is a violation of RCW 77.15.382. Possession of crab while using gear in violation of the provisions of this section is a rebuttable presumption that the crab were taken with such gear.

(10) **Shrimp pot gear requirements:**

(a) All buoys attached to shrimp gear must be solid yellow or solid fluorescent yellow in color. Flags and staff, if attached, may be any color. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) It is unlawful to take, fish for, or possess shrimp taken with shellfish pot gear unless the gear meets the following requirements:

(i) A shrimp pot may not exceed 10 feet in perimeter and 1 1/2 feet in height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Shrimp pot minimum mesh size:

(A) Year-round, Marine Areas 1, 2, 3, and 4 west of the Bonilla-Tatoosh line and shoreward of 20 fathoms, the minimum mesh size for shrimp pots is 1/2 inch. Seaward of 20 fathoms, the minimum mesh size for shrimp pots is 1 inch.

(B) May 1 through October 15, Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13, the minimum mesh size for shrimp pots is 1 inch, with the following exception: June 1 through October 15, in any Marine Area or portion thereof that is closed for spot shrimp but open for coonstripe and pink shrimp, the minimum mesh size for shrimp pots is 1/2 inch.

(C) Half-inch mesh is defined as mesh that a 3/8 inch square peg will pass through each mesh opening; flexible (web) mesh pots must have mesh size openings that are a minimum of 1 1/8 inch stretch measure.

(D) One inch mesh is defined as a mesh that a 7/8 inch square peg will pass through each mesh opening; flexible (web) mesh pots must have mesh size openings that are a minimum of 1 3/4 inch stretch measure.

(iv) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(v) Unless otherwise designated, a violation of this subsection is a violation of RCW 77.15.382. Possession of shrimp while using gear in violation of the provisions of this section is a rebuttable presumption that the shrimp were taken with such gear.

(c) In the field, it is unlawful for each person harvesting shrimp to fail to use a separate container to hold their catch and the container must be in the harvester's presence or identified with the harvester's name. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(d) It is unlawful to dig for or possess ghost or mud shrimp taken by any method except hand operated, nonmechanized suction devices or dug by hand.

OTS-4781.1

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-030 Shellfish harvest logs.** (1) **Logbook requirement:** It is unlawful for any vessel operator engaged in the commercial harvest of crawfish, sea cucumber, sea urchin, scallop, shrimp, or squid to fail to obtain and accurately and completely maintain the appropriate harvest log available from the Washington department of fish and wildlife. It is unlawful for any license holder engaged in commercial sand shrimp fishing or operator of mechanical clam digging device to fail to obtain and accurately and completely maintain the appropriate harvest log available from the Washington department of fish and wildlife.

(2) **Logbook maintenance:** It is unlawful for any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section, to fail to maintain the required harvest log: Aboard the vessel; at the harvest site; when crawfish, sea cucumbers, sea urchins, shrimp, squid, scallops, clams, or sand shrimp are aboard during transit of a harvest vessel, or are in possession of the license holder.

(3) **Logbook submission and retention:** It is unlawful for the vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to submit harvest logs for inspection upon request by department of fish and wildlife officers or authorized employees.

(4) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to comply with the following methods of logbook submittal and time frames related to harvest logbook submittal:

(a) Completed harvest logs for crawfish, coastal ocean pink shrimp, sea cucumber, sea urchin, scallop, Puget Sound shrimp pot and trawl, and squid must be received by the department within 10 days following any calendar month in which fishing occurred(~~(, required completed harvest logs must be received by the department)~~); however, vessel operators or license holders may submit logs directly to authorized department employees.

(b) Vessel operators or license holders responsible for submitting logs to the department, as described in subsection (1) of this section, must maintain a copy of all submitted logs for a period of three years following the harvest activity. Copies of harvest logs, which are required to be maintained, must be available for inspection upon request by department of fish and wildlife officers and authorized employees.

(c) Original harvest logs must be maintained and submitted in ascending consecutive order of the log serial number.

(5) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to send completed harvest logs to the appropriate following mailing address, except as provided for in subsection (4)(a) of this section.

**For Puget Sound Shrimp Pot and Trawl Harvest Logbooks:**

ATTN: PUGET SOUND SHRIMP HARVEST MANAGER

Washington Department of Fish and Wildlife

375 Hudson St.  
Port Townsend, WA 98368.

**For Coastal Shrimp Harvest Logbooks:**

ATTN: COASTAL SHRIMP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
48 Devonshire Rd.  
Montesano, WA 98563.

**For Crawfish Harvest Logbooks:**

ATTN: FISH PROGRAM - CRAWFISH HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Sea Urchin and Sea Cucumber Harvest Logbooks:**

ATTN: FISH PROGRAM - SEA URCHIN/SEA CUCUMBER HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Clam (harvest with mechanical digging devices) Harvest Logbooks:**

ATTN: FISH PROGRAM - GEODUCK HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Scallop Harvest Logbooks:**

ATTN: FISH PROGRAM - SCALLOP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Squid (Coastal waters) Harvest Logbooks:**

ATTN: FISH PROGRAM - COASTAL SQUID HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Squid (Puget Sound waters) Harvest Logbooks:**

ATTN: PUGET SOUND SQUID HARVEST MANAGER  
Washington Department of Fish and Wildlife  
375 Hudson St.  
Port Townsend, WA 98368.

**For Coastal Sand Shrimp Harvest Logbooks:**

ATTN: COASTAL SAND SHRIMP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 190  
Ocean Park, WA 98640-0190.

**For Puget Sound Sand Shrimp Harvest Logbooks:**

ATTN: PUGET SOUND SAND SHRIMP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
375 Hudson St.  
Port Townsend, WA 98368.

(6) It is unlawful for any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section to fail to permanently and legibly record in ink the following information within the following time frames:

(a) (~~(Shrimp (other than Puget Sound shrimp or sand shrimp) or crawfish with shellfish pot gear:))~~) **Crawfish:**

(i) Before leaving the catch area where harvest occurred, record the vessel Washington department of fish and wildlife boat registration number, number of pots pulled, date pulled, soak time, and gear location; and

(ii) Immediately after delivery of shellfish to an original receiver, record the weight of all shellfish.

(b) (~~(Shrimp with beam trawl or shrimp trawl gear:))~~) **Puget Sound shrimp trawl gear:**

(i) Before commencing a new tow or prior to leaving the site where the catch was taken, record the vessel ((identity)) name, current date of fishing activity, location fished, trawl width, ((~~Marine Fish-Shellfish Management and Catch Reporting Area fished,~~)) depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow, and estimated weight of shrimp of each species caught for each tow.

(ii) Immediately after delivery of shrimp to an original receiver((~~7~~)) or ((~~before leaving the last catch site of the day~~)) the submission of a fish receiving ticket, if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket ((~~serial~~)) number.

(c) **Coastal shrimp trawl gear:**

(i) Before commencing a new tow, record the vessel name, current date of fishing activity, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, duration of tow, estimated weight of shrimp of each species not retained for each tow, and estimated weight of shrimp of each species caught for each tow.

(ii) Immediately after delivery of shrimp to an original receiver or the submission of a fish receiving ticket, if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket number.

(d) **Sea urchins and sea cucumbers:**

(i) Before leaving the harvest site, record the vessel identity, date, Marine Fish-Shellfish Catch Reporting Area fished, location fished, depth fished, latitude and longitude to the nearest tenth of a minute or to the nearest second, and the approximate weight in pounds of sea urchins or sea cucumbers harvested.

(ii) Upon landing or delivery to an original receiver, the exact species and weight of sea urchins, as recorded on the shellfish receiving ticket, must be recorded.

(iii) Upon landing or delivery to an original receiver, the exact weight of sea cucumbers, as recorded on the shellfish receiving ticket, and whether or not prelanded processing occurred ("whole-live" or "split-drained"), must be recorded.

((~~d~~)) (e) **Clams, with mechanical digging devices:**

(i) Before the end of each day's fishing and departure from the harvest grounds, record the vessel identity if a harvest vessel is used in harvest operation, exact location by latitude and longitude to the nearest thousandths of a minute (recorded in WGS 84 datum), and date of harvest.

(ii) Weight by each clam species in pounds upon landing or delivery to an original receiver.

(iii) Weight in pounds of each clam species caught and returned to the harvest grounds.

((~~e~~)) (f) **Scallops:**



(i) Before leaving the location where the catch was taken, record the vessel identity, date, location, and duration of harvest and estimated weight in pounds and species of scallops caught for each tow or dive hour.

(ii) Upon landing or delivery to an original receiver, the exact weight in pounds, as recorded on the shellfish receiving ticket, and species of harvested scallops.

~~((f))~~ (g) Squid, except when taken incidental to any other lawful fishery:

(i) Coastal:

(A) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, starting and ending time of fishing, and numbers of other species caught and returned.

(B) Weight in pounds of squid upon landing or delivery to an original receiver.

(ii) Puget Sound:

(A) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, location (nearest landmark, bay, or GPS coordinates), starting and ending time of fishing, total vessel wattage or lumens of attracting lights, and numbers of other species caught and returned.

(B) Weight in pounds of squid upon landing or delivery to an original receiver.

~~((g))~~ (h) Sand shrimp (Puget Sound and coastal), except when taken incidental to other lawful fishery:

(i) Prior to leaving the harvest site, the location or identification number of the harvest tract, date of harvest, number of trenches pumped, average length and width of trenches (yards), total number of sand shrimp retained (dozens).

(ii) At the time of delivery to an original receiver, total number of sand shrimp sold (dozens), and the name of the sand shrimp buyer.

~~((h) Shrimp (other than sand shrimp), using shellfish pot gear in Puget Sound:)~~ (i) Puget Sound shrimp pot:

(i) Prior to leaving the harvest site, the name of vessel operator, license number, the vessel's Washington department of fish and wildlife boat registration number, buoy brand, date, phone number, pot mesh size, pull date, groundline length, number of pots pulled, depth fished, soak time, gear location (including latitude and longitude to the nearest hundredth of a minute), Shrimp Management Unit fished (region, subregion, catch area, subarea), species targeted, sorted catch estimates, and weight(s) in pounds of catch (~~(, and shellfish receiving ticket number)~~). A separate weight for each species caught and retained must be recorded. Any time that gear is deployed the location must be recorded. For pots deployed on a (~~(ground line both)~~) ground line, the start (~~(and end)~~) location(~~(s)~~) for each string must be provided.

(ii) Immediately after delivery of shrimp to an original receiver (~~(, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license or limited fish seller endorsement and is the original receiver)~~), record the fish receiving ticket (~~(serial)~~) number.

(7) Violation of this section as it relates to failing to report required information or failing to submit log books is punishable un-

der RCW 77.15.280 reporting of fish or wildlife harvest. Violation of this section as it relates to knowingly providing false or misleading information is punishable under RCW 77.15.270, providing false information.

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-455 Commercial crab fishery—Seasons and areas—Puget Sound.** The open times and areas for commercial crab fishing in Puget Sound are as follows:

(1) It is unlawful to fish for, take, or possess crab for commercial purposes except during open commercial crab harvest seasons and from open commercial crab management units as set by emergency rule. Commercial crab fishing will be open from one hour before sunrise to one hour after sunset during open seasons, except as provided below.

(2) The following areas are closed to commercial crab fisheries regulated by the department:

(a) Crab Management Regions 4, 5, and 6 (WAC 220-320-110).

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from Sandy Point Light No. 2 (48.7868°, -122.7124°) to Gooseberry Point (48.7324°, -122.6728°).

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder off the southeast portion of Point Francis (48.6973°, -122.6073°) to the old pilings at Stevie's Point (~~((0.2 miles north-west of the point where the Lehigh Cement pipeline meets the shoreline; 48.7682°, -122.5282°))~~) (48.7765°, -122.5523°).

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island (48.4131°, -122.5814°) and extending south to the most westerly tip of Hope Island (48.3959°, -122.5788°), thence southeast to Seal Rocks (48.3737°, -122.5634°), thence southeast to the green can buoy (Buoy No. 5; 48.3630°, -122.5510°) at the mouth of Swinomish Channel, thence easterly to the western tip of Goat Island (48.3630°, -122.5386°).

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point (48.0322°, -122.2274°) to the five-meter tower (48.0156°, -122.2707°) between Gedney (Hat) Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point (48.1935°, -122.4625°) to the intersection (48.1353°, -122.3999°) with a line projected true west from Kayak Point (48.1351°, -122.3678°), thence east to shore.

(f) Those waters of the Dungeness Bay Crustacean Special Management Area (WAC 220-320-120).

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-530 Commercial shrimp trawl fishery—Puget Sound.**

**License**

(1) It is unlawful to take, fish for, land, or deliver shrimp taken for commercial purposes with trawl gear from Puget Sound waters without a valid Puget Sound shrimp trawl license and a shrimp trawl permit, issued annually by the director, and without complying with all provisions of a Puget Sound shrimp trawl fishery permit.

A Puget Sound shrimp trawl license will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp trawl licenses may designate a single alternate operator per license.

**Trawl gear and area restrictions**

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except during seasons opened by emergency rule and authorized by a permit issued by the director.

It is unlawful to operate shrimp beam trawl gear in Puget Sound from one hour after official sunset to one hour before official sunrise.

(3) It is unlawful to retain spot shrimp with trawl gear.

(4) Gear restrictions - Beam trawl gear is the only lawful trawl gear type permitted for Puget Sound. (~~Use of otter trawl gear or other trawl gear types is unlawful.~~)

(a) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 22A is 25 feet.

(b) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A (trawl Catch Area 23A; WAC 220-320-140), 23B, 23C, 25A, and 29 is 60 feet.

(5) (~~Area restrictions:~~

~~(a) Catch Areas 21B, 22B, and those waters of Catch Area 20A north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light, at the Lummi Reservation (48.7868°, -122.7124°) are closed year round.~~

(b)) Depth restrictions - It is unlawful to fish for shrimp with beam trawl gear in waters shallower than the following:

(a) 100 feet in Puget Sound.

(b) 120 feet in Catch Area 20A.

(6) Closed areas - It is unlawful to fish for shrimp with beam trawl gear year-round in the following areas:

(a) Catch Area 21A except those waters of the Lummi-Sinclair Triangle, as defined in WAC 220-320-140(4).

(b) Catch Areas 21B, 22B, and those waters of Catch Area 20A north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light, at the Lummi Reservation (48.7868°, -122.7124°).

(c) Subregion 1A, as defined in WAC 220-320-140 (1)(a)(i).

(d) Discovery Bay Shrimp District, as defined in WAC 220-320-120 (1)(b).

(e) Sequim Bay CSMA, as defined in WAC 220-320-120(6).

(f) Catch Area 23D.

(7) Area restrictions - The following areas are closed from the season opening through the dates described in the following paragraphs.

(a) Catch Area 20A outside of those waters north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light at the Lummi Reservation (48.7868°, -122.7124°) are closed through July 31st.

~~((c) Catch Area 21A is closed year round, except that those waters north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) on Lummi Island)) (b) Those waters of the Lummi-Sinclair Triangle, as defined in WAC 220-320-140 (4) (c) are closed through June 30th.~~

~~((d) In Catch Area 22A:~~

~~(i) Shrimp trawl fishing is closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°) from the season opening through July 9th, except as described in (f) of this subsection.~~

~~(ii) Shrimp trawl fishing is closed that portion east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait from the season opening through June 15th, except as described in (f) of this subsection.~~

~~(e) Subregion 1B (Catch Areas 20B and 22A) is closed through June 15th, except as described in (f) of this subsection.~~

~~(f)) (c) Those waters of South Lopez Sound, as defined in WAC 220-320-140 (4) (a), are closed through July 9th.~~

~~(d) All waters of subregion 1B, with the exception of South Lopez Sound and the Lummi-Sinclair Triangle, as defined in WAC 220-320-140(4), are closed through June 15th, except as described in (e) of this subsection.~~

~~(e) The following areas may open on the described dates and remain open from that date contingent upon the results of department-approved observer sampling to evaluate bycatch. Bycatch parameters must be satisfied for the fishery to remain open earlier than the date((s)) described in (d) ((and (e))) of this subsection.~~

~~(i) ((In Catch Area 22A, in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°): May 1st.~~

~~(ii) That portion of Catch Area 22A east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait:)) Those waters of the subregion 1B, except South Lopez Sound and the Lummi-Sinclair Triangle, as defined in WAC 220-320-140(4) may open as early as May 1st.~~

~~((iii) Subregion 1B (Catch Areas 20B and 22A): May 16th.~~

~~(iv)) (ii) Trawl fishers seeking to open before the date((s)) described in (d) ((and (e))) of this subsection must coordinate with the department to arrange a department-approved bycatch observation plan prior to commencing fishing.~~

~~((g) It is unlawful to fish for shrimp in Puget Sound with beam trawl gear in waters shallower than 100 feet.~~

~~(h) It is unlawful to fish for shrimp with beam trawl gear shallower than 120 feet in Catch Area 20A.~~

~~(i)) A violation of this section is punishable under RCW 77.15.750.~~

### ~~(Landing and reporting~~

~~(6) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a licensed fish buyer, or if transferred at sea, without transfer to a licensed fish buyer. A fisher who is a licensed fish buyer or a limited fish seller may complete and return a fish receiving ticket to satisfy the requirements of this subsection.~~

~~(7) Harvesters must also comply with reporting provisions of WAC 220-340-030.)~~

## OTS-4782.2

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

### **WAC 220-340-420 Commercial crab fishery—Unlawful acts. (1)**

**Crab size and sex restrictions.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crab; or

(b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) **Net fishing boats must not have crab on board.** It is unlawful for any person to possess any crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear for commercial purposes or while commercial quantities of food fish or shellfish are on board. Violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), depending on the quantity of crab taken or possessed.

(5) **Area must be open to commercial crabbing.** It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots for taking crab for commercial purposes in any area or time that is not open for commercial crabbing by rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-340-450.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation.

(7) **When it is unlawful to buy or land crab from the ocean without a crab vessel inspection.** It is unlawful for any fisher or wholesale fish buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12 hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

- (i) Are properly licensed commercial crab fishing; and
- (ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

(9) **Barging of crab pots by undesignated vessels.** It is unlawful for a vessel not designated on a Dungeness crab coastal or Puget Sound fishery license to deploy crab pot gear except under the following conditions:

(a) **Coastal**

(i) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(ii) The undesignated vessel carries no more than 250 crab pots at any one time; and

(iii) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(b) **Puget Sound**

(i) The vessel deploys pot gear only during the 48-hour period immediately following the initial season opening date and time;

(ii) The primary or alternate operator designated on the license associated with the barged gear is on board the nondesignated vessel ("barge" vessel) while the gear is being deployed; and

(iii) The Puget Sound commercial crab license holder who owns the gear intended for barging has provided notice to the department via email at [crab.report@dfw.wa.gov](mailto:crab.report@dfw.wa.gov) at least 24 hours in advance of the fishery opening date. Notice must include the following information:

(A) Name and license number(s) of the owner of the gear being barged;

(B) Name of the designated primary operator, if different from the licensed owner;

(C) Name of the alternate operator, if used to deploy pots from a nondesignated vessel;

(D) Buoy brand number and number of pots to be deployed from a nondesignated vessel;

(E) Name and identification numbers (WN and/or Coast Guard) of the nondesignated vessel;

(F) Puget Sound Crab Management Region or set location.

(10) Violation of subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(11) **Storing crab prior to delivery to an original receiver, Puget Sound.** It is unlawful for a Puget Sound commercial crab license holder to store crab off-vessel prior to delivery to an original receiver, except under the following conditions:

(a) It is unlawful to store crab, off-vessel or on-vessel, for more than 10 days (~~(prior to)~~) without making a delivery to an original receiver.

(b) All crab that have been removed from a vessel and are not immediately delivered to an original receiver must be stored in containers labeled with the following:

- (i) Fisher name;
- (ii) WDFW-issued vessel ID number;
- (iii) Puget Sound commercial crab license number;
- (iv) Date of harvest;

~~((ii) An estimate of pounds of crab contained;~~

~~(iii) Either the)) (v) The quantity of pounds of crab retained by Crab Management Region or by Marine Fish-Shellfish (MFSF) Catch Reporting Area ((or the Crab Management Region from which the catch originated));~~

~~((iv)) (vi) Containers used for storing crab removed from a vessel and not delivered to an original receiver by 5:00 p.m. of the day following the day of harvest must additionally be labeled with the commercial fish and shellfish transportation ticket number(s).~~

(c) Storage of crab is subject to the reporting requirements described in WAC 220-352-340.

(12) **Electronic monitoring system (EM system)** is defined as a vessel monitoring system that automatically determines a vessel's position, records individual pot retrieval via a hydraulic pressure reading, and transmits this information to an EM system service provider. The service provider receives the transmission and provides automated data access to the Pacific States Marine Fisheries Commission (PSMFC) in a format consistent with PSMFC specifications where it is available to WDFW for management and enforcement.

(a) The department has published a compliance guide for the EM system which provides additional information and instructions to follow in complying with this regulation and is incorporated by reference herein. The guide can be obtained by contacting the EM program manager: 48 Devonshire Road, Montesano, WA 98563; phone: 360-249-4628; email: coastal.crab.EM@dfw.wa.gov or wdfw.wa.gov/fishing/commercial/crab/coastal.

(b) It is unlawful for the operator of a vessel designated to a coastal Dungeness crab license that is used to commercial fish for coastal Dungeness crab as defined by WAC 220-340-400 to fail to:

(i) Obtain an EM system that is capable of recording and transmitting vessel location and hydraulic pressure readings and have it installed on board the vessel designated to the coastal Dungeness crab license. The operating requirements for the EM system are as follows:

(A) The EM system must accurately record the vessel's position at least once every minute.

(B) The EM system must transmit the vessel location data to the service provider at least once every hour.

(C) A hydraulic pressure sensor must be installed between the crab block and the first fitting from the crab block on the main line of a vessel that controls it such that recorded pressure readings are indicative of pot hauling activity.

(D) The hydraulic pressure sensor must accurately record a pressure reading at least once every 10 seconds.

(E) The EM system must transmit hydraulic pressure sensor readings at least once every hour.

(F) If the EM system can determine when a vessel is moored, the EM system may automatically decrease the position and hydraulic pressure recording rate to at least once every hour.

(G) The EM system must be able to store vessel position and hydraulic pressure data in the event of service coverage interruption. Once service is restored, the system must transmit stored data to the service provider.

(H) The EM system must include a feedback mechanism to indicate to the vessel operator that the system is operational.

(ii) Arrange for an EM system service provider to receive and relay transmissions to Pacific States Marine Fisheries Commission (PSMFC) in a format consistent with PSMFC specifications.

(A) The following data fields must be provided to the PSMFC whenever a new system is installed, or new data transmissions begin: Vessel coast guard number, state vessel registration number, state of registration, serial number or unique identifier linked to the EM system, EM service provider name, name of the make and model of the EM system, date the system was installed or started transmitting data, date the system was removed or stopped transmitting data.

(B) The following data fields must be recorded by the EM system and relayed to the PSMFC every hour: Serial number or unique identifier linked to the EM system, date, time, latitude, longitude, pressure reading from sensor, speed, vessel name.

(iii) Activate the EM system, submit an EM system activation report to WDFW, and receive confirmation from WDFW that the location and pressure sensor transmissions are being received before the vessel is used to fish in the coastal commercial Dungeness fishery. Commercial crab fishing is defined in WAC 220-340-400. An activation report must be submitted to WDFW under the following circumstances:

(A) Annually before gear is deployed at the start of each coastal commercial Dungeness crab season.

(B) When an EM system is reactivated following a reinstallation.

(C) When there is a change in service provider.

(D) When any changes are made to the information required in the EM activation report.

(E) After operating under a temporary exemption permit as described in (b) (v) (A), (B), and (C) of this subsection.

(iv) Operate and maintain the EM system in good working order continuously, 24 hours a day when a vessel is fishing for coastal commercial crab, as defined in WAC 220-340-400, in the Washington coastal commercial Dungeness crab fishery unless the vessel is operating under an exemption provided under (b) (v) (A), (B), (C), or (b) (vi) (A) or (B) of this subsection.

(v) Request and secure an EM exemption permit when there is an interruption in the EM system function and comply with the requirements of this subsection and the terms of the EM exemption permit. Vessels required to operate and maintain an EM system under (b) of this subsection may be temporarily exempt from this requirement if a valid WDFW EM exemption permit is received from WDFW. An exemption is only authorized for the period specified on the permit. The exemption permits are as follows:

(A) EM system failure exemption permit. Vessels required to operate and maintain an EM system under (b) of this subsection may be temporarily exempt from EM system requirements in situations due to an EM system failure, or hydraulic pressure sensor failure by obtaining an EM system failure exemption permit. In the event a system failure exemption permit is granted by WDFW, the operator of the vessel must submit a harvest logbook per WAC 220-340-460 and use electronic navigational equipment (including, but not limited to, chart plotters, hand-held global positioning systems, etc.) to record a track line of the vessel's movements while commercial crab fishing, and track line information must be made available to WDFW officers or authorized employees immediately upon request and retained for 30 days. Requests



for multiple exemption permits for a single vessel within a season will be reviewed and approved at the discretion of WDFW.

(B) Haul out exemption permit. Vessels required to operate and maintain an EM system under (b) of this subsection may be temporarily exempted from EM requirements when it is anticipated that a vessel's EM system will be inoperable due to removing the vessel from the water for less than 14 days and coastal commercial Dungeness crab gear will remain lawfully deployed by obtaining a "Haul Out Exemption Permit" from WDFW.

(C) Emergency exemption permit: Vessels required to operate and maintain an EM system under (b) of this subsection may be exempt from EM requirements in emergency situations rendering the vessel's EM system inoperable for less than 14 days including, but not limited to, fire, flooding, or extensive physical damage to critical areas of the vessel by obtaining an emergency exemption permit from WDFW.

(D) To request an exemption permit described in (b)(v) of this subsection, a vessel owner must contact WDFW. For an exemption permit to be valid, a request must be received by WDFW as soon as it is apparent that there is a system failure or emergency or at least 2 hours before a haul out exemption is needed. A vessel will be required to submit an activation report under (b)(iii) of this subsection before returning to fish.

(vi) Submit a long-term departure exemption report. A vessel that is required to operate and maintain an EM system under (b) of this subsection may be exempt from this requirement if a long-term departure exemption report is submitted to WDFW in compliance with all the conditions described in (b)(vi)(A), (B), or (C) of this subsection. The basis for a long-term departure exemption report are as follows:

(A) Suspension of fishing operations. Vessels required to operate and maintain an EM system under (b) of this subsection may be exempted from EM system requirements when the vessel has concluded fishing for coastal commercial Dungeness crab for the current season or has suspended fishing operations such that all commercial gear is removed from waters open to the coastal Dungeness crab fishery.

(B) Emergency. Vessels required to operate and maintain an EM system under (b) of this subsection may be exempted from EM system requirements in emergency situations rendering the vessel's EM system inoperable for more than 14 days including, but not limited to, fire, flooding, or extensive physical damage to critical areas of the vessel, and the vessel will not resume fishing for coastal commercial Dungeness crab for the remainder of the current season.

(C) Long-term departure reports must be received by WDFW no later than 24 hours after a vessel has concluded fishing for the season.

(vii) Contact WDFW immediately if transmission of position and pressure sensor readings have been interrupted and no more than 24 hours after being notified by WDFW that position and pressure sensor readings are not being received, by notifying the EM program manager, phone: 360-249-4628, or email [coastal.crab.EM@dfw.wa.gov](mailto:coastal.crab.EM@dfw.wa.gov).

(viii) Make the EM system available for inspection by WDFW enforcement personnel, USCG personnel, or any authorized employee upon request.

(ix) Ensure that the EM system or signal is not interfered with, tampered with, disabled, or destroyed and is operated and maintained according to the EM system provider instructions.

(x) Pay all charges levied by the service provider as necessary to ensure continuous operation of the EM system.

(13) Violation of subsection (12) of this section is a gross misdemeanor punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-430 Commercial crab fishery—Gear requirements. (1) Buoy tag and pot tag required.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters, except if authorized by permit issued by the director, each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, except if authorized by permit issued by the director, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection by the department, except under the following conditions: The holder or alternate operator of a Puget Sound crab license has declared, as permitted under (f) of this subsection, that deployed tags have been lost and are unrecoverable, under penalty of perjury, and has been granted permission by the department to use undeployed buoy tags as a replacement.

(f) Replacement crab buoy tags.

(i) Puget Sound: (~~The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.~~) Puget Sound commercial crab license holders are required to request permission to use undeployed buoy tags in the event deployed buoy tags are lost and are unrecoverable. Requests to use undeployed buoy tags must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss. Requests must be made using a department provided electronic form.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery in the case of extraordinary loss or on a case-by-case basis. Replacement buoy tags will not be issued in excess of the license holder's permanent pot limit.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

**(5) Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached, unless otherwise authorized by permit issued by the director.

(b) It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy. The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the excess line from floating on the water's surface.

(c) No buoys attached to Puget Sound or coastal commercial crab gear (~~in Puget Sound~~) may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

(d) It is unlawful for any coastal or Puget Sound commercial Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. The license holder, or alternate operator, must register the buoy brand and buoy color(s) to be used with the license each crab season using the WDFW online registration form. In the event that a license is transferred to another vessel or owner in the same season, the license holder must reregister the buoy brand and buoy color(s) to be used with the license for the remainder of that crab season. A license holder may register only one unique buoy brand and one unique buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for

each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations, unless otherwise authorized by permit issued from the director.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

**(6) (~~Coastal~~) Commercial crab fishery line requirements.**

(a) All crab pots used in (~~the coastal~~) any Dungeness crab fishery shall be set up to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b)(i) It is unlawful for a coastal Dungeness crab fishery license holder to use line that connects the main buoy to the crab pot that is not marked sufficiently to identify it as gear used exclusively in the Washington coastal Dungeness crab fishery.

(ii) For each shellfish pot used in the Washington coastal commercial Dungeness crab fishery and rigged with line, that line must be marked with no less than 12 continuous inches of red in at least two places. At a minimum, 12 continuous inches of line must be marked in red, no more than one fathom from the main buoy and no more than one fathom from the pot.

(7) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-460 Commercial crab fishery—Coastal Dungeness crab logbook requirements.** (1) It is unlawful for any vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery without a fully operational electronic monitoring system to fail to have in possession, and to complete a department-issued paper or a department-approved electronic logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters for all crab deliveries to a Washington port. Fully operational means the electronic monitoring system is collecting, storing, and transmitting data per WAC 220-340-420(12). For the purposes of this section, "delivery" is defined as provided in RCW 77.65.210.

(2) It is unlawful for any vessel operator engaged in fishing without a fully operational electronic monitoring system to fail to comply with the following method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets or electronic fields within (~~ten days~~) 24 hours following any (~~calendar month in which fishing occurred~~) landing made by a vessel while fishing for Dungeness crab in the coastal commercial fishery without a fully operational electronic monitoring system. Completed Dungeness crab harvest (~~logs~~) logbooks must be (~~sent~~) submitted to the (~~following address:~~) Washington department of fish and wildlife (~~(, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd.,~~

Montesano, WA 98563)) using a WDFW logbook drop box or the following electronic mail address: [coastal.crab.EM@dfw.wa.gov](mailto:coastal.crab.EM@dfw.wa.gov).

(b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery and without a fully operational electronic monitoring system must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting ~~((logs))~~ harvest logbooks to the department must maintain a copy of all submitted ~~((logs))~~ harvest logbooks for no less than three years after the fishing activity ended.

(c) Vessel operators can obtain paper logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628 or at [coastal.crab.EM@dfw.wa.gov](mailto:coastal.crab.EM@dfw.wa.gov).

(3) A violation of this section is an infraction, punishable under RCW 77.15.160.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-510 Commercial ocean spot shrimp pot fishery—Coastal waters.** It is unlawful to fish for, possess, or deliver ocean spot shrimp (*Pandalus platyceros*) taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, except as provided for in this section:

#### **License and area**

(1) It is unlawful to fish for, possess, or deliver spot shrimp taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, unless the fisher has a valid Washington-coastal spot shrimp pot fishery license. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

(2) It is unlawful to fish for or possess spot shrimp or to set spot shrimp gear in waters of the Pacific Ocean adjacent to the state of Oregon without the licenses or permits required to commercially fish for spot shrimp within the state waters of Oregon. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Season**

(3) It is unlawful to fish for, take, or possess spot shrimp on board a commercial fishing vessel, except from March 15 through September 15 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(4) The total allowable catch of spot shrimp taken from waters west of the Bonilla-Tatoosh line and from offshore waters during a calendar year is 200,000 pounds round weight. Of this 200,000 pounds round weight, no more than 100,000 pounds can be taken south of 47 degrees 04.00' N. latitude, and no more than 100,000 pounds can be taken north of 47 degrees 04.00' N. latitude.

#### **Gear**

(5) It is unlawful to fish with spot shrimp pot gear for commercial purposes if the pots exceed a maximum 153-inch bottom perimeter

and a maximum 24-inch height. It is unlawful to possess spot shrimp taken with spot shrimp pot gear that exceeds a maximum 153-inch bottom perimeter and a maximum 24-inch height.

(a) Shrimp pot gear must be constructed with net webbing or rigid mesh. At least 50 percent of the net webbing or mesh covering the sides of the pot must easily allow passage of a seven-eighths inch diameter dowel.

(b) Pot gear is required to have an escape mechanism as provided for in WAC 220-340-060.

(c) Set line end marker buoys must be floating and visible on the surface of the water, equipped with a pole, flag, radar reflector, and operating light, and marked with the clear identification of the license holder and the vessel designated on the coastal spot shrimp pot license.

(d) Fishers shall use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(6) It is unlawful to fish for spot shrimp for commercial purposes with more than a maximum of 500 pots. It is unlawful to possess spot shrimp taken for commercial purposes with more than a maximum of 500 pots.

(7) It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

(8) A violation of subsection (5) or (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

#### **Incidental catch**

~~((8))~~ (9) It is unlawful for persons fishing in any coastal spot shrimp fishery to deliver spot shrimp while having on board the fishing vessel any bottomfish taken in the coastal bottomfish fishery under WAC 220-355-100.

~~((9))~~ (10) It is unlawful to retain any species of finfish or shellfish taken with spot shrimp pot gear, except octopus, squid, or up to 50 pounds round weight of other shrimp species taken incidentally with spot shrimp pot gear.

~~((10))~~ (11) A violation of subsection ~~((8))~~ (9) or ~~((9))~~ (10) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Harvest logs**

~~((11))~~ (12) It is unlawful for any spot shrimp pot fishery license holder or vessel operator engaged in fishing for spot shrimp in the coastal commercial spot shrimp fishery to fail to complete a department-issued harvest log for all fishing activity in state or off-shore waters.

~~((12))~~ (13) It is unlawful for any vessel operator engaged in fishing for spot shrimp for commercial purposes to fail to comply with the following method and time frame related to harvest log submittal and recordkeeping:

(a) Completed harvest logs must be submitted so that the department receives them within ~~((ten))~~ 10 days following any calendar month in which fishing occurred. Washington-coastal spot shrimp pot license holders can submit the completed harvest logs to a WDFW employee upon

request, or mail the completed harvest logs to Washington Department of Fish and Wildlife, Attention: Coastal Spot Shrimp Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Washington-coastal spot shrimp pot license holders or vessel operators engaged in fishing for spot shrimp in the coastal commercial fishery must complete a harvest log entry for each day fished, prior to offloading the spot shrimp. Washington-coastal spot shrimp pot license holders must maintain a copy of all submitted harvest log entries for no less than three years after the fishing activity ended.

(c) Washington-coastal spot shrimp pot license holders or vessel operators can obtain a harvest logbook by contacting the department's coastal spot shrimp manager at 360-249-4628.

~~((13))~~ (14) A violation of subsection ~~((11))~~ (12) or ~~((12))~~ (13) of this section is a misdemeanor, punishable under RCW 77.15.280, Reporting of fish or wildlife harvest—Rules violation—Penalty.

#### Permit

~~((14))~~ (15) It is unlawful to fish for, retain, land, or deliver spot shrimp taken with pot gear for commercial purposes without a valid coastal spot shrimp pot fishery permit.

~~((15))~~ (16) It is unlawful to take, retain, land, or deliver any spot shrimp taken with pot gear without complying with all provisions of a coastal spot shrimp pot fishery permit.

~~((16))~~ (17) A violation of subsection ~~((14))~~ (15) or ~~((15))~~ (16) of this section is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

### WAC 220-340-520 Commercial shrimp pot fishery—Puget Sound.

#### License

(1) It is unlawful to take, fish for, land, or deliver shrimp taken for commercial purposes with pot gear from Puget Sound waters without a valid Puget Sound shrimp pot license.

A Puget Sound shrimp pot license will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp pot licenses may designate a single alternate operator per license.

#### Pot Gear and area

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except during seasons opened by emergency rule.

(3) ~~((Gear restrictions in all areas, maximum 100 pots per fisher))~~ In all areas fishers are limited to a maximum of 100 spot shrimp pots, as defined in subsection (5)(d) of this section, and a maximum of 100 nonspot shrimp pots, as defined in subsection (5)(e) of this section, except for dual licensees as provided for in RCW 77.70.410.

(4) Buoy requirements, in all areas:

(a) Buoys must be solid orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.

(b) Buoys must be marked with the clear identification of the license holder and the vessel designated on the Puget Sound shrimp pot license.

(c) When two or more shrimp pots are attached to a common ground line, the number and type of pots (spot shrimp or nonspot shrimp pot) so attached must be clearly labeled on the required buoy.

(d) Fishers shall use only the amount of line reasonably necessary to compensate for tides, currents, and weather. The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.

(e) It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

(5) Pot requirements, in all areas:

(a) A shrimp pot may not exceed a maximum of 153-inch bottom perimeter and a maximum of 24-inch height.

(b) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(c) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(d) Spot shrimp may only be harvested using pots with a minimum mesh size of one inch. Mesh size of one inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(e) Nonspot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(6) Harvest restrictions, all areas:

(a) It is unlawful to set or pull shrimp pot gear from one hour after official sunset to one hour before official sunrise.

~~(b) ((It is unlawful to deploy spot shrimp pots and nonspot shrimp pots concurrently within the same Catch Reporting Area, with the following exceptions:~~

~~(i) Spot and nonspot shrimp pots may be concurrently deployed in Catch Area 23A but not within the same subarea (23A-E, 23A-W, 23A-C, or 23A-S) concurrently.~~

~~(ii) Nonspot pots may be deployed within Sequim Bay CSMA (WAC 220-320-120) concurrently with spot shrimp pots deployed in the remaining portion of Catch Area 25A outside of Sequim Bay CSMA.~~

~~(iii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.~~

~~(e))~~ Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and an estimate of total pounds that are being targeted prior to the deployment of any shrimp gear by email or text message to



shrimp.report@dfw.wa.gov, or by using the Puget Sound commercial shrimp reporting website.

~~((d))~~ (c) It is unlawful to harvest nonspot and spot shrimp in the same day.

~~((e) It is unlawful to harvest shrimp in more than one catch area per day, except for concurrent pot deployment described in (b) of this subsection.~~

~~(f))~~ (d) Nonspot shrimp pot harvest restrictions:

(i) Harvest of nonspot shrimp is not permitted deeper than 175 feet in Shrimp Management ~~((Area))~~ Region 2E.

(ii) Harvest of nonspot shrimp is not permitted deeper than 175 feet in Shrimp Management Subregion 1A.

(iii) Harvest of nonspot shrimp is not permitted deeper than 175 feet in Catch Area 23A including the corresponding shrimp subareas (23A-E, 23A-W, 23A-S, 23A-C).

(iv) Harvest of nonspot shrimp is not permitted deeper than 150 feet in Shrimp Management Region 2W.

**(Reporting**

~~(7) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a wholesale fish buyer, or if transferred at sea, without transfer to a wholesale fish buyer. A fisher who is a wholesale fish buyer or a limited fish seller may complete and return a fish receiving ticket to satisfy the requirements of this subsection.)~~

**OTS-4780.2**

AMENDATORY SECTION (Amending WSR 21-24-031, filed 11/22/21, effective 1/1/22)

**WAC 220-352-060 Completion, submission, distribution, and retention of copies of nontreaty fish receiving tickets.** (1) Original receivers must complete state of Washington nontreaty fish receiving tickets by recording the delivery amount using the appropriate weight or quantity measure for all fish or shellfish at the conclusion of the offload and prior to the fish or shellfish being processed or transported away from the delivery site.

(2) Fish receiving tickets paper forms must be made out in quadruplicate (four copies) at the time of delivery of fish or shellfish. Original receivers must use fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued. Original receivers reporting using paper forms must:

(a) Mail the state copy (green) of the fish receiving ticket to the department of fish and wildlife (department), except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and sturgeon under WAC 220-352-315, 220-352-320, 220-352-325 and 220-352-330. The department must receive the state copy no later than the sixth working day after the day the original receiver completes the fish ticket.

(b) Retain the dealer copies (white and yellow) of the fish receiving ticket for his or her records.

(c) The deliverer must retain the fisher copy (gold) for his or her records.

(3) Original receivers who are required to submit fish receiving tickets using an electronic form under WAC 220-352-035(2) must:

(a) (i) ~~((Submit the ticket within 24 hours of completion of the delivery if required to report electronically under WAC 220-352-035(2))~~ For deliveries completed on a mobile device, original receivers are required to fill out an electronic fish ticket form at the delivery location and submit it immediately following the completion of the delivery of fish or shellfish to the original receiver before leaving the delivery location.

In the event of a cellular or broadband outage or lack of service at the delivery site, the original receiver must submit the ticket immediately upon regaining access to a cellular or broadband connection following the completion of the delivery.

(ii) For deliveries of fish and shellfish made to original receivers using a nonmobile device or desktop electronic fish ticket form, the original receiver must submit the ticket within 24 hours after the delivery is completed except:

~~((iii))~~ For deliveries ((made by vessels fishing and delivering under a)) of coastal Dungeness crab ((license)), the original receiver must submit the ticket by the close of the next business day after the delivery is ((completed)) complete.

(b) Submit the ticket in compliance with the timely reporting conditions set forth in the electronic fish receiving ticket reporting agreement if reporting voluntarily under WAC 220-352-035(3).

(4) Original receivers who submit fish receiving tickets using an electronic form must print and retain a copy of the completed electronic fish receiving ticket for three years unless:

(a) The fish receiving ticket is signed electronically under WAC 220-352-140 (4)(c) and an electronic copy of the signed and completed fish receiving ticket is available to the department including WDFW officers upon request for a minimum of three years; or

(b) An alternative fish ticket retention requirement is specified in the electronic fish receiving ticket agreement governing the voluntary reporting of the delivery.

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

**WAC 220-352-230 Commercial fish and shellfish transportation ticket.** (1) If fish or shellfish are transported from a vessel or catch site (if the fishery does not require a vessel) prior to completing a fish receiving ticket, the fisher must complete a commercial fish and shellfish transportation ticket as required by this section. The transportation ticket must accompany the fish or shellfish until the fish receiving ticket is completed. The purpose of this rule is to ensure catch accountability when fish or shellfish are transported by the fisher or his or her designee before a fish receiving ticket is required to be completed. Fish receiving ticket requirements under this chapter are still in effect.

(2) The fisher must complete the department provided transportation ticket with the following information:

- (a) The name of the fisher who caught the fish or shellfish.
  - (b) The fisher's (~~vessel registration~~) WDFW-issued vessel ID number.
  - (c) The signature of the fisher or additional operator.
  - (d) The name of the transporter.
  - (e) The catch area where the fish or shellfish were caught.
  - (f) The species of fish or shellfish being transported.
  - (g) The individual number or approximate pounds of fish or shellfish being transported, as required under WAC 220-352-040.
  - (h) The date(s) the fish or shellfish were harvested.
- (3) In cases where the fisher does not deliver the fish or shellfish to an original receiver within twenty-four hours after offloading, the fisher must send a copy of the completed transportation ticket to the department. The completed ticket must arrive within the sixth working day. Once the fisher delivers the fish or shellfish to the original receiver, a copy of the transportation ticket must be attached or the ticket number must be written on the fish receiving ticket.
- (4) In cases where an agent of the fisher delivers fish or shellfish with a transportation ticket to the original receiver, the original receiver must mail the transportation ticket, together with the state copy of the fish receiving ticket as required in WAC 220-352-060, 220-352-090, and 220-352-130. If the commercial fisher delivers and signs the fish receiving ticket, only the fish receiving ticket must be mailed in, and the transportation ticket is not required to be submitted with it.
- Transportation tickets completed for deliveries reported using electronic fish receiving ticket forms should be attached to the printed and signed copy of the form, as required by WAC 220-352-140(5).
- (5) Any person transporting commercially taken fish or shellfish or commercial quantities of fish or shellfish must provide a transportation ticket for inspection upon demand by a fish and wildlife officer.
- (6) The provisions of this section do not apply to:
- (a) Fish and shellfish purchased at retail, provided the purchaser has, in his or her possession, a sales receipt documenting the purchase;
  - (b) Fish or shellfish for which a fish receiving ticket has been completed and a copy of the fish receiving ticket is in the possession of the person transporting;
  - (c) Fish or shellfish being transported by the department;
  - (d) Hatchery carcass sales;
  - (e) Private sector cultured aquatic products in transport;
  - (f) Fish or shellfish being transported on a completed Oregon transportation ticket, provided that the fish were caught in the concurrent waters of the Columbia River and were landed on Washington's shore; and
  - (g) Fish or shellfish being transported in the catching vessel, provided that the vessel is not being transported or towed over land.

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-352-340 Puget Sound crab—Additional reporting requirements.** (1) **License registration:** Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region to which gear will be deployed for each license they hold prior to the fishery opening date.

(a) Registrations must be updated when gear moves between areas.

(b) The department must be notified if gear is not going to be deployed for a period of 72 hours or longer.

(c) Registrations must be made by registering via the WDFW Puget Sound commercial crabbing web page or via email or text to crab.report@dfw.wa.gov.

(d) Reports must include the following information:

(i) Vessel operator name;

(ii) Vessel name and WDFW-issued vessel (~~(registration)~~) ID number;

(iii) Permit number(s) to be fished;

(iv) Crab Management Region to be fished;

(v) Gear deployment date.

(2) **Quick reports:** Any person originally receiving or purchasing Dungeness crab taken from Puget Sound by nontreaty fishers must report to the department the previous day's purchases by 10:00 a.m. the following day.

(a) Reports must be sent by email or text message to crab.report@dfw.wa.gov, or by using the Puget Sound commercial crab reporting website.

(b) For crab originally received or purchased by a licensed fish buyer, reports must include, for each fish receiving ticket completed by a licensed fish buyer:

(i) The name and department-issued license number of the wholesale fish buyer or limited fish seller;

(ii) The phone number or email address of the wholesale fish buyer or limited fish seller;

(iii) The date of landing of crab; and

(iv) The quantity of pounds of crab delivered, by Crab Management Region (WAC 220-320-110) or by Marine Fish-Shellfish Management and Catch Reporting Area (WAC 220-301-040).

(c) Receivers who complete and submit an electronic fish receiving ticket form, which is also received by the department, per the provisions of WAC 220-352-035 are exempted from the requirements of this subsection.

(3) **Shellfish transportation tickets:** If crab are transported from a vessel prior to completing a fish receiving ticket and not delivered to an original receiver by 5:00 p.m. on the day following the day of harvest, the fisher must complete and submit a commercial fish and shellfish transportation ticket per the provisions of WAC 220-352-230 and submit a transported crab quick report to the department.

(a) "Transported" is intended to include crab stored off, but in close proximity to, a vessel with Puget Sound commercial crab license beyond 5:00 p.m. on the day following the day of harvest and prior to delivery to an original receiver.

(b) (~~Separate~~) "Stored" is intended to include crab removed from, and stored in close proximity to, a vessel with a Puget Sound

commercial crab license prior to delivery to an original receiver up until 5:00 p.m. the day following the day of harvest.

(c) Each day's harvest that is not delivered to a licensed fish buyer by 5:00 p.m. on the day following the day of harvest must be recorded separately on a commercial fish and shellfish transportation ticket(s) ((must be filled out for each day's harvest that is not delivered to a licensed fish buyer by 5:00 p.m. on the day following the day of harvest)).

(4) **Stored or transported crab quick reports:** Stored or transported crab quick reports must be submitted by the fisher and received by the department by 10:00 a.m. the day following the day crab are off-loaded from the vessel ((for storage)). Reports must be made ((on-line)) using the department-provided electronic forms on the Puget Sound commercial crab reporting website, or by email or text to crab.report@dfw.wa.gov. Reports must include:

(a) ((The name of the fisher who caught the crab)) Fisher name;

(b) ((The)) WDFW-issued vessel ID number;

(c) Puget Sound commercial crab license number;

(d) Date of harvest ((of the crab));

((e) Puget Sound commercial license number of the fisher who caught the crab;

(d) The vessel ID from which the crab were harvested;

(e) The number of containers used to store the crab;

(f) The approximate weight of the crab retained;

(g) Catch Reporting Area of crab harvested;

(h)) (e) The quantity of pounds of crab retained by Crab Management Region or by Marine Fish-Shellfish ((Management)) Catch Reporting Area; (and

(i)) (f) Shellfish transportation ticket number(s).

(5) **((Delivery of crab previously retained beyond 5:00 p.m. on the day following the day of harvest (transported crab):)) Sale of stored or transported crab quick report:** Commercial harvesters of crab in Puget Sound must report ((the delivery to an original receiver of all transported crab)) to the department the delivery of stored or transported crab to an original receiver. Reports are due by 10:00 a.m. the day following the delivery ((to an original receiver)). Reports must be made using the department-provided electronic forms on the Puget Sound commercial crab reporting website, or by email or text to crab.report@dfw.wa.gov. Reports must contain:

(a) Fisher name;

(b) WDFW-issued vessel ID number;

(c) Puget Sound commercial crab license number;

(d) Date of sale;

(e) Dealer name;

(f) Commercial shellfish transportation ticket number(s) associated with the delivered crab; and

(g) Fish receiving ticket number(s) corresponding to landing date of delivery.

OTS-4647.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-360-220 Hagfish pot trial fishery—Season and gear.** It is unlawful to fish for hagfish for commercial purposes except as provided in this section:

- (1) Season - Open year-round to hagfish pot gear only.
- (2) Area - Open only in Pacific Ocean waters greater than 50 fathoms in depth.
- (3) Gear restrictions:
  - (a) Maximum of 100 hagfish pots per permit. Pots may be fished individually or on a common ground line.
  - (b) Hagfish pot gear requirements:
    - (i) Maximum entrance tunnel size of eleven square inches. Entrance tunnels may be of any shape.
    - (ii) Each pot is required to have at least one escape exit of at least nine and one-half square inches in opening and which must be constructed of 120 thread size or smaller untreated cotton twine.
  - (c) Buoy requirements: Hag fish pot gear must be buoyed. Marker buoys must be floating and visible on the surface of the water, equipped with a pole, flag, radar reflector and operating light, and marked with the clear identification of the permittee. If ground lines are used, ground line end marker buoys must display the number of pots on the ground line.

It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

**WSR 23-17-009**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed August 4, 2023, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-062.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) proposes amending WAC 388-436-0050 Determining financial need and benefit amount for CEAP, 388-478-0020 Payment standards for TANF, SFA, and RCA, 388-478-0027 What is the payment standard for pregnant women assistance (PWA)?, 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?, and 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA, and RCA?

Hearing Location(s): On September 26, 2023, at 10:00 a.m., virtually via [Microsoft] Teams or call in. Hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than September 27, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by September 26, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by September 12, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments will implement an eight percent payment standard increase (effective January 1, 2024) for the temporary assistance for needy families, state family assistance, refugee cash assistance, aged, blind, or disabled, and pregnant women assistance programs, as approved via the 2024-2025 operating budget. Amendments will also update net income limits and allowable benefit amounts for the consolidated emergency assistance program.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.660, 74.08.090, 74.08A.230.

Statute Being Implemented: ESSB 5187 (chapter 475, Laws of 2023).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5470, 360-522-2214.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents..."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

August 1, 2023  
 Katherine I. Vasquez  
 Rules Coordinator

**SHS-4994.2**

AMENDATORY SECTION (Amending WSR 22-19-094, filed 9/21/22, effective 10/22/22)

**WAC 388-436-0050 Determining financial need and benefit amount for CEAP.** (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than or equal to 90 percent of the temporary assistance for needy families (TANF) payment standard. The net income limit for CEAP assistance units is:

Assistance unit members	Net income limit
1	(((\$375)) <u>\$405</u> )
2	((475)) <u>513</u>
3	((589)) <u>636</u>
4	((694)) <u>749</u>
5	((799)) <u>863</u>
6	((908)) <u>981</u>
7	((1,049)) <u>1,132</u>
8	((1,160)) <u>1,253</u>
9	((1,274)) <u>1,376</u>
10 or more	((1,385)) <u>1,496</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8	9	10 or more
Food	(((\$253)) <u>\$273</u> )	(((\$322)) <u>\$348</u> )	(((\$397)) <u>\$429</u> )	(((\$469)) <u>\$507</u> )	(((\$539)) <u>\$582</u> )	(((\$612)) <u>\$661</u> )	(((\$699)) <u>\$755</u> )	(((\$773)) <u>\$835</u> )	(((\$864)) <u>\$933</u> )	(((\$939)) <u>\$1,014</u> )
Shelter	((308)) <u>333</u> )	((390)) <u>421</u> )	((485)) <u>524</u> )	((572)) <u>618</u> )	((657)) <u>710</u> )	((744)) <u>804</u> )	((863)) <u>932</u> )	((952)) <u>1,028</u> )	((1,048)) <u>1,132</u> )	((1,139)) <u>1,230</u> )
Clothing	((36)) <u>39</u> )	((45)) <u>49</u> )	((56)) <u>60</u> )	((66)) <u>71</u> )	((76)) <u>82</u> )	((89)) <u>96</u> )	((98)) <u>106</u> )	((112)) <u>121</u> )	((127)) <u>137</u> )	((139)) <u>150</u> )



	1	2	3	4	5	6	7	8	9	10 or more
Minor medical care	((214)) <u>231</u>	((273)) <u>295</u>	((338)) <u>365</u>	((397)) <u>429</u>	((458)) <u>495</u>	((516)) <u>557</u>	((603)) <u>651</u>	((665)) <u>718</u>	((736)) <u>795</u>	((800)) <u>864</u>
Utilities	((105)) <u>113</u>	((132)) <u>143</u>	((163)) <u>176</u>	((194)) <u>206</u>	((220)) <u>238</u>	((253)) <u>273</u>	((292)) <u>315</u>	((322)) <u>348</u>	((354)) <u>382</u>	((385)) <u>416</u>
Household maintenance	((76)) <u>82</u>	((97)) <u>105</u>	((121)) <u>131</u>	((140)) <u>151</u>	((163)) <u>176</u>	((185)) <u>200</u>	((214)) <u>231</u>	((235)) <u>254</u>	((255)) <u>275</u>	((277)) <u>299</u>
Job related transportation	((417)) <u>450</u>	((528)) <u>570</u>	((654)) <u>706</u>	((771)) <u>833</u>	((888)) <u>959</u>	((1,009)) <u>1,090</u>	((1,165)) <u>1,258</u>	((1,289)) <u>1,392</u>	((1,416)) <u>1,529</u>	((1,539)) <u>1,662</u>
Child related transportation	((417)) <u>450</u>	((528)) <u>570</u>	((654)) <u>706</u>	((771)) <u>833</u>	((888)) <u>959</u>	((1,009)) <u>1,090</u>	((1,165)) <u>1,258</u>	((1,289)) <u>1,392</u>	((1,416)) <u>1,529</u>	((1,539)) <u>1,662</u>

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

- (a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;
- (b) Cash on hand, if not already counted as income; and
- (c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

AMENDATORY SECTION (Amending WSR 21-21-054, filed 10/15/21, effective 11/15/21)

**WAC 388-478-0020 Payment standards for TANF, SFA, and RCA.** The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	(((\$417)) <u>\$450</u>	6	(((\$1,009)) <u>\$1,090</u>
2	(((\$528)) <u>570</u>	7	(((\$1,165)) <u>1,258</u>
3	(((\$654)) <u>706</u>	8	(((\$1,289)) <u>1,392</u>
4	(((\$771)) <u>833</u>	9	(((\$1,416)) <u>1,529</u>
5	(((\$888)) <u>959</u>	10 or more	(((\$1,539)) <u>1,662</u>

AMENDATORY SECTION (Amending WSR 21-21-054, filed 10/15/21, effective 11/15/21)

**WAC 388-478-0027 What is the payment standard for pregnant women assistance (PWA)?** The payment standard for a PWA cash assistance unit is:

Assistance Unit Size	Payment Standard
1	(((\$417)) <u>\$450</u>

AMENDATORY SECTION (Amending WSR 23-01-057, filed 12/14/22, effective 1/14/23)

**WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?** (1) The maximum monthly payment standards for aged, blind, or disabled (ABD) cash assistance program assistance units are:

Assistance Unit Size	Payment Standard
1	<del>((\\$417))</del> <u>\\$450</u>
2	<del>((\\$528))</del> <u>570</u>

(2) ABD clothing, personal maintenance, and necessary incidentals (CPI) payment standards are listed in WAC 388-478-0006.

AMENDATORY SECTION (Amending WSR 21-21-054, filed 10/15/21, effective 11/15/21)

**WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA, and RCA?** To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or ((a)) pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
1	<del>((\\$834))</del> <u>\\$900</u>	6	<del>((\\$2,018))</del> <u>\\$2,180</u>
2	<del>((1,056))</del> <u>1,140</u>	7	<del>((2,330))</del> <u>2,516</u>
3	<del>((1,308))</del> <u>1,412</u>	8	<del>((2,578))</del> <u>2,784</u>
4	<del>((1,542))</del> <u>1,666</u>	9	<del>((2,832))</del> <u>3,058</u>
5	<del>((1,776))</del> <u>1,918</u>	10 or more	<del>((3,078))</del> <u>3,324</u>

## WSR 23-17-014

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed August 4, 2023, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-104.

Title of Rule and Other Identifying Information: WAC 182-550-2900 Payment limits—Inpatient hospital services, 182-550-3800 Rebasing, 182-550-3830 Adjustments to inpatient rates, 182-550-4500 Payment method—Ratio of costs-to-charges (RCC), 182-550-7200 OPPS—Billing requirements and payment method, 182-550-7550 OPPS payment enhancements, 182-550-8000 Hospital safety net program (HSNP)—Purpose, and 182-550-8100 Assessment notices—Process and timelines.

Hearing Location(s): On September 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_E7tAxNWnSVCG-SIhvxxsWg](https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SIhvxxsWg). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: September 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 26, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by September 15, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to update terminology, revise rates approved by the legislature, remove outdated information, and make other general policy changes.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Abby Cole, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1835.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose any costs on small businesses.

August 4, 2023

Wendy Barcus

## OTS-4728.2

AMENDATORY SECTION (Amending WSR 21-18-059, filed 8/26/21, effective 9/26/21)

**WAC 182-550-2900 Payment limits—Inpatient hospital services.**

- (1) **Eligibility for payment.** To be eligible for payment for covered inpatient hospital services, a hospital must:
- (a) Have a core-provider agreement with the medicaid agency; and
  - (b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of that hospital, as defined in WAC 182-550-1050; or
  - (c) Be an out-of-state hospital that meets the conditions in WAC 182-550-6700.
- (2) **Exclusions.** The agency does not pay for any of the following:
- (a) Inpatient care or services, or both, provided in a hospital or distinct unit to a client when a managed care organization (MCO) plan is contracted to cover those services.
  - (b) Care or services, or both, provided in a hospital or distinct unit provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.
  - (c) Ancillary services provided in a hospital or distinct unit unless explicitly spelled out in this chapter.
  - (d) Additional days of hospitalization on a non-DRG claim when:
    - (i) Those days exceed the number of days established by the agency or the agency's designee under WAC 182-550-2600, as the approved length of stay (LOS); and
    - (ii) The hospital or distinct unit has not received prior authorization for an extended LOS from the agency or the agency's designee as specified in WAC 182-550-4300(4). The agency may perform a prospective, concurrent, or retrospective utilization review as described in WAC 182-550-1700, to evaluate an extended LOS. An agency designee may also perform those utilization reviews to evaluate an extended LOS.
  - (e) Inpatient hospital services when the agency determines that the client's medical record fails to support the medical necessity and inpatient level of care for the inpatient admission. The agency may perform a retrospective utilization review as described in WAC 182-550-1700, to evaluate if the services are medically necessary and are provided at the appropriate level of care.
  - (f) Two separate inpatient hospitalizations if a client is readmitted to the same or affiliated hospital or distinct unit within (~~fourteen~~) 14 calendar days of discharge and the agency determines that one inpatient hospitalization does not qualify for a separate payment. See WAC 182-550-3000 (7)(f) for the agency's review of (~~fourteen~~) 14-day readmissions.
  - (g) Inpatient claims for (~~fourteen~~) 14-day readmissions considered to be provider preventable as described in WAC 182-550-2950.
  - (h) A client's day(s) of absence from the hospital or distinct unit.

(i) A nonemergency transfer of a client. See WAC 182-550-3600 for hospital transfers.

(j) Charges related to a provider preventable condition (PPC), hospital acquired condition (HAC), serious reportable event (SRE), or a condition not present on admission (POA). See WAC 182-502-0022.

(k) An early elective delivery as defined in WAC 182-500-0030. The agency may pay for a delivery before (~~(thirty-nine)~~) 39 weeks gestation, including induction and cesarean section, if medically necessary under WAC 182-533-0400(20).

(3) **Interim billed inpatient hospital claims.** This section defines when the agency considers payment for an interim billed inpatient hospital claim.

(a) When the agency is the primary payer, each interim billed nonpsychiatric claim must:

(i) Be submitted in (~~(sixty)~~) 60-calendar-day intervals, unless the client is discharged before the next (~~(sixty)~~) 60-calendar-day interval.

(ii) Document the entire date span between the client's date of admission and the current date of services billed, and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(iii) Be submitted as an adjustment to the previous interim billed hospital claim.

(b) When the agency is not the primary payer:

(i) The agency pays an interim billed nonpsychiatric claim when the criteria in (a) of this subsection are met; and

(ii) Either of the following:

(A) Sixty calendar days have passed from the date the agency became the primary payer; or

(B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(c) For psychiatric claims, (a) (i) and (b) (i) of this subsection do not apply.

(i) When the agency is the primary payer, each billed psychiatric claim may be submitted in 60-calendar-day intervals unless the client is discharged before the next 60-calendar-day interval.

(ii) If a claim is submitted under (c) (i) of this subsection, the claim must document the current dates of services billed and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(d) When the agency is not the primary payer, the agency pays a billed psychiatric claim when:

(i) The criteria in (c) (i) of this subsection are met; and

(ii) Either of the following occur:

(A) Sixty calendar days have passed from the date the agency became the primary payer; or

(B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(4) **Admission period for claims.** The agency considers for payment a hospital claim submitted for a client's continuous inpatient hospital admission of (~~(sixty)~~) 60 calendar days or less upon the client's formal release from the hospital or distinct unit.

(5) **Billing for hospital claims.** To be eligible for payment, a hospital or distinct unit must bill the agency using an inpatient hospital claim:

(a) Under the current national uniform billing data element specifications:

(i) Developed by the National Uniform Billing Committee (NUBC);

(ii) Approved or modified, or both, by the Washington state payer group or the agency; and

(iii) In effect on the date of the client's admission.

(b) Under the current published international classification of diseases clinical modification coding guidelines;

(c) Subject to the rules in this section and other applicable rules;

(d) Under the agency's published billing instructions and other documents; and

(e) With the date span that covers the client's entire hospitalization. See subsection (3) of this section for when the agency considers and pays an initial interim billed hospital claim and any subsequent interim billed hospital claims;

(f) That requires an adjustment due to, but not limited to, charges that were not billed on the original paid claim (e.g., late charges), through submission of an adjusted hospital claim. Each adjustment to a paid hospital claim must provide complete documentation for the entire date span between the client's admission date and discharge date, and include the following for that date span:

(i) All inpatient hospital services provided; and

(ii) All applicable diagnosis codes and procedure codes; and

(g) With the appropriate NUBC revenue code specific to the service or treatment provided to the client.

(6) **Multiple hospital rates.** When a hospital charges multiple rates for an accommodation room and board revenue code, the agency pays the hospital's lowest room and board rate for that revenue code. The agency may request the hospital's charge master. Room charges must not exceed the hospital's usual and customary charges to the general public, as required by 42 C.F.R. Sec. 447.271.

(7) **Administrative day rate.** The agency allows hospitals an administrative day rate for those days of a hospital stay in which a client no longer meets criteria for the acute inpatient level of care, as provided in WAC 182-550-4550.

(8) **Payment for observation services.** The agency pays for observation services according to WAC 182-550-6000, 182-550-7200, and other applicable rules.

(9) **Required adjustments.** The agency determines its actual payment for an inpatient hospital admission by making any required adjustments from the calculations of the allowed covered charges. Adjustments include:

(a) Client participation (e.g., spenddown);

(b) Any third-party liability amount, including medicare part A and part B; and

(c) Any other adjustments as determined by the agency.

(10) **Clients under state-administered programs.** The agency pays hospitals less for services provided to clients eligible under state-administered programs, as provided in WAC 182-550-4800.

(11) **Final charges.** All hospital providers must present final charges to the agency according to WAC 182-502-0150.

AMENDATORY SECTION (Amending WSR 22-03-008, filed 1/6/22, effective 2/6/22)

**WAC 182-550-3800 Rebasing.** The medicaid agency redesigns (rebases) the medicaid inpatient payment system as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of (~~fee-for-service (FFS)~~) paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598; and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(c) FFS and managed care encounter data.

(2) Estimates costs. The agency uses one of two methods to estimate costs. The agency may perform an aggregate cost determination by multiplying the ratio of costs-to-charges (RCC) by the total billed charges, or the agency may use the following detailed costing method:

(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;

(b) The agency estimates costs for each claim in the dataset as follows:

(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and

(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery room, radiology, laboratory, pharmacy, or clinic) by the allowed charges reported at the claim line level by type of service; and

(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:

(i) Routine cost components:

(A) Routine care;

(B) Intensive care;

(C) Intensive care-psychiatric;

(D) Coronary care;

(E) Nursery;

(F) Neonatal ICU;

(G) Alcohol/substance abuse;

(H) Psychiatric;

(I) Oncology; and

(J) Rehabilitation.

(ii) Ancillary cost components:

- (A) Operating room;
- (B) Recovery room;
- (C) Delivery/labor room;
- (D) Anesthesiology;
- (E) Radio, diagnostic;
- (F) Radio, therapeutic;
- (G) Radioisotope;
- (H) Laboratory;
- (I) Blood administration;
- (J) Intravenous therapy;
- (K) Respiratory therapy;
- (L) Physical therapy;
- (M) Occupational therapy;
- (N) Speech pathology;
- (O) Electrocardiography;
- (P) Electroencephalography;
- (Q) Medical supplies;
- (R) Drugs;
- (S) Renal dialysis/home dialysis;
- (T) Ancillary oncology;
- (U) Cardiology;
- (V) Ambulatory surgery;
- (W) CT scan/MRI;
- (X) Clinic;
- (Y) Emergency;
- (Z) Ultrasound;
- (AA) NICU transportation;
- (BB) GI laboratory;
- (CC) Miscellaneous; and
- (DD) Observation beds.

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by 3M™ Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system. The agency periodically reviews and determines the most appropriate APR-DRG grouper version to use.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter. The agency models the rebased system to be budget neutral on a prospective basis, including global adjustments to the budget target determined by the agency. The agency ensures that base DRG conversion factors and per diem rates are sufficient to support economy, efficiency, and access to services for medicaid recipients. The agency will publish base rate factors on its website.

(5) To maintain budget neutrality, the agency makes global adjustments as needed.

(a) Claims paid under the DRG, rehab per diem, and withdrawal management per diem payment methods were reduced to support an estimated (~~three million five hundred thousand dollar~~) \$3,500,000 increase in psychiatric payments to acute hospitals.

(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by (~~three million five hundred thousand dollars~~) \$3,500,000.



(c) Effective for dates of admission on and after October 1, 2017, the agency increased psychiatric per diem rates as directed by the legislature. The increase applies to any hospital with (~~two hundred~~) 200 or more psychiatric bed days.

(i) The agency prioritized the increase for hospitals not currently paid based on provider-specific costs using a similar methodology to set rates for existing inpatient facilities utilizing cost report information for hospital fiscal years ending in 2016.

(ii) The distribution of funds for each fiscal year is as follows:

(A) Free-standing psychiatric hospitals receive 68.15 percent of the statewide average cost per day.

(B) All other hospitals receive the greater of 78.41 percent of their provider-specific cost, or their current medicaid psychiatric per diem rate.

(iii) The agency set the increased rates to assure that the distribution of funds does not exceed the amounts provided by the legislature.

(iv) The agency conducts annual reviews for updated cost information to determine whether new and existing providers meet the (~~two hundred~~) 200 or more bed criteria.

(v) The agency will apply the same cost percentage criteria for future rebasing of the psychiatric per diem rates.

(6) Effective July 1, 2020, the agency sets psychiatric per diem rates specific to long-term civil commitments separately from other psychiatric per diem rates.

(a) In order to qualify for a provider-specific long-term civil commitment psychiatric per diem, the provider must be contracted with the agency to provide long-term civil commitment beds.

(b) The agency sets the provider-specific rate at the time of contracting.

(c) The agency sets the rate for acute care hospitals with distinct psychiatric units as follows:

(i) Hospitals that have a 12-month medicare cost report with at least 200 psychiatric bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the costs documented on the medicare cost report.

(ii) Hospitals that do not have a 12-month cost report with at least 200 bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the greater of the average of all acute care hospitals providing long-term psychiatric services in-state, provider-specific long-term psychiatric per diem rates, or the current short-term psychiatric per diem. The long-term psychiatric rate is applied to any hospital that accepts patients committed to a psychiatric facility for a period of 90 days or greater. The agency sets the rate so as not to exceed the amount provided by the legislature.

(d) The agency sets the rates for free-standing psychiatric hospitals as follows:

(i) Hospitals without an existing long-term rate receive a per diem rate equivalent to either the greater of the short-term rate or the state-wide average long-term psychiatric rate for free-standing psychiatric hospitals.

(ii) Hospitals that have an existing long-term per diem will continue to receive the \$940 established for July 1, 2021. In addition to the \$940 per diem rate, the hospital may submit supplemental cost data with the cost report to the agency for consideration. If approved, the

agency will make appropriate adjustments to the medicaid inpatient psychiatric per diem payment rate of the hospital. Adjustment of costs may include any of the following:

(A) Costs associated with professional services and fees not accounted for in the hospital's medicare cost report or reimbursed separately;

(B) Costs associated with the hospital providing the long-term psychiatric patient access to involuntary treatment court services that are not reimbursed separately;

(C) Other costs associated with caring for long-term psychiatric patients that are not reimbursed separately.

(iii) The agency sets the rate so as to not exceed the amount provided by the legislature.

(7) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:

(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(ii) The amount in (a)(i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(iii) The agency adds the nonlabor portion of the base rate to the amount in (a)(ii) of this subsection to produce a hospital-specific wage adjusted factor.

(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and

(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

(8) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (6) and (7) of this section.

AMENDATORY SECTION (Amending WSR 23-01-013, filed 12/8/22, effective 1/8/23)

**WAC 182-550-3830 Adjustments to inpatient rates.** (1) The medicaid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates at rebase:

(a) Wage index adjustment;

(b) Direct graduate medical education (DGME); and

(c) Indirect medical education (IME).

(2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(3) The agency does not update the statewide average DRG factor between rebasing periods, except:

(a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and

(b) When directed by the legislature.

(4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of 12 consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than 18 months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.

(7) Sole community hospitals.

(a) For sole community hospitals' rate enhancements, the agency multiplies an in-state hospital's specific conversion factor and per diem rates by a multiplier if the hospital meets all the following criteria per RCW 74.09.5225:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013;

(ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;

(iii) Have less than 150 acute care licensed beds in fiscal year 2011;

(iv) Be owned and operated by the state or a political subdivision; and

(v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

(b) As of July 1, 2021, through June 30, 2023, an additional increase is applied for hospitals that accept single bed certifications per RCW 71.05.745.

Enhancement Multiplier by Year						
Provider Category	Effective For the Dates					
	07/01/2015	07/01/2020	07/01/2021	07/01/2022	07/01/2023	01/01/2024
	06/30/2020	06/30/2021	06/30/2022	06/30/2023	12/31/2023	06/30/2024
Sole community hospital	1.25	1.5	N/A	1.25	1.25	1.5

Enhancement Multiplier by Year						
Provider Category	Effective For the Dates					
	07/01/2015	07/01/2020	07/01/2021	07/01/2022	07/01/2023	01/01/2024
	06/30/2020	06/30/2021	06/30/2022	06/30/2023	12/31/2023	06/30/2024
Sole community hospital accepting single bed certifications	N/A	N/A	1.5	1.5	N/A	N/A

AMENDATORY SECTION (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

**WAC 182-550-4500 Payment method—Ratio of costs-to-charges (RCC).** (1) The medicaid agency pays hospitals using the ratio of costs-to-charges (RCC) payment method for services exempt from the following payment methods:

- (a) Ambulatory payment classification (APC);
- (b) Diagnosis-related group (DRG);
- (c) Enhanced ambulatory patient group (EAPG);
- (d) Per case;
- (e) Per diem; and
- (f) Maximum allowable fee schedule.

(2) The agency:

- (a) Determines the payment for:
  - (i) Inpatient claims by multiplying the hospital's inpatient RCC by the allowed covered charges for medically necessary services; and
  - (ii) Outpatient claims by multiplying the hospital's outpatient RCC by the allowed covered charges for medically necessary services.
- (b) Deducts from the amount derived in (a) of this subsection:
  - (i) All applicable adjustments for client responsibility;
  - (ii) Any third-party liability;
  - (iii) Medicare payments; and
  - (iv) Any other adjustments as determined by the agency.
- (c) Limits the RCC payment to the hospital's usual and customary charges for services allowed by the agency.

(3) The agency uses the RCC payment method to calculate the following:

- (a) Payment for the following services:
  - (i) Organ transplant services (see WAC 182-550-4400 (4)(h));
  - (ii) Hospital services provided at a long-term acute care (LTAC) facility not covered under the LTAC per diem rate (see WAC 182-550-2596); and
  - (iii) Any other hospital service identified by the agency as being paid by the RCC payment method; and
- (b) Costs for the following:
  - (i) High outlier qualifying claims (see WAC 182-550-3700); and
  - (ii) Hospital services provided in hospitals eligible for certified public expenditure (CPE) payments under WAC 182-550-4650(5).

(4) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 182-550-3000(8), the agency may apply an inpatient adjustment factor to the inpatient RCC payments made for the services in subsection (3) of this section.

(5) This section explains how the agency calculates each in-state and critical border hospital's RCC. For noncritical border city hospitals, see WAC 182-550-3900. The agency:

(a) Divides adjusted costs by adjusted patient charges. The agency determines the allowable costs and associated charges.

(b) Excludes agency nonallowed costs and nonallowed charges, such as costs and charges attributable to a change in ownership.

(c) Bases the RCC calculation on data from the hospital's annual medicare cost report (Form 2552) and applicable patient revenue reconciliation data provided by the hospital. The medicare cost report must cover a period of ~~((twelve))~~ 12 consecutive months in its medicare cost report year.

(d) Updates a hospital's inpatient RCC annually after the hospital sends its hospital fiscal year medicare cost report to the centers for medicare and medicaid services (CMS) and the agency. If medicare grants a delay in submission of the CMS medicare cost report to the medicare fiscal intermediary, the agency may determine an alternate method to adjust the RCC.

(e) Limits a noncritical access hospital's RCC to one point zero (1.0).

(6) For a hospital formed as a result of a merger (see WAC 182-550-4200), the agency combines the previous hospital's medicare cost reports and follows the process in subsection (5) of this section. The agency does not use partial year cost reports for this purpose.

(7) For newly constructed hospitals and hospitals not otherwise addressed in this chapter, the agency annually calculates a weighted average in-state RCC by dividing the sum of agency-determined costs for all in-state hospitals with RCCs by the sum of agency-determined charges for all hospitals with RCCs.

~~((8) The agency calculates each hospital's outpatient RCC annually. The agency calculates:~~

~~(a) A hospital's outpatient RCC by multiplying the hospital's inpatient RCC by the outpatient adjustment factor (OAF); and~~

~~(b) The weighted average in-state hospital outpatient RCC by multiplying the in-state weighted average inpatient RCC by the OAF.~~

~~(9) The OAF:~~

~~(a) Is the ratio between the outpatient and inpatient RCC payments;~~

~~(b) Is updated annually to adjust for cost and charge inflation; and~~

~~(c) Must not exceed one point zero (1.0).)~~

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

**WAC 182-550-7200 OPPS—Billing requirements and payment method.**

This section describes hospital provider billing requirements and the payment methods the medicaid agency uses to pay for covered outpatient hospital services provided by hospitals included in the outpatient prospective payment system (OPPS).

(1) Providers must bill according to national correct coding initiative (NCCI) standards maintained by the Centers for Medicare and Medicaid Services (CMS).

**ENHANCED AMBULATORY PATIENT GROUP (EAPG) METHOD**

(2) The agency uses the enhanced ambulatory patient group (EAPG) method as the primary payment method for OPPTS. Examples of services paid by the EAPG method include:

- (a) Surgeries;
- (b) Significant procedures;
- (c) Observation services;
- (d) Medical visits;
- (e) Dental procedures; and
- (f) Ancillary services.

**OPPTS MAXIMUM ALLOWABLE FEE SCHEDULE**

(3) The agency pays using the outpatient fee schedule for:

- (a) Covered services exempted from the EAPG payment method due to agency policy;
- (b) Covered services for which there are no established relative weights, such as:
  - (i) Durable medical equipment procedures grouped to EAPG type 7; and
  - (ii) Physical therapy procedures grouped to EAPG type 21;
- (c) Corneal tissue acquisition; and
- (d) Other services as identified by the agency and posted on the agency's website.

~~(( HOSPITAL OUTPATIENT RATIO OF COSTS-TO-CHARGES (RCC)~~

~~(4) The agency uses the hospital outpatient ratio of costs to charges (RCC) in WAC 182-550-3900 and 182-550-4500 to pay for the services listed in subsection (3) of this section for which the agency has not established a maximum allowable fee.)~~

AMENDATORY SECTION (Amending WSR 23-01-014, filed 12/8/22, effective 1/8/23)

**WAC 182-550-7550 OPPTS payment enhancements.** (1) Pediatric adjustment.

(a) The medicaid agency establishes a policy adjustor to be applied to all enhanced ambulatory patient group (EAPG) services for clients under age 18 years.

(b) Effective July 1, 2014, this adjustor equals one point thirty-five (1.35).

(2) Chemotherapy and combined chemotherapy/pharmacotherapy adjustment.

(a) The agency establishes a policy adjustor to be applied to services grouped as chemotherapy drugs or combined chemotherapy and pharmacotherapy drugs.

(b) Effective July 1, 2014, this adjustor equals one point one (1.1).

(3) Sole community hospitals.

(a) For sole community hospital's rate enhancements, the agency multiplies the in-state hospital's specific EAPG conversion factor by a multiplier if the hospital meets all of the following criteria per RCW 74.09.5225:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013;

- (ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;
  - (iii) Have less than 150 acute care licensed beds in fiscal year 2011; and
  - (iv) Be owned and operated by the state or a political subdivisions.
- (b) As of July 1, 2021, through June 30, 2023, an additional increase may be applied for hospitals that accept single bed certifications per RCW 71.05.745.

Enhancement Multiplier by Year						
Provider Category	Effective For the Dates					
	07/01/2015	07/01/2020	07/01/2021	07/01/2022	07/01/2023	01/01/2024
	06/30/2020	06/30/2021	06/30/2022	06/30/2023	12/31/2023	06/30/2024
Sole community hospital	1.25	1.5	N/A	1.25	1.25	1.50
Sole community hospital accepting single bed certifications	N/A	N/A	1.5	1.5	N/A	N/A

AMENDATORY SECTION (Amending WSR 20-14-054, filed 6/26/20, effective 7/27/20)

**WAC 182-550-8000 Hospital safety net ((assessment (HSNA))) program (HSNP)—Purpose.** Chapter 74.60 RCW establishes the hospital safety net ((assessment (HSNA))) program (HSNP). The ((HSNA program imposes an assessment on certain Washington state hospitals)) HSNP provides funding that is used solely to increase funding from all other sources and support additional payments to hospitals ((for)) as authorized ((medicaid services)) by chapter 74.60 RCW. The medicaid agency has authority to issue rules associated with the ((HSNA program)) HSNP under RCW 41.05.021 (1) (m) (iv) and 74.60.050(1).

AMENDATORY SECTION (Amending WSR 20-14-054, filed 6/26/20, effective 7/27/20)

**WAC 182-550-8100 Assessment notices—Process and timelines.** (1) **Notification.** The medicaid agency sends hospital safety net ((assessment (HSNA))) program (HSNP) assessment notices on or about ((thirty)) 30 calendar days prior to the end of each quarter as required by RCW 74.60.030 (1) (a).

(2) **Payment due date.** Each hospital must pay its assessment in full by the due date listed in the ((HSNA)) HSNP notice.

(3) **First past-due notification.** If a hospital does not pay its ((HSNA)) HSNP assessment in full by the due date, the agency sends the hospital a past-due notice. The past-due notice informs the hospital of the actions the agency may take if the hospital's assessment becomes ((ninety)) 60 calendar days past due.

(4) **Final past-due notification.** If a hospital does not pay its assessment in full within ((ninety)) 60 calendar days of its due date stated in the ((HSNA)) HSNP notice, the agency sends the hospital a final past-due notice.

(a) The final past-due notice informs the hospital of the actions the agency takes, as required by RCW 74.60.050(2), to offset funds from the agency's scheduled payments to the hospital.

(b) The agency does not offset funds from managed care capitation payments, as described in RCW 74.60.130.

(5) **Appeal.** A hospital may appeal the actions the agency takes to offset funds by following the process outlined in WAC 182-502-0050.



## WSR 23-17-024

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed August 8, 2023, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-055.

Title of Rule and Other Identifying Information: WAC 192-02-060  
Making a request for public records and 192-02-130 Denials of requests.

Hearing Location(s): On September 28, 2023, at 9:00 a.m. PST, via Zoom, Meeting ID 832 5819 3394, Passcode 965187; or call in +12532050468,,83258193394#,,,,\*965187# US, +12532158782,,83258193394#,,,,\*965187# US (Tacoma). Join Zoom meeting <https://esd-wa-gov.zoom.us/j/83258193394?pwd=WURHbVFBakpoRjBLYXV0dzJoUncxdz09>.

Date of Intended Adoption: October 2, 2023.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by September 28, 2023.

Assistance for Persons with Disabilities: Contact: Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY relay 711, email [Teresa.eckstein@esd.wa.gov](mailto:Teresa.eckstein@esd.wa.gov), by September 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to update the regulations governing the department's public records processes, including the information required to be submitted as part of a public records request and requests for the department to review a response denying a public records request.

Reasons Supporting Proposal: The department's public records rules should be updated to include a clear process for a requestor to ask the department to review a response denying a public records request, and the information required to be provided in a public records request should be updated to remove information that the department does not need.

Statutory Authority for Adoption: RCW 42.56.100, 50.13.030, 50A.25.030, and 50B.04.170 provide authority for the agency to adopt rules regarding access to agency records. RCW 50.12.010, 50.12.040, 50.13.030, and 50A.25.030 provide the agency's general rule-making authority.

Statute Being Implemented: RCW 42.56.100, 50.13.030, 50A.25.030, and 50B.04.170.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 360-463-1079.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 711, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), <https://esd.wa.gov/newsroom/rulemaking/>.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

August 7, 2023

Joy Adams

Interim Director

Employment System Policy and Integrity Division

## OTS-4742.2

AMENDATORY SECTION (Amending WSR 20-21-071, filed 10/16/20, effective 11/16/20)

**WAC 192-02-060 Making a request for public records.** (1) To request access to public records of the department, or seek assistance in making such a request, contact the public records officer at:

Public Records Officer  
P.O. Box 9046  
Olympia, WA 98507-9046  
Phone: 1-844-766-8930  
Email: recordsdisclosure@esd.wa.gov

(2) Any person wishing to inspect or copy public records of the department shall make the request in writing to the public records officer through one of the following:

- (a) On the department's request form;
- (b) Through an online portal designated by the department for this purpose;
- (c) By letter mailed to the address listed in subsection (1) of this section;
- (d) By email sent to the address listed in subsection (1) of this section; or
- (e) By submitting the request in person at the address provided on the department's website.

(3) Public records request should include:

- (a) The name of requestor;
- (b) ~~((The address of requestor;~~
- ~~(c) Other))~~ (c) Contact information, including telephone number and any email address;
- ~~((d))~~ (d) Identification of the public records adequate for the public records officer to locate the records; and
- ~~((e))~~ (e) The date and time of day of the request.

(4) If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor should so indicate and make arrangements to pay for copies of the records or a deposit.

(5) A records request form is available for use by requestors at the office of the public records officer and online at the department's website.

(6) If requestors refuse to identify themselves or provide sufficient contact information, the department will respond to the extent feasible and consistent with the law.

AMENDATORY SECTION (Amending WSR 20-21-071, filed 10/16/20, effective 11/16/20)

**WAC 192-02-130 Denials of requests.** (1) A denial of a request for records will be accompanied by a written statement of the specific reasons therefor.

(2) If the department denies a requestor access to public records, the requestor may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement denying the request.

(3) The department shall promptly review a petition to review a denial of a public records request and either affirm or reverse the denial within two business days following the department's receipt of the petition or within such other time as the department and the requestor mutually agree to.

(4) If the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter, pursuant to RCW 42.56.530. The attorney general has adopted rules on such requests in WAC 44-06-160.

~~((3))~~ (5) Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550.

**WSR 23-17-034**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**

[Filed August 9, 2023, 9:28 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 1.01, 1.07, 3.01, 3.03, 3.06, 3.09, 3.13, 3.15, 3.19, 4.01, 5.07, 7.01, 8.05, 13.02, 13.05 and 13.07; and Regulation II Section 1.01.

Hearing Location(s): On September 28, 2023, at 8:45 a.m., via Zoom <https://us02web.zoom.us/j/9128500665?pwd=dGhUdnU2Q0gzdHQxbTNTM0lNbllMUT09>, Meeting ID 912 850 0665, Passcode 1904, Call in 888 788 0099 US Toll-free; or in person at 1904 3rd Avenue, Suite 105, Seattle, WA.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Betsy Wheelock, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email [RegUpdates@psccleanair.gov](mailto:RegUpdates@psccleanair.gov), fax 206-343-7522, by September 27, 2023.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-343-8800, fax 206-343-7522, email [RegUpdates@psccleanair.gov](mailto:RegUpdates@psccleanair.gov), by September 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These sections currently reference chapter 70.94 RCW, which was recodified as chapter 70A.15 RCW pursuant to section 2010, chapter 20, Laws of 2020. Regulation I, Section 1.07 also references chapter 70.98 RCW, which was recodified as chapter 70A.388 RCW pursuant to section 2025, chapter 20, Laws of 2020. These actions by the Washington state legislature did not make any material changes to these sections of RCW. The agency is updating its regulations to reflect the proper RCW references.

Reasons Supporting Proposal: To provide clarification to the public and ease of reference to the applicable RCW.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: John Dawson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4060; Implementation and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70A.15.2040.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide

significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

Scope of exemption for rule proposal:

Is fully exempt.

August 8, 2023  
Christine Cooley  
Executive Director

**REGULATION I ARTICLE I**  
**AMENDATORY SECTION**  
**SECTION 1.01 POLICY**

The Puget Sound Clean Air Agency, consisting of the counties of Pierce, King, Snohomish, and Kitsap, having been activated by the Washington Clean Air Act, RCW ((70.94)) 70A.15, adopts the following Regulation to control the emission of air contaminants from all sources within the jurisdiction of the Agency, to provide for the uniform administration and enforcement of this Regulation, and to carry out the requirements and purposes of the Washington Clean Air Act and the Federal Clean Air Act.

It is hereby declared to be the public policy of the Puget Sound Clean Air Agency to secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the Puget Sound area, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

**AMENDATORY SECTION**  
**SECTION 1.07 DEFINITIONS**

When used herein:

- (a) **AGENCY** means the Puget Sound Clean Air Agency.
- (b) **AIR CONTAMINANT** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.
- (c) **AIR POLLUTION** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. Air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.
- (d) **AMBIENT AIR** means the surrounding outside air.
- (e) **BOARD** means the Board of Directors of the Puget Sound Clean Air Agency.
- (f) **COMBUSTIBLE REFUSE** means solid or liquid combustible waste material.
- (g) **CONTROL EQUIPMENT** means any device which prevents or controls the emission of any air contaminant.

- (h) **CONTROL OFFICER** means the Air Pollution Control Officer of the Puget Sound Clean Air Agency.
- (i) **EMISSION** means a release of air contaminants into the ambient air.
- (j) **EMISSION STANDARD** means a requirement established under the Federal Clean Air Act (FCAA) or chapter ((70.94)) 70A.15 RCW that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the FCAA or chapter ((70.94)) 70A.15 RCW.
- (k) **EQUIPMENT** or **EMISSIONS UNIT** means any part of a stationary source or source that emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter ((70.94)) 70A.15 or ((70.98)) 70A.388 RCW.
- (l) **FUEL BURNING EQUIPMENT** means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.
- (m) **GASOLINE** means a petroleum distillate that is a liquid at standard conditions and has a true vapor pressure greater than 4 pounds per square inch absolute at 20°C, and is used as a fuel for internal combustion engines. Also any liquid sold as a vehicle fuel with a true vapor pressure greater than 4 pounds per square inch absolute at 20°C shall be considered "gasoline" for purpose of this regulation.
- (n) **GASOLINE STATION** means any site dispensing gasoline into motor vehicle, marine vessel, or aircraft fuel tanks from stationary storage tanks.
- (o) **HAZARDOUS AIR POLLUTANT** means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. § 7412.
- (p) **MOTOR VEHICLE** means any operating vehicle or one capable of being operated that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.
- (q) **MULTIPLE CHAMBER INCINERATOR** means a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.
- (r) **OWNER** or **OPERATOR** means the person who owns, leases, supervises, or operates the equipment or control equipment.
- (s) **PERSON** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.
- (t) **REASONABLY AVAILABLE CONTROL TECHNOLOGY** or RACT means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.
- (u) **REFUSE BURNING EQUIPMENT** means equipment employed to burn any solid or liquid combustible refuse.
- (v) **SOURCE** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or

adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same 2-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 supplement.

(w) **TOXIC AIR POLLUTANT (TAP) or "toxic air contaminant"** means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(x) **TRUE VAPOR PRESSURE** means the equilibrium partial pressure of a petroleum liquid as determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporative Loss from External Floating Roof Tanks", May 1996.

(y) **URBANIZED AREA** means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

(z) **VOLATILE ORGANIC COMPOUND or VOC** means an organic compound that participates in atmospheric photochemical reactions as defined in 40 CFR 51.100(s) in effect as of the federal regulation reference date listed in Section 3.25 of this regulation herein incorporated by reference.

### **REGULATION I ARTICLE 3**

#### **AMENDATORY SECTION**

#### **SECTION 3.01 DUTIES AND POWERS OF THE CONTROL OFFICER**

Pursuant to the provisions of the "Washington Clean Air Act" (Chapter ((70.94)) 70A.15 RCW), the Board has appointed a Control Officer whose sole responsibility is to observe and enforce the provisions of the Act and all orders, rules, and regulations pursuant thereto, including but not limited to Regulations I, II, and III of the Puget Sound Clean Air Agency. The Control Officer is empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of the Act.

#### **AMENDATORY SECTION**

#### **SECTION 3.03 GENERAL REGULATORY ORDERS**

(a) **Purpose.** The Board may, by regulatory order, apply to a specific source or sources any applicable provision of chapter ((70.94)) 70A.15 RCW or the rules adopted thereunder. In addition, federally enforceable regulatory orders that limit the potential to emit any air contaminant(s) pursuant to WAC 173-400-091 and modifications to such orders are issued under Section 3.03(f) of this regulation.

(b) **Public Involvement Process.** The Board may issue a regulatory order after the following public involvement process has been completed:

(1) Public notice of the proposed regulatory order shall be published in a newspaper of general circulation in the area where the source that is the subject of the order is located. Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator. The public notice shall include, at a minimum, the following information:

(A) The name and address of the owner or operator and the source;

(B) A brief description of the purpose of the proposed regulatory order and the requirements included in the proposed regulatory order;

(C) The deadline for submitting written comments to the Agency;

and

(D) The opportunity for a public hearing if the Agency determines that there is significant public interest in the proposed regulatory order.

(2) The initial public comment period shall be at least 30 days.

(3) During the initial 30-day public comment period, any person may request a public hearing be held. Any such request shall be submitted in writing to the Agency, shall indicate the interest of the entity filing it, and describe why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held before a hearing officer and upon such notice and at a time and place as the Agency deems reasonable. The hearing officer shall hear testimony at the public hearing and prepare a written summary of the testimony received at the hearing. The Agency shall provide at least 30 days prior notice of any hearing. If a public hearing is held, the public comment period shall extend through the hearing date.

(c) **Board Action.** The Board shall only issue a regulatory order under this section after:

(1) The public comment period has ended;

(2) Any public hearing scheduled has been held; and

(3) The Board has considered all information and data related to the proposed regulatory order received by the Agency, including all written comments received and any summary of testimony prepared by the hearing officer.

The Board shall take action on a proposed regulatory order at a Board meeting. Unless otherwise ordered by the Board, a regulatory order issued under this section shall be effective on the date the Board approves the regulatory order.

(d) **Appeals.** Regulatory orders issued by the Board under this section may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

(e) **Fees.** When a regulatory order is requested by an applicant, the Agency shall assess a fee of \$4,000 to cover the costs of processing and issuing a regulatory order under this section. The Agency shall also assess a fee equal to the cost of providing public notice in accordance with Section 3.03(b) of this regulation. These fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) When an applicant requests a federally enforceable regulatory order to limit the potential to emit any air contaminant or contaminants pursuant to WAC 173-400-091, or requests a modification to such an order, the Control Officer or a duly authorized representative may issue such order consistent with the requirements of WAC 173-400-091 and 173-400-171 and Section 3.03(e) above. Regulatory orders issued pursuant to this section are effective the day the Control Officer or representative approves the order and may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

#### **AMENDATORY SECTION**

#### **SECTION 3.06 CREDIBLE EVIDENCE**



For the purpose of establishing whether or not a person has violated or is in violation of any provision of chapter ~~((70.94))~~ 70A.15 RCW, any rule enacted pursuant to that chapter, or any permit or order issued thereunder, nothing in this regulation shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed.

#### **AMENDATORY SECTION**

##### **SECTION 3.09 VIOLATIONS - NOTICE**

(a) At least 30 days prior to the commencement of any formal enforcement action under RCW ~~((70.94.430))~~ 70A.15.3150 or ~~((70.94.431))~~ 70A.15.3160, the Board or Control Officer shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of Chapter ~~((70.94))~~ 70A.15 RCW or the orders, rules, or regulations adopted pursuant thereto, alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Board or the Control Officer may require that the alleged violator or violators appear before the Board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(b) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation and be subject to the same penalty.

(c) In case of a continuing violation, whether or not knowingly committed, each day's continuance shall be a separate and distinct violation.

#### **AMENDATORY SECTION**

##### **SECTION 3.13 CRIMINAL PENALTIES**

(a) Any person who knowingly violates any of the provisions of Chapter ~~((70.94))~~ 70A.15 RCW or any rules or regulations in force pursuant thereto, shall be guilty of a crime and upon conviction thereof, shall be punished by a fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.

(b) Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.

(c) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 years, or both.

#### **AMENDATORY SECTION**

**SECTION 3.15 ADDITIONAL ENFORCEMENT**

(a) Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of Chapter ((70.94)) 70A.15 RCW, or any order, rule, or regulation issued by the Board or the Control Officer or a duly authorized agent, the Board, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(b) As an additional means of enforcement, the Board or Control Officer may accept an assurance of discontinuance of any act or practice deemed in violation of Chapter ((70.94)) 70A.15 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the orders, rules, or regulations issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court.

**AMENDATORY SECTION****SECTION 3.19 CONFIDENTIAL INFORMATION**

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, pursuant to any sections in Chapter ((70.94)) 70A.15 RCW, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Agency. Nothing herein shall be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis or summaries do not reveal any information otherwise confidential under the provisions of this section: Provided further, that emission data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Agency.

**REGULATION I ARTICLE 4****AMENDATORY SECTION****SECTION 4.01 VARIANCES**

(a) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who owns or controls like processes or like equipment, or any material subject to Article 8 of this regulation, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration, or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The total time period for a variance and renewal of such variance shall not exceed 1 year. Variances to state rules shall require the approval of the Department of Ecology. The Board may grant

such variance, but only after public hearing or due notice, if it finds that:

(1) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(2) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) In addition to the requirements of Section 4.01(a) above, applications seeking a variance shall not be considered complete unless the applicant provides:

(1) A list of interested parties and neighbors within 500 feet or more of the property on which the variance is proposed to occur, as deemed necessary by the Air Pollution Control Officer; and

(2) For a variance from Article 8 of this regulation, written estimates of the cost of removing, recycling, or reducing the material in place versus burning the material.

(c) No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Air Pollution Control Officer shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within 500 feet of the property on which the variance is proposed. The Air Pollution Control Officer may require notice to parties beyond 500 feet if deemed necessary. A 30-day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

(1) The time, date, and place of the hearing;

(2) The name and address of the owner or operator and the source;

(3) A brief description of the variance request; and

(4) The deadline for submitting written comments to the Agency.

(d) After the hearing is held, the Air Pollution Control Officer shall make written findings and forward same with a recommended decision on the variance to the Board. The Board shall take action at a regular board meeting.

(e) Any variance or renewal thereof shall be granted within the requirements of Section 4.01(a) and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Board may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Section 4.01 (e) (1) and 4.01 (e) (2), it shall be for not more than 1 year.

(f) In addition to the criteria provided by state and federal statutes, the Air Pollution Control Officer may consider the following factors in making findings regarding requests seeking a variance from Article 8 of this regulation:

(1) Unusual individual sites, such as those that are bisected by the no-burn boundary; and

(2) Unusual economic factors, such as extremely high costs for recycling or hauling, that are attributable to some site-specific condition; and

(3) Whether burning in place would be of lower risk or harm to the environment than either removal or reduction in place (chipping, composting, or decay) in such areas as drainages, steep slopes, beaches, and other inaccessible points.

(g) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of the Board.

(h) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW as now or hereafter amended.

(i) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW ((70.94.710)) 70A.15.6000 through ((70.94.730)) 70A.15.6040 to any person or his or her property.

(j) Variances approved under this section shall not be included in orders or permits provided for in RCW ((70.94.161)) 70A.15.2260 until such time as the variance has been accepted by the United States Environmental Protection Agency as part of an approved State Implementation Plan.

## **REGULATION I ARTICLE 5**

### **AMENDATORY SECTION**

#### **SECTION 5.07 ANNUAL REGISTRATION FEES**

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and

currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. Registration fees shall be deemed delinquent if not fully paid within 45 days of the date of the invoice. Persons or sources that under-report emissions, fail to submit other information used to set fees, or fail to pay required fees within 90 days of the date of the invoice, may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter ((70.94)) 70A.15 RCW).

(c) Except as specified in Section 5.07(d) and (e) of this regulation, registered sources shall be assessed a fee of \$1,350, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$2,450 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,670;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$30 for each ton of CO and \$60 for each ton of NOx, PM10, SOx, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,670;

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed \$6,670; and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed \$26,680.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- (1) More than 6,000,000 gallons. . . . . \$4,740;
- (2) 3,600,001 to 6,000,000 gallons. . . . . \$2,355;
- (3) 1,200,001 to 3,600,000 gallons. . . . . \$1,565;
- (4) 840,001 to 1,200,000 gallons. . . . . \$785;
- (5) 200,001 to 840,000 gallons. . . . . \$395.

(e) The following registered sources shall be assessed an annual registration fee of \$165, provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

- (3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;
- (4) Unvented dry cleaners using perchloroethylene; and
- (5) Batch coffee roasters subject to notification under Section 6.03(b)(11) of this regulation.

**REGULATION I ARTICLE 7**  
**AMENDATORY SECTION**  
**SECTION 7.01 PURPOSE**

The purpose of this article is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the federal Clean Air Act Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW ((70.94.161)) 70A.15.2260 and its implementing regulation Chapter 173-401 of the Washington Administrative Code.

**REGULATION I ARTICLE 8**  
**AMENDATORY SECTION**  
**SECTION 8.05 AGRICULTURAL BURNING PERMITS**

(a) **Applicability.** This section applies to burning permits related to agricultural operations. The definitions and requirements contained in chapter 173-430 WAC also apply to this section; provided that if there is a conflict between this section and chapter 173-430 WAC, this section governs.

(b) **General Requirements.** Agricultural burning will be permitted if the following requirements are met:

- (1) The natural vegetation being burned is generated from the property of the commercial agricultural operation; and
- (2) Burning is necessary for crop propagation or rotation, disease or pest control; and
- (3) Burning is a best management practice as established by the Agricultural Burning Practices and Research Task Force (established in RCW ((70.94.6528)) 70A.15.5090 as referenced in chapter 173-430 WAC); or the burning practice is approved in writing by the Washington State Cooperative Extension Service or the Washington State Department of Agriculture; or the burning is conducted by a governmental entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards; and
- (4) The proposed burning will not cause a violation of any Agency regulation.

(c) **Permit Applications.** Agricultural burning permits shall be approved by the Agency prior to burning.

(1) The permit application shall be submitted on forms provided by the Agency and shall include:

- (A) A copy of the applicant's most recent year's Schedule F (as filed with the Internal Revenue Service);
- (B) A written review by the local fire district or fire marshal indicating their endorsement that local requirements have been met; and
- (C) A permit fee as required below:

Burn Type	Minimal Fee	Variable Fee
(i) Field Burning of vegetative residue on an area of land used in an agricultural operation. (does not include pile burning)	\$37.50 for the first 10 acres.	\$3.75 for each additional acre.

Burn Type	Minimal Fee	Variable Fee
(ii) Spot Burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists.	\$37.50 for 10 acres or less.	None.
(iii) Pile Burning of stacked vegetative residue from an agricultural operation.	\$80 for the first 80 tons.	\$1.00 for each additional ton.

(2) Any refunds of the variable fee portion of a permit fee are issued in accordance with chapter 173-430 WAC.

(d) **Permit Action and Content.**

(1) The Agency will act on a complete application within 7 days of receipt.

(2) All agricultural burning permits shall contain conditions that are necessary to minimize emissions.

(3) All permits shall expire 12 months from date of issuance.

(e) **Permit Denial.** All denials shall become final within 15 days unless the applicant petitions the Control Officer for reconsideration, stating the reasons for reconsideration. The Control Officer shall then consider the petition and shall within 30 days issue a permit or notify the applicant in writing of the reason(s) for denial. (For more information on the appeal process, see Section 3.17 of this regulation.)

## REGULATION I ARTICLE 13

### AMENDATORY SECTION

#### SECTION 13.02 DEFINITIONS

When used herein:

(a) Adequate Source of Heat means a heating system designed to maintain seventy degrees Fahrenheit at a point three feet above the floor in each normally inhabited room. If any part of the heating system has been disconnected, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of the design on the system's capability prior to the disconnection, damage, improper maintenance, malfunction, or occurrence that rendered the system nonfunctional.

(b) AGENCY means the Puget Sound Clean Air Agency.

(c) Certified Wood Stove means a wood stove that:

(1) has been determined by Ecology to meet Washington emission performance standards, pursuant to RCW ((~~70.94.457~~)) 70A.15.3530 and WAC 173-433-100; or

(2) has been certified and labeled in accordance with procedures and criteria specified in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(3) meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and is certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

(d) Coal-only heater means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating, or indoor cooking and has all of the following characteristics:

- (1) An opening for emptying ash which is located near the bottom or the side of the appliance;
- (2) A system which admits air primarily up and through the fuel bed;
- (3) A grate or other similar device for shaking or disturbing the fuel bed or power driven mechanical stoker; and
- (4) The model is listed by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.
- (e) Ecology means the Washington State Department of Ecology.
- (f) EPA means the United States Environmental Protection Agency.
- (g) Fine particulate or PM2.5 means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.
- (h) Fireplace means any permanently installed masonry fireplace or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.
- (i) Nonaffected pellet stove means a pellet stove that has an air-to-fuel ratio equal to or greater than 35.0 to 1.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 CFR 60 Appendix A, Test Method 28A - Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances" as amended through July 1, 1990.
- (j) Nonattainment area means a geographical area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.
- (k) PM10 means particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.
- (l) PROPERLY SEASONED FUEL WOOD means untreated wood or untreated lumber with moisture content of 20% or less, wet basis, or 25% or less, dry basis.
- (m) Solid Fuel Burning Device or solid fuel heating device means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel which has a heat input less than one million British thermal units per hour. This includes, but is not limited to, devices used for aesthetic or space-heating purposes in a private residence or commercial establishment.
- (n) SUBSTANTIALLY REMODELED means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period.
- (o) TACOMA, WASHINGTON Fine Particulate Nonattainment Area means the area of Pierce County that is designated by EPA as not meeting the 2006 federal 24-hr fine particulate National Ambient Air Quality Standard and described in 40 CFR 81.348. This area is also known as the Tacoma, Pierce County Nonattainment Area.
- (p) Treated wood means wood or lumber of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.
- (q) Wood stove or wood heater means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:
  - (1) An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;
  - (2) A useable firebox volume of less than twenty cubic feet;



(3) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

(4) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

#### **AMENDATORY SECTION**

#### **SECTION 13.05 RESTRICTIONS ON OPERATION OF SOLID FUEL BURNING DEVICES**

(a) No person in a residence or commercial establishment shall operate a solid fuel burning device under any of the following conditions:

(1) Whenever the Agency has declared the first stage of impaired air quality for a geographical area in accordance with RCW (~~(70.94.473 (1)(b)(i) or (ii))~~), 70A.15.3580 (1)(b)(i) or (ii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section or the solid fuel burning device is one of the following:

(A) A nonaffected pellet stove; or

(B) A wood stove certified and labeled by the EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(C) A wood stove meeting the "Oregon Department of Environmental Quality Phase 2" emission standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984; or

(D) A solid fuel burning device approved by Ecology as meeting the standards in RCW (~~(70.94.457 (1)(a)-(b))~~) 70A.15.3530 (1)(a)-(b).

(2) Whenever the Agency has declared the second stage of impaired air quality for a geographical area in accordance with RCW (~~(70.94.473 (1)(c)(i), (ii), or (iii))~~) 70A.15.3580 (1)(c)(i), (ii), or (iii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section.

(b) Whenever a first stage of impaired air quality is declared under subsection (a)(1):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the first stage of impaired air quality if that device is restricted from operating under subsection (a)(1) of this section during the first stage of impaired air quality;

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a first stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a first stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(c) Whenever a second stage of impaired air quality is declared under subsection (a)(2):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the second stage of impaired air quality if that device is restricted from operating under

subsection (a)(2) of this section during the second stage of impaired air quality.

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a second stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a second stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(d) Any person desiring an exemption from the Agency for the purposes of subsections (a)(1) or (2) of this section shall apply to the Agency using procedures specified by the Agency.

(1) The following are eligible for exemption:

(A) A residence or commercial building that has no adequate source of heat other than a solid fuel burning device and the building was neither constructed nor substantially remodeled after July 1, 1992.

(B) A residence or commercial building that has no adequate source of heat other than a solid fuel heating device and the building:

- i. was constructed or substantially remodeled after July 1, 1992; and
- ii. is outside an urban growth area, as defined in RCW 36.70A; and
- iii. is outside an area designated by EPA as a PM2.5 or PM10 particulate nonattainment area.

(2) Exemptions shall be valid for a period determined by the Agency. Exemptions may be renewed using procedures specified by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. Exemptions may be revoked if the Agency determines the residence or commercial building for which the exemption was approved no longer qualifies for an exemption.

#### **AMENDATORY SECTION**

#### **SECTION 13.07 PROHIBITIONS ON WOOD STOVES THAT ARE NOT CERTIFIED WOOD STOVES**

(a) Subsections (a)(1) - (a)(4) of this section shall be effective January 1, 2015 and apply only to PM2.5 nonattainment areas or areas where required by EPA.

(1) Any person who owns or is responsible for a wood stove that is both (a) not a certified wood stove and (b) is located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(2) Any person who owns or is responsible for a coal-only heater located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(3) Subsection (a)(1) of section does not apply to:

(A) A person in a residence or commercial establishment that does not have an adequate source of heat without burning wood; or

(B) A person with a shop or garage that is detached from the main residence or commercial establishment that does not have an adequate source of heat in the detached shop or garage without burning wood.

(4) The owner or person responsible for removing or rendering permanently inoperable a wood stove under subsection (a)(1) of this section or a coal-only heater under subsection (a)(2) of this section

must provide documentation of the removal and disposal or rendering permanently inoperable to the Agency using the Agency's procedures within 30 days of the removal or rendering permanently inoperable.

(b) PM10. Subsection (b) of this section is established for the sole purpose of a contingency measure for PM10 nonattainment and maintenance areas. If the EPA makes written findings that: (1) an area has failed to attain or maintain the National Ambient Air Quality Standard for PM10, and (2) in consultation with Ecology and the Agency, finds that the emissions from solid fuel burning devices are a contributing factor to such failure to attain or maintain the standard, the use of wood stoves not meeting the standards set forth in RCW ((70.94.457)) 70A.15.3530 shall be prohibited within the area determined by the Agency to have contributed to the violation. This provision shall take effect one year after such a determination.

**REGULATION II ARTICLE I**  
**AMENDATORY SECTION**  
**SECTION 1.01 PURPOSE**

The Puget Sound Clean Air Agency, consisting of the counties of King, Kitsap, Pierce, and Snohomish, having been activated by the Washington Clean Air Act, RCW ((70.94)) 70A.15, adopted Regulation I on March 13, 1968 to control the emission of air contaminants from all sources, to provide for the uniform administration and enforcement of air pollution control in its jurisdiction and to carry out the requirements and purposes of the Washington Clean Air Act.

The Board of Directors of the Puget Sound Clean Air Agency has amended Regulation I from time to time as necessary and now recognizes the need for a special regulation to reduce ozone concentrations as required by the Federal Clean Air Act as amended. Accordingly, the Board has adopted Regulation II to provide for control of photochemically reactive volatile organic compounds (VOC), which are precursors to ozone, to meet the National Ambient Air Quality Standard for ozone.

**WSR 23-17-035**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**

[Filed August 9, 2023, 9:57 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): On September 28, 2023, at 8:45 a.m., via Zoom <https://us02web.zoom.us/j/9128500665?pwd=dGhUdnU2Q0gzdHQxbTNTM0lNbllMUT09>, Meeting ID 912 850 0665, Passcode 1904, Call in 888 788 0099 US Toll-free; or in person at 1904 3rd Avenue, Suite 105, Seattle, WA.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Betsy Wheelock, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email [RegUpdates@psccleanair.gov](mailto:RegUpdates@psccleanair.gov), fax 206-343-7522, by September 27, 2023.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-343-8800, fax 206-343-7522, email [RegUpdates@psccleanair.gov](mailto:RegUpdates@psccleanair.gov), by September 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 3.11: The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70A.15.3160 (formerly RCW 70.94.431) and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index (CPI) for the Seattle/Tacoma/Bellevue area increased by 7.89 percent for the 2022 calendar year, which amounts to an increase of \$1,776.00 in the maximum civil penalty amount. The agency has used the CPI for wage earners (CPI-W) in the Puget Sound region for many years to make this inflation-based adjustment because it reflects the data of what happened (i.e. not a forecast) and it represents local economic information.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.11: This section currently references chapter 70.94 RCW, which was recodified as chapter 70A.15 RCW pursuant to section 2010, chapter 20, Laws of 2020. These actions by the Washington state legislature did not make any material changes to these sections of the RCW. The agency is updating this section to reflect the proper RCW references.

Section 3.25: This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2022. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2023.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: John Dawson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4060; Implementation and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70A.15.2040.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

Scope of exemption for rule proposal:

Is fully exempt.

August 8, 2023  
Christine Cooley  
Executive Director

## **REGULATION I ARTICLE 3**

### **AMENDATORY SECTION**

#### **SECTION 3.11 CIVIL PENALTIES**

(a) Any person who violates any of the provisions of chapter ((70.94 RCW)) 70A.15 or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$ ((22,497.00)) 24,273.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter ((70.94)) 70A.15 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((22,497.00)) 24,273.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday,

and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

#### **AMENDATORY SECTION**

#### **SECTION 3.25 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((2022)) 2023.

WSR 23-17-037  
PROPOSED RULES  
PUGET SOUND  
CLEAN AIR AGENCY

[Filed August 9, 2023, 11:03 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 5.05 and 7.09.

Hearing Location(s): On September 28, 2023, at 8:45 a.m., via Zoom [https://us02web.zoom.us/j/9128500665?](https://us02web.zoom.us/j/9128500665?pwd=dGhUdnU2Q0gzdHQxbTNTM0lNbllMUT09)  
[pwd=dGhUdnU2Q0gzdHQxbTNTM0lNbllMUT09](https://us02web.zoom.us/j/9128500665?pwd=dGhUdnU2Q0gzdHQxbTNTM0lNbllMUT09), Meeting ID 912 850 0665, Pass-code 1904, Call in 888 788 0099 US Toll-free; or in person at 1904 3rd Avenue, Suite 105, Seattle, WA.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Betsy Wheelock, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email [RegUpdates@psc-cleanair.gov](mailto:RegUpdates@psc-cleanair.gov), fax 206-343-7522, by September 27, 2023.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-343-8800, fax 206-343-7522, email [RegUpdates@psc-cleanair.gov](mailto:RegUpdates@psc-cleanair.gov), by September 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 5.05: This proposed new section would require that all air contaminant sources subject to agency Regulation I, Article 5 submit all required compliance reports electronically, specifically as an attachment to an email message. Paper copies of these reports would not meet the requirements of this section.

Section 7.09: The proposed amendments to agency Regulation I, Section 7.09 would remove the requirement that reports submitted electronically also be submitted in paper form for record purposes. The proposal would provide clarity that a report submitted to the agency as an attachment to an email message would fulfill the requirements of that section.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: John Dawson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4060; Implementation and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70A.15.2040.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

Scope of exemption for rule proposal:

Is fully exempt.

August 8, 2023  
Christine Cooley  
Executive Director

**REGULATION I ARTICLE 5****SECTION 5.05 REGISTRATION REQUIREMENTS**

(a) The owner or operator of a source requiring registration under Section 5.03 of this regulation shall make reports containing information as required by the Agency concerning location, size, and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The owner or operator shall be responsible for obtaining the proper forms from the Agency, notifying the Agency of its existence (including changes in its ownership or name), and for the accuracy, completeness, and timely submittal of all registration reports and fees.

(b) The owner or operator of a source requiring registration under Section 5.03 of this regulation shall submit a report by June 30th of each year, listing the emissions of those air contaminants emitted during the previous calendar year that equaled or exceeded:

- (1) 2.50 tons of any single hazardous air pollutant (HAP);
- (2) 6.25 tons of total hazardous air pollutants (HAP);
- (3) 25.0 tons of carbon monoxide (CO), nitrogen oxides (NOx), particulate matter (PM2.5 or PM10), sulfur oxides (SOx), or volatile organic compounds (VOC); or
- (4) 0.5 tons of lead.

(c) The owner or operator of a registered source shall develop and implement an operation and maintenance plan to ensure continuous compliance with Regulations I, II, and III. A copy of the plan shall be filed with the Control Officer upon request. The plan shall reflect good industrial practice and shall include, but not be limited to, the following:

- (1) Periodic inspection of all equipment and control equipment;
- (2) Monitoring and recording of equipment and control equipment performance;
- (3) Prompt repair of any defective equipment or control equipment;
- (4) Procedures for start up, shut down, and normal operation;
- (5) The control measures to be employed to ensure compliance with Section 9.15 of this regulation; and
- (6) A record of all actions required by the plan.

The plan shall be reviewed by the source owner or operator at least annually and updated to reflect any changes in good industrial practice.

**NEW SECTION:**

(d) After December 1, 2023, owners or operators of air contaminant sources subject to Article 5 of this regulation shall submit complete copies of all required compliance reports to this Agency in electronic format as an attachment to an e-mail message. The date the report is received by the Agency e-mail system shall be considered the submitted date of the report. An email message to the Agency with a link to a file-sharing or folder-sharing site requiring a document download by the Agency will not meet the requirement in this section.



Nothing in this section waives or modifies any requirements established under other applicable regulations.

**REGULATION I ARTICLE 7**

**AMENDATORY SECTION**

**SECTION 7.09 GENERAL REPORTING REQUIREMENTS FOR OPERATING PERMITS**

(a) **Emission Reporting.** An emission report shall be required from each owner or operator of an operating permit source, listing those air contaminants emitted during the previous calendar year that equal or exceed the following (tons/year):

carbon monoxide (CO) emissions. . . . .	25
facility combined total of all toxic air contaminant (TAC) emissions. . . . .	6
any single toxic air contaminant (TAC) emissions (excluding lead, but including lead compounds). . . . .	2
nitrogen oxide (NOx) emissions. . . . .	25
particulate matter (PM10) emissions. . . . .	25
particulate matter (PM2.5) emissions. . . . .	25
sulfur oxide (SOx) emissions. . . . .	25
volatile organic compounds (VOC) emissions. . . . .	25
lead. . . . .	0.5

Annual emission rates shall be reported to the nearest whole tons per year for only those air contaminants that equal or exceed the thresholds above, except lead which must be reported to the nearest tenth of a ton. The owner or operator of a source requiring a Title V operating permit under this Article shall maintain records of information necessary to document any reported emissions or to demonstrate that the emissions were less than the above amounts.

(b) **Operation and Maintenance Plan.** Owners or operators of air contaminant sources subject to Article 7 of this regulation shall develop and implement an operation and maintenance plan to assure continuous compliance with Regulations I, II, and III. A copy of the plan shall be filed with the Control Officer upon request. The plan shall reflect good industrial practice and shall include, but not be limited to, the following:

- (1) Periodic inspection of all equipment and control equipment;
- (2) Monitoring and recording of equipment and control equipment performance;
- (3) Prompt repair of any defective equipment or control equipment;
- (4) Procedures for start up, shut down, and normal operation;
- (5) The control measures to be employed to assure compliance with Section 9.15 of this regulation; and
- (6) A record of all actions required by the plan.

The plan shall be reviewed by the source owner or operator at least annually and updated to reflect any changes in good industrial practice.

(c) **Compliance Reports.** (~~(After June 30, 2009, owners)~~) Owners or operators of air contaminant sources subject to Article 7 of this regulation shall submit complete copies of all required compliance reports to this Agency in electronic format as an attachment to an e-mail message. The date the ~~((document))~~ report is received by the Agency e-mail system shall be considered the submitted date of the report. An email message to the Agency with a link to a file-sharing or folder-sharing site requiring a document download by the Agency will not meet the requirement in this section. (~~((Original written documents shall also be submitted for record purposes.))~~) Nothing in this section

waives or modifies any requirements established under other applicable regulations.

## WSR 23-17-057

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed August 11, 2023, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-009.

Title of Rule and Other Identifying Information: WAC 192-310-010 What reports are required from an employer? and 192-310-050 What records must every employer keep?

Hearing Location(s): On October 5, 2023, at 9:00 [a.m.], Zoom, Meeting ID 850 9179 6945, Passcode 418099, call in 253-215-8782. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/85091796945?pwd=amlOam9reGdRNXhBcFcvSTJVVVTZjQT09>.

Date of Intended Adoption: October 6, 2023.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by October 5, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY relay 711, email [Teresa.eckstein@esd.wa.gov](mailto:Teresa.eckstein@esd.wa.gov), by September 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will incorporate changes made by HB 1684 (2023), which allows, but does not require, federally recognized tribes to report to the employment security department (department) standard occupational classifications (SOC codes) and job titles for its employees in its wage reports.

Reasons Supporting Proposal: This rule making is necessary to incorporate HB 1684 into the department's rules.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.12.070, as amended by HB 1684 (2023), provides authority for the department to adopt rules implementing HB 1684.

Statute Being Implemented: RCW 50.12.070, as amended by HB 1684 (2023).

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 360-463-1079.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), <https://esd.wa.gov/newsroom/rulemaking/>.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making will not impose costs because it does not require businesses to take any action. Federally recognized tribes may report SOC codes and job titles to the department but are not required to do so.

August 9, 2023

Joy E. Adams

Acting Director

Employment Security and Policy Integrity Division

**OTS-4764.1**

AMENDATORY SECTION (Amending WSR 22-21-094, filed 10/17/22, effective 11/17/22)

**WAC 192-310-010 What reports are required from an employer?** (1) **Business license application.** Every person or unit with one or more individuals performing services for it in the state of Washington must file a business license application with the department of revenue.

(2) **Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than (~~ten~~) 10 percent, or (~~ten~~) 10 percent or more, and the family relationship of corporate officers to other corporate officers who own (~~ten~~) 10 percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within (~~thirty~~) 30 days of registration, must pay a penalty of (~~twenty-five dollars~~) \$25 for each violation unless the penalty is waived by the department.

(d) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

**(3) Quarterly tax and wage reports:**

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, standard occupational classification code or job title, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, the individual must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing the individual has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for their records;

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030);

(v) For the purposes of this section, if an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of employees' wages; ((and))

(vi) An Indian tribe, as defined in 26 U.S.C. § 3306, may, but is not required to, report the standard occupational classifications codes or job titles of workers; and

(vii) The United States Bureau of Labor Statistics Standard Occupational Classification system is used by federal agencies to classify workers into standard occupational categories for the purpose of collecting, calculating or disseminating data. These standard occupational categories are identified by a six-digit numerical code.

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using programs or services authorized by the department; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup> of each year. So, reports are due by April 30<sup>th</sup>, July 31<sup>st</sup>, October 31<sup>st</sup>, and January 31<sup>st</sup>, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

AMENDATORY SECTION (Amending WSR 22-21-094, filed 10/17/22, effective 11/17/22)

**WAC 192-310-050 What records must every employer keep? (RCW 50.12.070.)** The commissioner requires every employer to keep true and accurate business, financial, and employment records which are deemed necessary for the effective administration of chapter 50.12 RCW.

(1) **Employment records.** Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

(a) The name of each worker;

(b) The Social Security number of each worker;

(c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;

(d) The basis upon which wages and/or remuneration are paid to each worker;

(e) The standard occupational classification code or job title associated with the worker's job duties. An Indian tribe, as defined in 26 U.S.C. § 3306, may elect to report the standard occupational classifications or job titles of workers. If an Indian tribe elects to report standard occupational classifications or job titles, it retains the option to opt out of reporting at any time for any reason it deems necessary;

(f) The location where such services were performed;

(g) 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 day;

(h) The workers' total gross pay period earnings;

(i) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and

(j) The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

(2) **Business, financial records, and record retention.** Every employer shall make, keep, and preserve business and financial records

containing the following information for four calendar years following the calendar year in which employment occurred:

(a) Payroll and accounting records, including payroll ledgers, all check registers and canceled checks covering both payroll and general disbursements, general and subsidiary ledgers, disbursement and petty cash records, and profit and loss statements or financial statements;

(b) Quarterly and annual tax reports, including W-2, W-3, 1099, 1096, and FUTA (940) forms;

(c) Quarterly reports to the employment security department and the department of labor and industries;

(d) For independent contractors and subcontractors, business license numbers and registration numbers and copies of contract agreements and invoices; and

(e) For years prior to 2009 for corporations that did not voluntarily elect to cover corporate officers for unemployment insurance, copies of written notifications to corporate officers that they were ineligible for unemployment insurance benefits.

(3) Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. 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.

(4) Penalties for failure to keep and preserve records shall be determined under RCW 50.12.070(3).

(5) For assistance with determining the appropriate standard occupational codes for their workers' job titles, employers can refer to the department's website or contact the employer call center.





Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lana Crawford, 111 Israel Road, S.E. Tumwater, WA 98501, 564-669-1455.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lana Crawford, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-1455, TTY 711, email lana.crawford@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impact behavioral health providers, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 14, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

#### OTS-4754.1

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-809-095 Probationary license.** (1) The department shall issue a probationary license to out-of-state applicants seeking licensure in Washington state for an advanced social worker, independent clinical social worker, mental health counselor, or marriage and family therapist according to the conditions and restrictions of the reciprocity program established in RCW 18.225.140 and this chapter.

(2) The out-of-state license must be from a state or territory identified on a list published by the department as eligible for reciprocity for the purposes of a probationary license for the particular behavioral health profession.

(3) An initial probationary license is valid for one year. To receive an initial probationary license, the applicant must submit to the department a completed application to include:

(a) Verification of their out-of-state license; and

(b) The fee according to WAC 246-809-990.

(4) A probationary license may be renewed a single time and is valid for one year after the date of renewal. To renew the probationary license, an applicant must submit to the department a completed application to include:

(a) Completion of suicide assessment, treatment, and management according to WAC 246-809-615(1) ((~~7~~

~~(b) AIDS education according to WAC 246-809-080)); and~~

((~~e~~)) (b) The fee according to WAC 246-809-990.

(5) Continuing education. With the exception of the requirements of subsection (4) this section, continuing education requirements will apply once a probationary licensee transitions to a full license.

(6) Approved supervision. If the department determines a probationary licensee must complete supervised hours of experience as a condition for full licensure, the licensee must complete the stated hours under an approved supervisor according to the conditions of this chapter.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-809-110 Definitions.** The following terms apply to the licensure of marriage and family therapists and marriage and family therapist associates, in WAC 246-809-100 through 246-809-140.

(1) "Approved educational program" means:

(a) Any college or university accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or its successor; or

(b) A program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), at the time the applicant completed the required education.

(2) "Approved supervisor" means a licensed marriage and family therapist, or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner, who has completed:

(a) Three hundred clock hours in graduate or postgraduate marriage and family education, or continuing education in marriage and family therapy or supervision by an approved marriage and family therapist supervisor in marriage and family therapy or any combination of these; and

(b) Five years of clinical practice that includes the equivalent of one year of clinical practice working with couples and families.

(4) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual who is accruing supervised clinical experience required for licensure.

(6) "One-on-one supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Peer" means a coworker who is not the licensure candidate's employer or supervisor.

(8) "Supervised experience requirement" means experience that is obtained under an approved supervisor who meets the requirements described in WAC 246-809-134.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a license holder to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-134.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-809-130 Supervised postgraduate experience.** (1) The experience requirements for the marriage and family therapist applicant's practice area include successful completion of a supervised experience requirement. Applicants who have held an active marriage and family therapy license for the past five consecutive years or more in another state or territory, without a disciplinary record or disqualifying criminal history, are deemed to have met the supervised experience requirements for Washington state licensure in subsection (3) of this section.

(2) In accordance with RCW 18.225.090 and 18.225.095, for applicants who can demonstrate they have practiced as a substance use disorder professional for at least three years within ~~((ten))~~ 10 years from the date their application for a marriage and family therapist license is submitted to the department, the department shall reduce the total required supervised hours from ~~((three thousand))~~ 3,000 hours to ~~((two thousand seven hundred))~~ 2,700 hours. The requirements in subsection (3)(a) through (e) of this section shall apply regardless of the reduction of total required hours.

(3) ~~((The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy.))~~ Total experience requirements include a minimum of ~~((three thousand))~~ 3,000 hours to include the following:

(a) One thousand hours of direct client contact with at least ~~((five hundred))~~ 500 hours gained in diagnosing and treating couples and families;

(b) At least ~~((two hundred))~~ 200 hours of qualified supervision with an approved supervisor.

(i) Of the ~~((two hundred))~~ 200 hours, ~~((one hundred))~~ 100 hours must be with a licensed marriage and family therapist with at least five years of clinical experience; the other ~~((one hundred))~~ 100 hours may be with an equally qualified licensed mental health practitioner;

(ii) At least ~~((one hundred))~~ 100 of the ~~((two hundred))~~ 200 hours must be one-on-one supervision; and

(iii) The remaining hours may be in one-on-one or group supervision.

(c) Applicants who have completed a master's program accredited by the Commission on Accreditation for Marriage and Family Therapy Education of the American Association for Marriage and Family Therapy boards will be credited with ~~((five hundred))~~ 500 hours of direct client contact and ~~((one hundred))~~ 100 hours of qualified supervision with an approved supervisor;

(d) Licensed marriage and family therapist associate applicants are not required to have supervised postgraduate experience prior to becoming an associate; and

(e) Licensed marriage and family therapist associate applicants must declare they are working towards full licensure.

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

**WAC 246-809-210 Definitions.** The following definitions apply to the licensure of mental health counselors and mental health counselor associates, in WAC 246-809-200 through 246-809-240.

(1) "Approved educational program" means any college or university accredited by an accreditation body recognized by the Council for Higher Education Accreditation (CHEA) or United States Department of Education.

(2) "Approved setting" includes facilities, agencies or private practice where an applicant works with individuals, families, couples or groups under the supervision of an approved supervisor.

(3) "Approved supervisor" means a qualified licensed mental health counselor or equally qualified licensed mental health practitioner who has been licensed without restrictions for at least two years.

(4) "Equally qualified licensed mental health practitioner" means a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(5) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(6) "Immediate supervision" means a meeting with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(8) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-234.

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

**WAC 246-809-310 Definitions.** The following definitions apply to the licensure of independent clinical and advanced social workers and independent clinical and advanced social work associates, in WAC 246-809-300 through 246-809-340.

(1) "Approved educational program" means a master's or doctoral educational program in social work accredited by the Council on Social Work Education.

(2) "Approved supervisor" means a licensed independent clinical social worker (LICSW), licensed advanced social worker (LASW) (for LASWs only), or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed marriage and family therapist, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(4) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(6) "Nationally recognized standards" means the *Educational Policy and Accreditation Standards*, revised October 2004 published by the Council on Social Work Education revised October 2004 or any future revisions.

(7) "One-on-one supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and one licensure candidate.

(8) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to become an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-334.

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

**WAC 246-809-320 Education requirements.** The following are the education requirements for the social worker applicant's practice area:

(1) Licensed advanced social worker or licensed social worker associate-advanced must have graduated from a master's (~~or doctoral~~) social work educational program accredited by the Council on Social Work Education or a social work doctorate program at a university accredited by a recognized accrediting organization.

(2) Licensed independent clinical social worker or licensed social worker associate-independent clinical must have graduated from a master's (~~or doctorate~~) level social work educational program accredited by the Council on Social Work Education or a social work doctorate program at a university accredited by a recognized accrediting organization.

AMENDATORY SECTION (Amending WSR 21-20-028, filed 9/24/21, effective 10/25/21)

**WAC 246-809-330 Supervised postgraduate experience requirements.**

(1) Licensed advanced social worker.

(a) Applicants who have held an active advanced social worker license for the past five consecutive years or more in another state or territory, without a disciplinary record or disqualifying criminal history, are deemed to have met the supervised experience requirements for Washington state licensure in subsection (1)(c) of this section.

(b) In accordance with RCW 18.225.090 and 18.225.095, for applicants who can demonstrate they have practiced as a substance use disorder professional for at least three years within (~~ten~~) 10 years from the date their application for an advanced social worker license is submitted to the department, the department shall reduce the total required supervised hours from (~~three thousand two hundred~~) 3,200

hours to ~~((two thousand eight hundred eighty))~~ 2,880 hours. The requirements in subsection (3)(c)(i) through (iii) of this section shall apply regardless of the reduction of total required hours.

(c) The supervised experience requirement consists of a minimum of ~~((three thousand two hundred))~~ 3,000 hours with ~~((ninety))~~ 90 hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours:

(i) Eight hundred hours must be in direct client contact; and

(ii) Ninety hours must be in direct supervision ~~((as follows:~~

~~(A) Fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; these hours may be in one-to-one supervision or group supervision; and~~

~~(B) Forty hours may be with an equally qualified licensed mental health practitioner as defined in WAC 246-809-310(3). These hours must) under the supervision of a licensed independent clinical social worker, a licensed advanced social worker, or an equally qualified licensed mental health professional. Of those hours of direct supervised experience at least:~~

~~(A) Forty hours must be in one-to-one supervision; and~~

~~(B) Fifty hours may be in one-to-one or group supervision.~~

(2) Licensed independent clinical social worker.

(a) Applicants who have held an active independent clinical social worker license for the past five consecutive years or more in another state or territory, without a disciplinary record or disqualifying criminal history, are deemed to have met the supervised experience requirements for Washington state licensure in (c) of this subsection.

(b) In accordance with RCW 18.225.090 and 18.225.095, for applicants who can demonstrate they have practiced as a substance use disorder professional for at least three years within ~~((ten))~~ 10 years from the date their application for an independent clinical social worker license is submitted to the department, the department shall reduce the total required supervised hours from ~~((four thousand))~~ 3,000 hours to ~~((three thousand six hundred))~~ 2,600 hours. The requirements in subsection (2)(c)(i) and (ii) of this section shall apply regardless of the reduction of total required hours.

(c) The experience requirement consists of a minimum of ~~((four thousand))~~ 3,000 hours of experience, over a period of not less than ~~((three))~~ two years. Of those ~~((four thousand))~~ 3,000 hours:

(i) One thousand hours must be direct client contact supervised by a licensed independent clinical social worker;

(ii) One hundred ~~((thirty))~~ hours of direct supervision as follows:

(A) Seventy hours must be with an independent clinical social worker;

(B) ~~((Sixty))~~ The remaining hours may be with an equally qualified licensed mental health practitioner as defined in WAC 246-809-310(3); and

(C) Sixty hours of the ~~((one hundred thirty))~~ 100 hours of direct supervision must be in one-to-one supervision. The remaining ~~((seventy))~~ hours may be in one-to-one supervision or group supervision.

(3) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants are not required to have supervised postgraduate experience prior to becoming an associate.

(4) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants must declare they are working toward full licensure.

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

**WAC 246-809-610 Eligible continuing education activities.** (1) The continuing education (CE) program or course for licensed counselors and associates must:

- (a) Be relevant to the profession; and
- (b) Contribute to the advancement, extension and enhancement of their professional competence.

(2) Courses or workshops primarily designed to increase practice income or office efficiency are not eligible for CE credit.

(3) Acceptable CE courses (including distance learning), seminars, workshops and postgraduate institutes are those which are:

- (a) Programs having a featured instructor, speaker(s) or panel approved by an industry-recognized local, state, national, international organization or institution of higher learning; or
- (b) Distance learning programs, approved by an industry-recognized local, state, national or international organization or institution of higher learning. These programs must require tests of comprehension upon completion. (~~(Distance learning programs are limited to twenty-six hours per reporting period.)~~)

(4) Training programs sponsored by the agency where a licensed counselor or associate is employed are acceptable but are limited to (~~(twenty-six)~~) 26 hours per reporting period.

(5) Other learning experience, such as serving on a panel, board or council, community service, research, peer consultation, or publishing articles for professional publications are acceptable but are limited to six hours per reporting period.

AMENDATORY SECTION (Amending WSR 21-09-037, filed 4/13/21, effective 5/14/21)

**WAC 246-809-630 Continuing education requirements.** (1) An associate must complete (~~(eighteen)~~) 18 hours of continuing education as required in WAC 246-809-632.

(2) Licensed social worker associate advanced and licensed social worker associate independent clinical must complete six hours of suicide assessment, treatment, and management CE as required in WAC 246-809-632.

(3) A licensed counselor must complete (~~(thirty-six)~~) 36 hours of continuing education (CE) every two years.

- (a) At least six of the (~~(thirty-six)~~) 36 hours must be in professional ethics and law, which may include topics under RCW 18.130.180.
- (b) All licensed counselors must complete a minimum of two hours in health equity continuing education training every four years. The training content must be consistent with requirements established in WAC 246-12-830.

(c) Beginning January 1, 2014, at least once every six years a licensed marriage and family therapist, licensed mental health counselor, and licensed social worker must complete at least six hours of training in suicide assessment, treatment, and management.

(i) The first training must be completed during the first full CE reporting period after January 1, 2014, or the first full CE period after initial licensure, whichever occurs later.

(ii) Beginning July 1, 2017, a qualifying suicide prevention training must be selected from the department's model list, as required in WAC 246-809-615.

(iii) Beginning July 1, 2021, a subsequent qualifying training must be selected from the department's model list, as required in WAC 246-809-615.

(iv) The hours spent completing training in suicide assessment, treatment, and management count toward the total (~~(thirty-six)~~) 36 hours of CE.

(v) An individual applying for initial licensure as a licensed marriage and family therapist, licensed mental health counselor, or licensed social worker on or after January 1, 2014, may delay completion of the first training required for six years after initial licensure if he or she can demonstrate completion of six hours of training in suicide assessment, treatment, and management that:

(A) Was completed no more than six years prior to the application for initial licensure; and

(B) Meets the qualifications listed in WAC 246-809-615.

AMENDATORY SECTION (Amending WSR 21-09-037, filed 4/13/21, effective 5/14/21)

**WAC 246-809-632 Licensed associate continuing education.** (1)

All licensed associates must complete a total of (~~(eighteen)~~) 18 hours of continuing education (CE) every year in order to renew their license. The CEs must be completed in accordance with this chapter. An associate must attest to completing the CE every year during the renewal.

(2) Professional ethics and law CE for all licensed associates. All licensed associates must include six hours of CE in professional ethics and law every two years. The associates must attest to completing the CE during the second renewal, fourth renewal, and sixth renewal. These six CE hours maybe completed anytime within the two-year period before each of these renewals. The six hours may contribute to the total (~~(eighteen)~~) 18 hours of CE for the year in which the CE was completed.

(3) All licensed associates must complete a minimum of two hours in health equity continuing education training every four years. The training content must be consistent with requirements established in WAC 246-12-830.

(4) Suicide assessment, treatment, and management CE only for licensed social worker associate advanced and licensed social worker associate independent clinical.

(a) Licensed social worker associate advanced and licensed social worker associate independent clinical must complete:

(i) Six hours of suicide assessment, treatment, and management CE after initial licensure and before the first renewal in accordance with WAC 246-809-615 and 246-809-630; and



(ii) Six hours of subsequent training per WAC 246-809-615 and 246-809-630 in the following six-year period.

(b) The licensed social worker associate advanced and licensed social worker associate independent clinical may delay completing the first training if he or she can demonstrate completion of the training no more than six years before gaining their initial license.

(c) The hours spent completing training in suicide assessment, treatment, and management count toward the total ((eighteen)) 18 hours of CE.

((Table 1

**Continuing Education Requirements by Licensure Renewal Dates**

License Type	<ul style="list-style-type: none"> <li>• Marriage and Family Therapist Associate</li> <li>• Mental Health Counselor Associate</li> </ul>	<ul style="list-style-type: none"> <li>• Social Worker Associate Advanced</li> <li>• Social Worker Associate Independent Clinical</li> </ul>
<b>At Initial Licensure</b>	Not applicable for initial licensure	Not applicable for initial licensure
<b>Between Initial Licensure and First Renewal</b>	18 Hours Total	18 Hours Total <ul style="list-style-type: none"> <li>• 6 hours in suicide assessment, treatment, and management unless obtained 6 years prior to initial licensure</li> </ul>
<b>Between First and Second Renewal</b>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date</li> </ul>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date</li> </ul>
<b>Between Second and Third Renewal</b>	18 Hours Total	18 Hours Total
<b>Between Third and Fourth Renewal</b>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date</li> </ul>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date</li> </ul>
<b>Between Fourth and Fifth Renewal</b>	18 Hours Total	18 Hours Total
<b>Between Fifth and Sixth Renewal</b>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date</li> </ul>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date))</li> </ul>

AMENDATORY SECTION (Amending WSR 02-11-108, filed 5/20/02, effective 6/20/02)

**WAC 246-809-650 ((How do I document my courses?)) Coursework documentation.** Acceptable documentation for all licenses under this chapter shall include transcripts, letters from course instructors, certificate of completion, or other formal certification, as required in chapter 246-12 WAC((, Part 7)).

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

**WAC 246-809-730 Retired active credential.** (1) To obtain a retired active license a licensed counselor must comply with chapter 246-12 WAC(~~, Part 5~~).

(2) A licensed counselor with a retired active license may practice no more than (~~ninety~~) 90 days each year in Washington, or practice only in emergency circumstances such as earthquakes, floods, time of declared war or other states of emergency; and

(3) A licensed counselor with a retired active license must renew yearly on their birthday, and must report (~~eighteen~~) 18 hours of continuing education including six hours in professional ethics and law as required under WAC 246-809-630 every two years.

## WSR 23-17-080

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed August 15, 2023, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-022.

Title of Rule and Other Identifying Information: WAC 182-535-1088  
Dental-related services—Covered—Periodontic services.

Hearing Location(s): On September 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_E7tAxNWnSVCG-SIhvxxsWg](https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SIhvxxsWg). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: September 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 26, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to increase the allowable number of periodontal treatments to up to four per 12-month period for apple health eligible clients, age 21 and over, with a current diagnosis of diabetes. Effective January 1, 2024, periodontal maintenance is allowed once every three months when criteria are met. In subsection (2)(a)(i), the agency removed "subgingival calculus" as it is unnecessary language.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: ESSB 5187 Conference Budget, section 211(60); RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Jayson Diaz, P.O. Box 55076, Olympia, WA 98504-5076, 360-725-1822.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. HCA is amending this rule to increase the allowable number of periodontal treatments. This change does not impose a more-than-minor cost.

August 15, 2023

## OTS-4724.2

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1088 Dental-related services—Covered—Periodontic services.** Clients described in WAC 182-535-1060 are eligible to receive the dental-related periodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specified service.

(1) **Surgical periodontal services.** The medicaid agency covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) only on a case-by-case basis and when prior authorized and only for clients age (~~(twenty)~~) 20 and younger; and

(b) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to WAC 182-535-1099.

(2) **Nonsurgical periodontal services.** The agency:

(a) Covers periodontal scaling and root planing for clients age (~~(thirteen through eighteen)~~) 13 through 18, once per quadrant per client, in a two-year period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease (~~(and subgingival calculus)~~);

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting done within the past (~~(twelve)~~) 12 months from the date of the prior authorization request and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment, or at least (~~(twelve)~~) 12 calendar months from the completion of periodontal maintenance.

(b) Covers periodontal scaling and root planing once per quadrant per client in a two-year period for clients age (~~(nineteen)~~) 19 and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(f) Covers periodontal scaling and root planing, one time per quadrant in a (~~twelve~~) 12-month period for clients residing in an alternate living facility or nursing facility.

(3) **Other periodontal services.** The agency:

(a) Covers periodontal maintenance for clients age (~~thirteen through eighteen~~) 13 through 18 once per client in a (~~twelve~~) 12-month period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting done within the past (~~twelve~~) 12 months with location of the gingival margin and clinical attachment loss and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) The client has had periodontal scaling and root planing but not within (~~twelve~~) 12 months of the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients age (~~nineteen~~) 19 and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed at least (~~twelve~~) 12 calendar months after receiving prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(e) Covers periodontal maintenance for clients residing in an alternate living facility or nursing facility:

(i) Periodontal maintenance (four quadrants) substitutes for an eligible periodontal scaling or root planing once every six months.

(ii) Periodontal maintenance allowed six months after scaling or root planing.

(f) Covers periodontal maintenance for clients 21 and older with a diagnosis of diabetes:

(i) Periodontal maintenance allowed once every three months. Criteria in (a)(i) through (iii) of this subsection must be met.

(ii) Periodontal maintenance allowed three months after scaling or root planing.

(g) Covers full-mouth scaling in the presence of generalized moderate or severe gingival inflammation and only:

(i) For clients age (~~nineteen~~) 19 and older once in a (~~twelve~~) 12-month period after an oral evaluation; and

(ii) For clients age (~~thirteen through eighteen~~) 13 through 18 once in a (~~twelve~~) 12-month period after an oral evaluation and when prior authorized.

## WSR 23-17-084

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed August 15, 2023, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-058.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for sex offender treatment providers (SOTP) under chapter 246-924 WAC, Sex offender treatment providers.

The department of health (department) is proposing to amend WAC 246-930-410 Continuing education requirements to establish health equity CE requirements and implement ESSB 5229.

Hearing Location(s): On October 16, 2023, at 2:00 p.m. The public hearing will be virtual, without a physical meeting space. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_5F4mz18HQ1SsVdIiPN4mMw](https://us02web.zoom.us/webinar/register/WN_5F4mz18HQ1SsVdIiPN4mMw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 31, 2023.

Submit Written Comments to: Lana Crawford, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, [www.doh.wa.gov](http://www.doh.wa.gov), by October 16, 2023.

Assistance for Persons with Disabilities: Contact Lana Crawford, phone 564-669-1455, TTY 711, email [lane.crawford@doh.wa.gov](mailto:lane.crawford@doh.wa.gov), [www.doh.wa.gov](http://www.doh.wa.gov), by October 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the department must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The department is proposing to amend WAC 246-930-410 to implement ESSB 5229. The department is proposing adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for SOTPs to comply with RCW 43.70.613.

The proposed rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every four years. The proposed rule does not change total CE hours but requires two hours in health equity CE every four years, which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Additionally, because providers hold an SOTP credential in addition to a primary health care credential, the proposed rule states that SOTPs who have already completed health equity CE for their primary credential are not required to take an additional training.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings includes implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address

structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Statutory Authority for Adoption: RCW 43.70.613, 18.155.040.

Statute Being Implemented: RCW 43.70.613; ESSB 5229 (chapter 276, Laws of 2021).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lana Crawford, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-1455.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lana Crawford, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504-7850, phone 564-669-1455, TTY 711, email lana.crawford@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Requirements apply to individual behavioral health care providers, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 15, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

## OTS-4773.1

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-930-410 Continuing education requirements.** Certified sex offender treatment providers must complete (~~forty~~) 40 hours of continuing education every two years as required in chapter 246-12 WAC (~~(, Part 7)~~).

(1) **Purpose and scope.** The aim of continuing education for sex offender treatment providers is to ensure that professionals practic-

ing in this specialty field are knowledgeable of current scientific and practice principles that affect the supervision and treatment of sex offenders in community-based treatment. Since the treatment of sex offenders in communities raises significant public safety concerns, continuing education is required to help sex offender treatment providers deliver the highest quality of professional service by being familiar with current developments in a rapidly changing profession. Certified sex offender treatment providers, regardless of certification status (e.g., full, affiliate, or provisional), shall meet the continuing education requirements set forth in this section as a prerequisite to license renewal.

(2) **Specific requirements.**

(a) A minimum of (~~thirty~~) 30 hours of the CE shall be earned through attendance at courses, workshops, institutes, and/or formal conference presentations with direct, specific relevance to the assessment and treatment of sex offenders.

(i) Consultative or supervisory training obtained from other certified sex offender treatment providers is not creditable under this CE definition.

(ii) Independent study of audio or video tapes of seminar presentations not actually attended are creditable under this definition, up to a maximum of (~~ten~~) 10 hours in any two-year period. Credit for independent study will only be granted if accompanied by documentation of the learning activity, such as a written summary of the independent study activity.

(iii) CE credit for assessment and treatment of sex offender training courses presented to other professionals may be claimed by the certified provider who provides the training one time only (usually the first time it is taught, unless there is substantial revision), up to a maximum of (~~ten~~) 10 hours in any two-year period.

(iv) Courses specifically oriented toward assessment or treatment of sex offenders may be claimed as CE. The following are examples of subjects that qualify under this definition:

- (A) Ethics and professional standards;
- (B) Relapse prevention with sex offenders;
- (C) Plethysmographic assessment;
- (D) Sexual arousal assessment and reconditioning;
- (E) Risk assessment with sex offenders;
- (F) Psychopharmacological therapy with sex offenders;
- (G) Family therapy with sex offenders;
- (H) Research concerning sexual deviancy;
- (I) Sexual addiction; and
- (J) Therapy/clinical methods specific to sex offenders.

(b) In addition to the (~~thirty~~) 30 hours of CE with direct, specific relevance to the assessment and treatment of sex offenders, (~~ten~~) 10 hours of the total requirement may be earned through participation in training courses with indirect relevance to the assessment and treatment of sex offenders. The following subjects qualify under this definition:

- (i) Victimology/victim therapy;
- (ii) General counseling methods;
- (iii) Psychological test interpretation;
- (iv) Addiction/substance abuse;
- (v) Family therapy;
- (vi) Group therapy; (~~and~~)
- (vii) Legal issues; and

(viii) Health equity training under (c) of this subsection.



(c) Beginning January 1, 2024, individuals certified under this chapter are required to complete at least two hours of health equity training every four-year renewal cycle. The training must meet the minimum standards under RCW 43.70.613 and comply with course requirements in WAC 246-12-800 through 246-12-830. Sex offender treatment providers who complete health equity training for their underlying credential are not required to take a separate training for their sex offender treatment provider credential during the same four-year period.

(3) **Program or course approval.** The department shall accept any CE that reasonably falls within the above categories and requirements. The department relies upon each individual provider's integrity with the intent and spirit of the CE requirements.

(4) **CE requirement for newly certified providers.** Providers who are newly certified within six months of their renewal date shall not be required to submit proof of continuing education for the preceding (~~twelve~~) 12-month period. Providers who are newly certified from six to nine months prior to the renewal date shall be required to submit proof of (~~ten~~) 10 hours of the annual CE requirement for the preceding (~~twelve~~) 12-month period. Providers who are newly certified from nine to (~~twelve~~) 12 months prior to the renewal date shall be required to submit proof of the full (~~twenty~~) 20 hour annual CE requirement at the renewal date. The above noted prorated CE requirements apply only to the first renewal following certification. If proof of CE is not required at the first renewal (dependent on birth-date), the prorated amount shall be added to the full (~~twenty~~) 20 hour annual requirement for the second year following certification.

## WSR 23-17-086

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed August 15, 2023, 2:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-024.

Title of Rule and Other Identifying Information: WAC

182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.

Hearing Location(s): On September 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_E7tAxNWnSVCG-SIhvxxsWg](https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SIhvxxsWg). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: September 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 26, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to make language less restrictive in subsection (5)(c) from covering a "case study when done in conjunction with limited or comprehensive orthodontic treatment only" to a "case study when done in conjunction with orthodontic treatment."

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Janice Tadeo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1583.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

Scope of exemption for rule proposal:

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. HCA is amending these rules to provide more precise language to define the program parameters and ensure consistency. This change does not impose a more-than-minor cost.

August 15, 2023

Wendy Barcus

**OTS-4725.1**

AMENDATORY SECTION (Amending WSR 23-08-009, filed 3/23/23, effective 4/23/23)

**WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.** Orthodontic treatment and orthodontic-related services require prior authorization.

(1) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team.

(a) Cleft lip and palate, cleft palate, or cleft lip.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogyryposis;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) The agency authorizes orthodontic treatment and orthodontic-related services when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of 25 or higher as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency covers orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis when the agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary;

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); or

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC.

(5) The agency covers the following orthodontic treatment and orthodontic-related services:

(a) Limited orthodontic treatment.

(b) Comprehensive full orthodontic treatment on adolescent dentition.

- (c) A case study when done in conjunction with (~~limited or comprehensive~~) orthodontic treatment (~~only~~).
- (d) Other orthodontic treatment subject to review for medical necessity as determined by the agency.
- (6) The agency covers the following orthodontic-related services:
  - (a) Clinical oral evaluations according to WAC 182-535-1080.
  - (b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.
- (c) Orthodontic appliance removal as a stand-alone service only when:
  - (i) The client's appliance was placed by a different provider or dental clinic; and
  - (ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.
- (7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:
  - (a) Document in the client's record why treatment was discontinued or not completed, or why treatment goals were not achieved.
  - (b) Notify the agency by submitting the Orthodontic Discontinuation of Service form (HCA 13-0039).
- (8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:
  - (a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and
  - (b) That are listed as noncovered according to WAC 182-501-0160.
- (9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

## WSR 23-17-087

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed August 15, 2023, 2:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-023.

Title of Rule and Other Identifying Information: WAC

182-531A-0200 Applied behavior analysis (ABA)—Definitions,  
182-531A-0400 Applied behavior analysis (ABA)—Client eligibility,  
182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and order, 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development, and  
182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Hearing Location(s): On September 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_E7tAxNWnSVCG-SIhvxxsWg](https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SIhvxxsWg). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: September 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 26, 2023, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to: (1) Remove language referencing a center of excellence (COE) as a facility rather than an individual provider; for the purposes of this chapter, COE means an individual provider.

(2) Update the COE definition in WAC 182-531A-0200.

(3) Add physician assistants and naturopaths to the list of eligible providers who can diagnose autism spectrum disorder.

(4) Add additional clarification and requirement that ARNPs, physicians, physician assistants, and naturopaths must complete the required COE training authorized by HCA. Additionally, physician assistants and naturopaths, in order to be recognized as a COE by HCA, must submit a signed COE attestation form, HCA 13-0009, to HCA.

(5) Remove subsection (12)(b); the attestation form regarding ABA qualifications, HCA 13-0008, is not required by the certified behavior technician.

(6) Clarify in WAC 182-531A-0800(6) all COEs must be enrolled with HCA and all COEs providing services to clients enrolled with a managed care organization (MCO) must also be contracted with the MCO per the MCO contract specifications in accordance with 42 C.F.R. 438.14 to be reimbursed for fee-for-service or MCO services.

(7) Add housekeeping changes such as updating the term "clinician" to "provider" for language consistency and the term "order or ordered" to "prescribed or prescription" to align with standard of language that ABA therapy is a prescription.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Alyssa Jennings, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1194.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. HCA is amending these rules to provide more precise language to define the program parameters and ensure consistency. This change does not impose a more-than-minor cost.

August 15, 2023  
Wendy Barcus  
Rules Coordinator

## OTS-4723.2

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

### **WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions.**

The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

**Applied behavior analysis** or **ABA** - Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

**Autism spectrum disorder (ASD)** - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders* (DSM) or *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood* (DC 0-5) criteria.

**Autism spectrum disorder (ASD) diagnostic tool** - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

**Autism spectrum disorder (ASD) screening tool** - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children (STAT).

**Centers of excellence (COE)** - (~~(A facility that employs a health care provider, or alternatively)~~) An individual provider who has been trained, as listed in WAC 182-531A-0800, to establish or confirm the diagnosis of autism spectrum disorder and that has been designated by the agency as a center of excellence provider. For the purposes of this chapter, center of excellence (COE) refers to an individual provider, not a facility.

**Client** - For the purposes of this chapter, client means a person enrolled in Washington apple health (WAH).

**Family member** - A client's parent, guardian, caregiver, or other support person.

**Qualifying diagnosis** - A diagnosis of an ASD, as defined by the DSM or DC 0-5, or other intellectual or developmental disability for which there is evidence ABA is effective.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility.** To be eligible for applied behavior analysis (ABA) services, a client must:

- (1) Be covered under Washington apple health (WAH);
- (2) Provide documentation created by a COE (~~(clinician)~~) provider

that:

(a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;

(b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:

(i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or

(ii) The client's behavior endangers the client or another person, or impedes access to home and community activities; and

(c) An agency-recognized center of excellence (COE) (~~(clinician)~~) provider has confirmed that:

- (i) The client meets all requirements in (a) and (b) of this subsection;
- (ii) The client has a qualifying diagnosis;
  - (A) Autism spectrum disorder; or
  - (B) Developmental/intellectual disability;
- (iii) There is a reasonable expectation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and
- (iv) Either:
  - (A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or
  - (B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing pro-social skills and behaviors, or maintaining desired behaviors.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and (~~order~~) prescription.** (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) provider for an evaluation.

(2) The individual COE provider must complete a comprehensive diagnostic evaluation and provide:

- (a) Documentation showing how the autism spectrum disorder or other intellectual/developmental disability (for which there is evidence ABA is effective) diagnosis was made or confirmed by an approved individual COE provider that includes:
  - (i) Results of formal diagnostic procedures performed by a (~~clinician~~) provider, including name of measure, dates, and results, as available; or
  - (ii) Clinical findings and observations used to confirm the diagnosis;
- (b) Documentation showing that the client's behaviors or skills deficits adversely affect development or communication, or demonstrating injurious behavior, such that:
  - (i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or
  - (ii) The client presents a safety risk to self or others;
- (c) Documentation showing:
  - (i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or
  - (ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;
- (d) Recommendations that address all of the client's health care needs;
- (e) A statement that the evaluating and prescribing provider believes that there is a reasonable expectation that the requested ABA services will result in measurable improvement in the client's behavior or skills; and



(f) ~~((An order))~~ A prescription for ABA services. If ~~((ordered))~~ prescribed, a copy of the ~~((COE's))~~ COE provider's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the client or the client's guardian under this chapter or provided to the client or the client's guardian to forward to the selected ABA provider.

(3) The COE provider must also include the following items if ~~((it possesses))~~ they possess a copy:

(a) Results of routine developmental screening;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism spectrum disorder (ASD) screening tool, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE provider or another qualified ~~((clinician))~~ provider, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE provider for developmental/intellectual disability or another qualified ~~((clinician))~~ provider, including name of measure, dates, results, and standardized scores providing scores of each domain.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two:**

**Functional assessment and treatment plan development.** (1) If the center of ~~((excellence's (COE's) evaluating and prescribing))~~ excellence ~~((COE))~~ provider has ~~((ordered))~~ prescribed applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior authorization must be obtained from the agency prior to implementing the ABA therapy treatment plan. The prior authorization request must be received no more than 60 days from the date of the assessment and ABA therapy treatment plan. See WAC 182-501-0165 for agency authorization requirements.

(3) The client or the client's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical ~~((clinician))~~ provider, and dietitian;

(ii) Provides multidisciplinary services in a short-term day treatment program setting;

(iii) Delivers comprehensive intensive services;

(iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;

(v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each client; and

(vi) Includes family support and training.

(b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, workplace, office, or clinic. A community-based program:

(i) May be used after discharge from a day services program (see subsection (3)(a) of this section);

(ii) Provides a developmentally appropriate ABA therapy treatment plan for each client;

(iii) Provides ABA services in the home (wherever the client resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, child care, early childhood education, school, or place of employment and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family or caregiver education, support, and training.

(4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the client or the client's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the ((COE's)) COE provider's current diagnostic evaluation (see WAC 182-531A-0500(2));

(c) Address each behavior, skill deficit, and symptom that prevents the client from adequately participating in home, school, employment, community activities, or that presents a safety risk to the client or others;

(d) Be individualized;

(e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;

(f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant or in conflict with, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education, from early intervention programs and early intervention providers or from the developmental disabilities administration) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, (e.g., discrete trial train-

ing, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the authorized treatment period;

(l) Incorporate strategies for promoting the learning of skills that improve targeted behaviors within settings as listed in this chapter;

(m) Integrate family education, goals, training, support services, and modeling and coaching family/client interaction;

(n) Incorporate strategies for coordinating treatment with school-based education and vocational programs, behavioral health treatment, habilitative supports, and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.**

**Center of excellence.**

(1) For the purposes of this chapter, center of excellence (COE) refers to an individual provider, not a facility.

(2) A center of excellence (COE) (~~may include a facility or an individual.~~

~~(2) The COE facility evaluating and prescribing providers must function as a multidisciplinary care team)~~ must be an evaluating and prescribing provider.

(3) The COE provider must be (~~or must employ~~):

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

(i) A developmental pediatrician;

(ii) A neurologist;

(iii) A pediatric neurologist;

(iv) A pediatric psychiatrist;

(v) A psychiatrist; or

(vi) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (4) of this section and who has been designated by the agency as a COE provider. (~~Behavioral health clinicians do not apply.~~)

(4) With the exception of providers listed in subsection (3)(a) of this section, ARNPs, physicians, physician assistants, and naturopaths must complete the required COE training authorized by the agency. The COE provider must be prequalified by the agency (~~or employ people who~~) and meet the following criteria:

(a) ARNPs, physicians, (~~and psychologists~~) physician assistants, and naturopaths must have demonstrated expertise in diagnosing an autism spectrum disorder by:

(i) Using a validated diagnostic tool;

(ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, ~~((and psychologists))~~ physician assistants, and naturopaths must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, ~~((and psychologists))~~ physician assistants, and naturopaths must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation~~((7))~~ and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(5) To be recognized as a COE by the agency, the provider, as listed in (4)(a) of this section, must submit a signed COE Attestation form, HCA 13-0009, to the agency.

(6) ~~((The))~~ To be reimbursed for fee-for-service or agency-contracted managed care organization (MCO) services:

(a) All COE providers must be enrolled with the agency ~~((or the client's managed care organization to be reimbursed for services.~~

~~(7) Examples of providers who can qualify as a designated COE include:~~

~~(a) Multidisciplinary clinics;~~

~~(b) Individual qualified provider offices; and~~

~~(c) Neurodevelopmental centers.~~

~~(8))~~.

(b) All COEs providing services to clients enrolled with an agency-contracted MCO must also be contracted with the MCO, per the MCO contract specifications in accordance with 42 C.F.R. § 438.14.

(7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

#### **Lead behavior analysis therapist.**

~~((9))~~ (8) The lead behavior analysis therapist (LBAT) must:

(a) Be licensed by the department of health (DOH) to practice independently as a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding certification as a board-certified behavior analyst (BCBA) or a board-certified assistant behavior analyst (BCaBA) on file with the agency.

~~((10))~~ (9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) A DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or

(b) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

~~((11))~~ (10) If the LBAT's role is filled by a LABA, the responsibilities below must be fulfilled by both the LABA and the supervising LBA or licensed psychologist, as required by DOH under chapter 246-805 WAC. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the certified behavior technician per week.

**Certified behavior technician.**

~~((12))~~ (11) The certified behavior technician (CBT) must ~~((a))~~ be certified by DOH as a CBT under chapter 18.380 RCW in good standing with no license restrictions ~~((and~~  
~~(b) Have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency))~~.

~~((13))~~ (12) The CBT must enroll as a servicing provider under chapter 182-502 WAC.

~~((14))~~ (13) The CBT must:

(a) Deliver services according to the ABA therapy treatment plan;

(b) Be supervised by a DOH-licensed professional who meets the requirements under WAC 246-805-330; and

(c) Review the client's progress with the supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the supervisor.

**Facility-based day program.**

~~((15))~~ (14) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;

(b) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable;

(c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and

(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.

## WSR 23-17-100

## PROPOSED RULES

## DEPARTMENT OF CORRECTIONS

[Filed August 16, 2023, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-041.

Title of Rule and Other Identifying Information: Chapter 137-25 WAC, Serious violations—Total and partial confinement facilities; and chapter 138-28 WAC, Discipline—Prisons.

Hearing Location(s): On September 28, 2023, at 2:00 p.m., Microsoft Teams meeting. Please contact rules coordinator at vvchebotar@docl.wa.gov to register.

Date of Intended Adoption: October 31, 2023.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections, Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@docl.wa.gov, by September 25, 2023.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, email vvchebotar@docl.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Make administrative changes, as necessary, to ensure WAC complies with department of corrections (department) policy. The purpose of making changes to this section of the WAC is to remove work release from the applicability. This change allows for the update to chapter 137-56 WAC, which will separate partial and total confinement, include all partial confinement programs, and identify progressive discipline within partial confinement.

Reasons Supporting Proposal: The WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: Department of corrections, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael Hathaway, department of corrections headquarters, 425-754-0882.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

August 11, 2023  
Cheryl Strange  
Secretary

OTS-4729.1

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-25-010 Application of chapter.** The definitions and serious violations described herein apply to (~~offenders~~) incarcerated individuals committed to both total and partial confinement facilities.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-25-020 Definitions.** For the purposes of this chapter, the following terms have the following meanings:

(1) Aggravated assault - An assault resulting in a documented physical injury requiring treatment in a medical facility/treatment center by medical staff including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered treatment.

(2) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

(3) Attempting - Putting forth an effort to commit any violation.

(4) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

(5) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(6) Facility - A correctional facility as defined in RCW 72.09.015.

(7) Infraction - A term designating the procedures and documents related to (~~offender~~) incarcerated individual misconduct and the facility disciplinary process.

(8) (~~Offender~~) Incarcerated individual - An inmate as defined in RCW 72.09.015.

(9) Possessing - When an item(s) is found on an (~~offender~~) incarcerated individual or in an (~~offender's~~) incarcerated individual's assigned area of responsibility.

(10) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration; genital or anal contact/penetration with an inanimate object; masturbation; sadistic/masochistic abuse; bondage; bestiality; and/or bodily excretory behavior which appears to be sexual in nature.

(11) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without (~~his/her~~) their consent or when (~~he/she is~~) they are unable to consent or refuse:

(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(12) Sexual contact against a staff member - Contact against a staff member without ((his/her)) their consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(13) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(14) Staff member - A department of corrections employee, contract staff, or volunteer.

(15) Violation - The act of failing to comply with a rule enumerated in this chapter.

AMENDATORY SECTION (Amending WSR 19-24-045, filed 11/26/19, effective 12/13/19)

**WAC 137-25-030 Serious violations.** (1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation, with the exception of attempting an aggravated assault. Attempting to commit an aggravated assault will be charged as violation:

- (a) #633 When against another ((offender)) incarcerated individual;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

**Category A**

501 - Committing homicide
502 - Committing aggravated assault against another ((offender)) <u>incarcerated individual</u>
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules
511 - Committing aggravated assault against a visitor or community member
521 - Taking or holding any person hostage
550 - Escaping
601 - Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component thereof
602 - Possessing, manufacturing, or introducing any firearm, weapon, sharpened instrument, knife, or poison, or any component thereof
603 - <u>Possessing</u> , introducing or transferring any unauthorized drug or drug paraphernalia
604 - Committing aggravated assault against a staff member
611 - Committing sexual assault against a staff member
613 - Committing an act of sexual contact against a staff member



635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or ( <del>offender-on-offender</del> ) <u>incarcerated individual on incarcerated individual</u> sexual assault)
637 - Committing sexual abuse against another ( <del>offender</del> ) <u>incarcerated individual</u> , as defined in department policy
650 - Rioting( <del>, as defined in RCW 9.94.010</del> )
651 - Inciting others to riot( <del>, as defined in RCW 9.94.010</del> )
830 - Escaping from work/training release with voluntary return within 24 hours
831 - While in work/training release, failing to return from an authorized sign out
882 - While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization

**Category B - Level 1**

504 - Engaging in a sex act with another person(s) ( <del>within the facility</del> ) that is not otherwise included in these rules, except in an approved extended family visit
553 - Setting a fire
560 - Possessing items or materials likely to be used in an escape without authorization
633 - Assaulting another ( <del>offender</del> ) <u>incarcerated individual</u>
704 - Assaulting a staff member
711 - Assaulting a visitor or community member
744 - Making a bomb threat
884 - Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle
886 - Adulterating any food or drink
892 - Giving, selling, or trading any prescribed medication, or possessing another ( <del>offender's</del> ) <u>incarcerated individual's</u> prescribed medication

**Category B - Level 2**

505 - Fighting with another ( <del>offender</del> ) <u>incarcerated individual</u>
556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member
607 - Refusing to submit to a urinalysis and/or failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member
608 - Refusing or failing to submit to a breath alcohol test or other standard sobriety test when ordered to do so by a staff member
609 - Refusing or failing to submit to testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by a staff member
652 - Engaging in or inciting a group demonstration
655 - Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance

682 - Engaging in or inciting an organized work stoppage
707 - Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules
716 - Using an over the counter medication without authorization or failing to take prescribed medication as required when administered under supervision
736 - Possessing, manufacturing, or introducing an unauthorized key or electronic security access device
750 - Committing indecent exposure
752 - <del>((Possessing))</del> <u>Admitting use</u> , or receiving a positive test for use of, an unauthorized drug, alcohol, or <u>other intoxicating substance</u>
778 - Providing a urine specimen that has been diluted, substituted, or altered in any way

**Category B - Level 3**

503 - Extorting or blackmailing, or demanding or receiving anything of value in return for protection against others or under threat of informing
506 - Threatening another with bodily harm or with any offense against any person or property
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area
525 - Violating conditions of a furlough
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties
600 - Tampering with, damaging, blocking, or interfering with any locking, monitoring, or security device
605 - Impersonating <del>((any staff member, other offender, or visitor))</del> <u>or assuming the identity of any other person</u>
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction
654 - Counterfeiting or forging, or altering, falsifying, or reproducing any document, article of identification, money, or security or other official paper without authorization
660 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is five dollars or more
709 - Out-of-bounds: Being in another <del>((offender's))</del> <u>incarcerated individual's cell</u> or being in <del>((an))</del> <u>a restricted or out of bounds area</u> <del>((in))</del> <u>of the facility</u> with one or more <del>((offenders))</del> <u>incarcerated individuals</u> without authorization
738 - Possessing clothing or assigned equipment of a staff member

739 - Possessing, transferring, or soliciting any person's identification information, including current staff members or their immediate family members, when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the superintendent
745 - Refusing a transfer to another facility
746 - Engaging in or inciting an organized hunger strike
762 - Noncompliance with the DOSA program. Note: <i>This violation must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC</i>
777 - Causing injury to another person by resisting orders, assisted movement, or physical efforts to restrain
813 - Being in the community without authorization, or being in an unauthorized location in the community
814 - While in work/training release, violating an imposed special condition
879 - Operating or being in a motor vehicle without permission or in an unauthorized manner or location
889 - Using facility phones, information technology resources/systems, or related equipment without authorization

**Category C - Level 1**

508 - Spitting or throwing objects, materials, or substances in the direction of another person(s)
557 - Refusing to participate in an available work, training, education, or other mandatory programming assignment
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices
610 - While in prison, receiving or possessing prescribed medication without authorization
620 - Receiving or possessing contraband during participation in off-grounds or outer perimeter activity or work detail
659 - Committing sexual harassment against another (( <del>offender</del> ) incarcerated individual, as defined in department policy
661 - Committing sexual harassment against a staff member, visitor, or community member
663 - Using physical force, intimidation, or coercion against any person
702 - Possessing, manufacturing, or introducing an unauthorized tool
708 - Organizing or participating in an unauthorized group activity or meeting
717 - Causing a threat of injury to another person by resisting orders, assisted movement, or physical efforts to restrain
720 - Flooding a cell or other area of the facility
724 - Refusing a cell or housing assignment

734 - Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group
810 - Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a work, training, education, or other programming assignment for negative or substandard performance
893 - Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband
896 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information
899 - Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the offender committed

**Category C - Level 2**

552 - Causing an innocent person to be penalized or proceeded against by providing false information
554 - Damaging, altering, or destroying any item that is not the ((offender's)) incarcerated individual's personal property, the value of which is ten dollars or more
710 - Acquiring an unauthorized tattoo/piercing/scar, tattooing/piercing/scarring another, or possessing tattoo/piercing/scarring paraphernalia
718 - Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action
726 - Telephoning, sending written or electronic communication, or otherwise initiating communication with a minor without the approval of that minor's parent or guardian

**Category C - Level 3**

606 - Possessing, introducing, or transferring any tobacco, tobacco products, matches, or tobacco paraphernalia
657 - Being found guilty of four or more general violations arising out of separate incidents within a 90-day period
658 - Failing to comply with any administrative or posthearing sanction imposed for committing any violation
812 - Failing to report/turn in all earnings

**Category D**

517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules
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551 - Providing false information to the hearing officer or in a disciplinary appeal
555 - Stealing property, possessing stolen property, or possessing another offender's property
559 - Gambling or possessing gambling paraphernalia
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service
662 - Soliciting goods or services for which the provider would expect payment, when the <del>((offender))</del> <u>incarcerated individual</u> knows or should know that <del>((he/she))</del> <u>they</u> lack <del>((s))</del> sufficient funds to cover the cost
706 - Giving false information when proposing a release plan
714 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more
725 - Telephoning or sending written or electronic communication to any <del>((offender))</del> <u>incarcerated individual</u> in a correctional facility, or <u>partial confinement</u> directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee
728 - Possessing any sexually explicit material(s), as defined in <del>((WAC 137-48-020))</del> <u>DOC Policy 450.100</u>
740 - Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense
741 - Stealing food, the value of which is <del>((five))</del> <u>ten</u> dollars or more
742 - Establishing a pattern of creating false emergencies by feigning illness or injury
755 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is ten dollars or more
811 - Entering into an unauthorized contract
861 - Performing or taking part in an unauthorized marriage
890 - Failing to follow a medical directive and/or documented medical recommendations, resulting in injury

(2) If contraband or another violation is discovered in an ~~((offender's))~~ incarcerated individual's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all ~~((offenders))~~ incarcerated individuals assigned responsibility for that area.

**OTS-4730.1**

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-140 Purpose.** The rules in this chapter provide a standardized system to determine whether misconduct by an ((~~offender~~)) incarcerated individual has occurred, and to provide a system that clearly links an ((~~offender's~~)) incarcerated individual's behavior and participation in available work, training, education, or other programming as determined through classification with the receipt or denial of earned release time and other privileges as outlined in department policy.

The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board.

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-160 Definitions.** For the purposes of this chapter, the following terms have the following meanings:

- (1) Attempting - Putting forth an effort to commit any violation.
- (2) Business days - Monday through Friday, excluding holidays and days the facility is experiencing altered/modified/emergency operational status.
- (3) Conspiring - Entering into an agreement with another person(s) to commit a violation.
- (4) Facility - A correctional facility as defined in RCW 72.09.015.
- (5) Hearing officer - A trained staff member designated by the superintendent to conduct disciplinary hearings processes, as well as review appeals of general violations.
- (6) Infraction - A term designating the procedures and documents related to ((~~offender~~)) incarcerated individual misconduct and the facility disciplinary process as a result of a rule violation.
- (7) Infraction review officer - A trained staff member who assesses and evaluates the accuracy of the infraction packet, to include verification of the incident, appropriateness of the violation(s) charged, thoroughness of the information, and verification that supporting documents are included and that all evidence is collected and handled correctly (when applicable) before submittal to the hearing office.
- (8) Lesser included offense - A less serious violation than the one charged, but one which the ((~~offender~~)) incarcerated individual necessarily committed in carrying out the charged violation.
- (9) ((~~Offender~~)) Incarcerated individual - An inmate as defined in RCW 72.09.015.
- (10) Possessing - When an item(s) is found on an ((~~offender~~)) incarcerated individual or in an ((~~offender's~~)) incarcerated individual's assigned area of responsibility.

(11) Promptly - To act as soon as reasonably possible, consistent with facility goals of safety, security, and rehabilitation.

(12) Staff member - A department of corrections employee, contract staff, or volunteer.

(13) Violation - The act of failing to comply with a rule enumerated in this chapter or chapter 137-25 WAC.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-180 Notification.** (1) All (~~offenders~~) incarcerated individuals confined in a facility shall have access to policies and rules regarding:

(a) Their rights and responsibilities in disciplinary matters;  
(b) Acts prohibited in the facility; and  
(c) Disciplinary action that may be taken in the event of misconduct.

(2) All (~~offenders~~) incarcerated individuals shall have access to a copy of the local disciplinary policies of the facility to which they are assigned.

(3) (~~Offenders~~) Incarcerated individuals unable to read or understand English shall be provided access to a written or recorded translation of these rules in their accustomed language.

(4) (~~Offenders~~) Incarcerated individuals should be provided access to changes to disciplinary policies or rules in advance of their effective date.

(a) Complete and up-to-date copies of these rules and all facility disciplinary policies shall be available for (~~offender~~) incarcerated individual access at each facility.

(b) (~~Offenders~~) Incarcerated individuals are responsible for informing themselves of changes to the rules and policies.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-190 Referral to law enforcement.** (1) The superintendent should report any felony under state or federal law committed in a facility to law enforcement. Any time an (~~offender~~) incarcerated individual commits a serious violation after losing all potential earned release time credits, the superintendent should report the (~~offender~~) incarcerated individual to local law enforcement for possible felony prosecution under RCW 9.94.070.

(2) The superintendent may report any misdemeanor under state or federal law committed in a facility to law enforcement.

(3) Nothing in this section shall prevent an (~~offender's~~) incarcerated individual's assignment to administrative segregation.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-200 Out-of-state ((offenders)) incarcerated individuals.** (1) ((Offenders)) Incarcerated individuals committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable to that prison. That prison may, in its discretion, use any presumptive sanction guidelines currently in effect in Washington state facilities.

(2) ((Offenders)) Incarcerated individuals committed to the department of corrections from other states shall be subject to the disciplinary rules and procedures currently in effect in the Washington state facility to which they are assigned.

(3) Each state shall forward all serious infraction reports and appeals to the originating state within seven days of the final action, and may include a recommendation that the ((offender)) incarcerated individual return to the originating state.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-210 Hearing officers.** (1) Each hearing shall be conducted by a hearing officer designated by the superintendent.

(2) Hearing officers may not preside over a hearing when they are related to the ((offender)) incarcerated individual, witness, victim, or infracting officer, or have direct personal involvement in the infraction under consideration. For purposes of this section, direct personal involvement means knowledge or interest acquired through witnessing, investigating, or directly participating in the incident under consideration. This rule shall not preclude hearing officer participation where the hearing officer has acquired knowledge of the incident as part of regular facility responsibilities.

(3) Hearing officers may disqualify themselves or may be disqualified by the superintendent if biased for or against any ((offender)) incarcerated individual so that they cannot render a fair and impartial decision in the hearing.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-220 General violations.** (1) Any of the following types of behavior may constitute a general violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

**Unauthorized possession/theft**

- 051 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is less than five dollars



- 053 - Possessing anything not authorized for retention or receipt by an ((offender)) incarcerated individual and/or not issued to an ((offender)) incarcerated individual through approved channels
- 255 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is less than ten dollars
- 310 - Pretending or failing to take prescribed medication by concealing or retaining the medication
- 354 - Stealing food, the value of which is less than ((five)) ten dollars
- 356 - Possessing an unauthorized amount of clothing, bedding, or issued supplies

**Lending/trading**

- 351 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is less than ten dollars

**Altering/destroying property**

- 055 - Damaging, altering, or destroying any item that is not the ((offender's)) incarcerated individual's personal property, the value of which is less than ten dollars

**Disruptive behavior/lying**

- 202 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s)
- 203 - Lying to a staff member
- 353 - Engaging in disruptive behavior
- 355 - Roughhousing, or engaging in horseplay or any other unauthorized physical contact with another ((offender(s))) incarcerated individual(s)
- 357 - Demonstrating, practicing, or using martial arts or other self-defense tactics

**Failure to follow rules and orders**

- 103 - Failing to follow any oral/written orders, rules, or policies not otherwise included in these rules
- 105 - Failing to perform a work, training, education, or other programming assignment as directed
- 210 - Out of bounds: Being in an area where the presence of the ((offender)) incarcerated individual is unauthorized
- 214 - Interfering or failing to comply with count procedures
- 251 - Smoking or possessing tobacco or related products/paraphernalia where prohibited
- 301 - Failing to maintain one's clothing, personal hygiene, or quarters in accordance with facility rules or policies

**Unauthorized communication/visitor contact**

- 303 - Using the mail, telephone, or electronic communications without authorization

- 304 - Conducting/participating in unwanted written, telephone, or electronic communications with any person
- 305 - Corresponding with or engaging in conduct with a visitor in violation of published or posted rules or policies

**Inappropriate use of equipment**

- 212 - Using any equipment or machinery when not specifically authorized or contrary to instructions or safety standards

**Unexcused absence/feigning illness**

- 104 - Being absent from work or any assignment, scheduled meeting, appointment, or call out without authorization
- 352 - Pretending to be ill or injured contrary to medical/mental health screening results

**Inappropriate sexual behavior**

- 244 - Displaying sexual affection with another ~~((offender))~~ incarcerated individual(s)
- 309 - Engaging in an unauthorized display of affection with a visitor

(2) If contraband or another violation is discovered in an ~~((offender's))~~ incarcerated individual's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all ~~((offenders))~~ incarcerated individuals assigned responsibility for that area.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-230 General infraction procedure.** (1) In the event of a general violation, a staff member may make an on-site adjustment. An on-site adjustment may consist of counseling, warning, or reprimanding the ~~((offender))~~ incarcerated individual and/or directing the ~~((offender))~~ incarcerated individual to remove ~~((himself/herself))~~ themselves from the situation immediately. An action addressed through an on-site adjustment cannot be considered a general violation for the purposes of determining whether a #657 serious violation has occurred.

(2) In the event of a general violation where a staff member does not make an on-site adjustment, the staff member will prepare and submit an infraction report per department policy. The staff member will attach copies of any supporting documents.

(3) The general infraction report shall be promptly submitted for review to the supervisor designated by the superintendent. Upon review, if the supervisor determines the action meets the criteria of a serious violation, ~~((he/she))~~ they may return the report to the reporting staff member to upgrade the general violation to a serious violation. If the violation is upgraded, the reporting staff member will forward the serious infraction report to the infraction review officer.

(4) If the action was appropriately charged as a general violation, the supervisor will decide whether the ~~((offender))~~ incarcerated individual is guilty or not guilty within five business days of re-

ceiving the report, unless an extension is approved in writing by the hearing officer. The supervisor will conduct an informal hearing at which ((he/she)) they may allow witnesses and documentary evidence with the ((offender)) incarcerated individual present.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-240 General violations—Sanctions.** (1) If the supervisor finds the ((offender)) incarcerated individual not guilty of a general violation, disciplinary sanctions shall not be imposed on the ((offender)) incarcerated individual for that violation. Records pertaining to the violation shall not be placed in the ((offender's)) incarcerated individual's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the supervisor finds the ((offender)) incarcerated individual guilty of any general violation, the supervisor may impose one or more of the following sanctions:

(a) Reprimand or warning;

(b) Issuance of a written order to cease the problematic behavior. The order will include a warning that if the identified behavior is repeated within a specified period (not to exceed ((one hundred eighty)) 180 days), the ((offender)) incarcerated individual will be charged with a serious violation ((+)) (#658 under WAC 137-25-030);

(c) Loss of a privilege or privileges as specified by the supervisor for a period not to exceed ((ten)) 10 consecutive days on the first offense, ((twenty)) 20 consecutive days on the second offense, and ((thirty)) 30 consecutive days on the third offense within a six-month period;

(d) Evening cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, not to exceed ((ten)) 10 consecutive evenings;

(e) Weekend and/or holiday cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period of one or more weekends, not to exceed four consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the ((offender's)) incarcerated individual's programming or work day Friday and terminate at the beginning of the ((offender's)) incarcerated individual's programming or work day Monday;

(f) Confinement to cell/room except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period not to exceed ((ten)) 10 consecutive days;

(g) Up to ((one hundred twenty)) 120 hours of extra work duty.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-250 General infraction appeals.** (1) If the supervisor finds the (~~offender~~) incarcerated individual guilty of a general violation, only the (~~offender~~) incarcerated individual may appeal the decision and/or sanction(s) to a hearing officer.

(a) The appeal must be in writing and must include the reason(s) why the (~~offender~~) incarcerated individual believes the action taken was incorrect and specify the desired relief.

(b) The appeal must be delivered to the hearing officer within (~~two~~) five business days of receiving the notice.

(c) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the hearing officer may consider appeals filed beyond the (~~two~~) five business day period.

(2) The hearing officer will review and act on the appeal request within (~~ten~~) 10 business days of receipt unless an extension is approved in writing by the superintendent. The hearing officer may affirm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s).

(3) Once a decision is made on the appeal, the (~~offender~~) incarcerated individual shall be notified in writing within three business days, unless an extension is approved in writing by the superintendent.

(4) Sanctions will not be stayed upon appeal.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-270 Serious infraction procedure.** (1) When a staff member witnesses a serious violation or determines that a serious violation has occurred, (~~he/she~~) they shall prepare and submit an infraction report per department policy. The staff member will attach to the report copies of any supporting documents, including a summary of any confidential information, which shall not identify the confidential source(s).

(2) The infraction review officer will review the serious infraction report and any supporting documents and/or evidence. If the report is incomplete or the charge(s) is inappropriate, the infraction review officer will return the report to the reporting staff member to be revised, rewritten, or reinvestigated. Otherwise, the infraction review officer will forward the report to the hearing clerk or designee to schedule a hearing.

The infraction review officer may recommend referral to a mental health professional as defined in department policy for consultation if there is a question whether:

(a) Mental illness contributed to the behavior that led to the violation; or

(b) The (~~offender's~~) incarcerated individual's mental health status may need to be monitored.

(3) A negotiated hearing process will be used for any violation specifically identified in department policy. The serious infraction report will be forwarded to the designated hearing officer per department policy.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-285 ((Offender)) Incarcerated individual rights.** (1)

An ((offender)) incarcerated individual charged with a violation(s) has the right to:

- (a) A fair and impartial hearing;
- (b) Written notice of the alleged violation(s) and a summary of the supporting evidence at least ((~~twenty-four~~)) 24 hours before the hearing;
  - (i) The notice shall include a statement of the rights listed in this section.
  - (ii) The ((offender)) incarcerated individual may waive the ((~~twenty-four~~)) 24 hour notice.
- (c) Be present at the hearing or waive presence at the hearing;
- (d) Request a department advisor and/or an interpreter to assist the ((offender)) incarcerated individual in preparing for and participating in the hearing;
- (e) Testify or remain silent;
- (f) Call witnesses and present documentary evidence, though the hearing officer may exclude witnesses/evidence deemed irrelevant, duplicative, or unnecessary;
- (g) Propose questions for the hearing officer to ask witnesses, although the hearing officer may exclude questions deemed irrelevant, duplicative, or unnecessary;
- (h) Appeal the hearing officer's finding(s) and/or sanction(s) imposed to the superintendent within ((~~fifteen~~)) 15 business days of the hearing officer's decision.

(2) ((Offenders)) Incarcerated individuals do not have the right to:

- (a) Cross-examine witnesses;
- (b) Have the reporting staff member present at the hearing;
- (c) Receive a polygraph or other supplemental tests;
- (d) Examine physical evidence;
- (e) Receive confidential information.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-290 Preparations for hearing.** (1) When possible, hearings will be held in the facility where the violation(s) occurred. If the ((offender)) incarcerated individual is transferred to another facility before a hearing is conducted, the sending facility will provide the infraction report, along with any supporting documents, to the receiving facility.

(2) In preparation for the hearing, the hearing clerk or designee shall, at least ((~~twenty-four~~)) 24 hours before the hearing:

- (a) Provide copies of the infraction report and nonconfidential supporting documents, including a summary of the supporting evidence, to the ((offender)) incarcerated individual;
- (b) Advise the ((offender)) incarcerated individual in writing of the date, time, and location of the hearing and of the rights, restrictions, and responsibilities listed in this chapter;

(c) Obtain written acknowledgment of the (~~offender's~~) incarcerated individual's receipt of the infraction report and any supporting documents;

(d) Determine whether the (~~offender~~) incarcerated individual wishes to contest the allegation;

(e) Determine whether the (~~offender~~) incarcerated individual needs a department advisor and/or an interpreter. If assigned, the department advisor and/or interpreter will remain in place throughout the hearing process, unless the (~~offender~~) incarcerated individual declines assistance.

(3) If an (~~offender is placed in prehearing confinement~~) incarcerated individual is in segregation, the hearing will be held within three business days of service of the infraction report and any supporting documents, unless the (~~offender~~) incarcerated individual has waived (~~twenty-four~~) 24 hour notice for the hearing or the hearing is continued in writing by the hearing officer. A staff member may be assigned to assist in obtaining witness statements.

If a hearing is continued, a determination shall be made in writing whether the (~~offender~~) incarcerated individual should remain in segregation.

(4) For (~~offenders not placed~~) incarcerated individuals not in segregation, the hearing will be held within five business days of service of the infraction report and any supporting documents.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-295 Department advisors.** (1) A department advisor may be appointed per department policy to help the (~~offender~~) incarcerated individual prepare for and participate in the hearing. Before a department advisor is assigned, the following factors will be considered:

(a) The (~~offender's~~) incarcerated individual's literacy;

(b) The complexity of the issue(s);

(c) The (~~offender's~~) incarcerated individual's overall ability to speak for (~~himself/herself~~) themselves and adequately present (~~his/her~~) their case;

(d) The individual's mental status, as determined by a mental health professional or other employee with mental health training or experience;

(e) The (~~offender's~~) incarcerated individual's ability to communicate in English; and/or

(~~e~~) (f) Any disability that might impair the (~~offender's~~) individual's ability to adequately defend (~~himself/herself~~) themselves.

(2) The department advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(3) The department advisor shall attend the hearing, in whole or in part, based on the (~~offender's~~) incarcerated individual's needs. (~~He/she~~) They may attend in person or by telephone. (~~He/she~~) They shall not present the (~~offender's~~) incarcerated individual's case, question witnesses, or make any other oral presentation, unless requested by the hearing officer.

(4) When a hearing is continued for the purpose of appointing a department advisor, an advisor shall be appointed immediately.

(5) Conversations between department advisors and (~~offenders~~) incarcerated individuals are neither confidential nor privileged.

AMENDATORY SECTION (Amending WSR 20-08-037, filed 3/24/20, effective 4/24/20)

**WAC 137-28-300 Conduct of hearing.** (1) The hearing officer shall ensure that the (~~offender's~~) incarcerated individual's rights are protected throughout the hearing process. The hearing officer shall ensure that the (~~offender~~) incarcerated individual is capable of understanding the charge(s) against (~~him/her~~) them and the nature of the proceedings, and (~~is~~) they are able to adequately participate in the hearing. If there is reason to doubt the (~~offender's~~) incarcerated individual's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information.

(2) The (~~offender~~) incarcerated individual shall be present at all stages of the hearing, except during deliberations, examination of any physical evidence and/or confidential information, and any inquiry the hearing officer may make concerning the evidence/information presented, including the source(s) of confidential information.

(a) If new evidence/information is introduced outside the hearing, the (~~offender~~) incarcerated individual will have an opportunity to rebut the evidence/information during the hearing.

(b) Unless excused, an (~~offender's~~) incarcerated individual's failure to attend a scheduled hearing will be considered (~~his/her~~) a waiver of (~~the~~) their right to be present at the hearing.

(3) An audio recording will be made of all category A, B, and C hearings. A written record will also be made of all hearings.

(a) The record shall include:

(i) The name and DOC number of the (~~offender~~) incarcerated individual;

(ii) The date, location, and time of the hearing;

(iii) The name of the hearing officer;

(iv) The alleged violation(s);

(v) The (~~offender's~~) incarcerated individual's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

(vii) A summary of the statements of the (~~offender~~) incarcerated individual and any witnesses, and information from any additional sources, including confidential sources;

(viii) A summary of any new evidence/information introduced outside the hearing;

(ix) A description of any physical evidence;

(x) The reasons for denying any witnesses;

(xi) Any witness statements requested by the (~~offender~~) incarcerated individual or hearing officer that were not provided or were unavailable, if applicable;

(xii) Any witness questions proposed by the (~~offender~~) incarcerated individual that the hearing officer did not ask and the reason(s) the questions were excluded (i.e., irrelevant, duplicative, or unnecessary);

(xiii) The hearing officer's decision, the sanction(s) imposed, and reasons.

(b) If the ((~~offender~~)) incarcerated individual is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the ((~~offender's~~)) incarcerated individual's file.

(4) The hearing officer will ensure physical evidence is handled per department policy.

(5) If an ((~~offender's~~)) incarcerated individual's behavior disrupts the hearing, ((~~he/she~~)) they may be removed and the hearing will continue on the record in the ((~~offender's~~)) incarcerated individual's absence.

(6) If the hearing officer determines that a witness's presence is necessary, the witness may participate by telephone or in person, at the hearing officer's discretion. If the hearing officer determines that participation would be unduly hazardous to facility safety or correctional goals, the witness will provide a written statement.

(7) The hearing officer has the authority to question all witnesses. The ((~~offender~~)) incarcerated individual may submit proposed questions to be asked of witnesses, but the hearing officer may exclude questions that are irrelevant, duplicative, or unnecessary to the adequate presentation of the ((~~offender's~~)) incarcerated individual's case.

(8) Information from a confidential source will be introduced by the testimony of the staff member who received the information.

(a) The hearing officer shall, out of the presence of the ((~~offender~~)) incarcerated individual and off the record, review the confidential information and make an independent determination regarding the reliability of the source, the credibility of the information, and the necessity of not revealing the source. In determining whether the source is reliable and the information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

(b) The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information.

(c) The reliability and credibility determination and the need for confidentiality must be made on the record.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-305 Continuances.** (1) At any time during the disciplinary process, the hearing officer may continue the hearing:

(a) To determine the individual's mental status or competency;

(b) To appoint a department advisor;

((~~(b)~~)) (c) To obtain an interpreter;



- ~~((e))~~ (d) To obtain a witness(es) or witness statement(s);
- ~~((d))~~ (e) To correct errors;
- (f) To obtain ~~((a-replacement))~~ an alternate hearing officer;
- ~~((e))~~ (g) To obtain crime lab reports or other documentation;
- (h) If the witness(es) is temporarily unavailable;
- ~~((f))~~ (i) To determine restitution costs;
- (j) If the ~~((offender))~~ incarcerated individual is unavailable (e.g., on escape, court-ordered custody, in transit to a nondepartment facility, etc.);
- ~~((g))~~ (k) At the reasonable request of the ~~((offender))~~ incarcerated individual;
- ~~((h))~~ (l) If the facility is experiencing altered/modified/emergency operational status(~~(+~~  
~~(i) To determine restitution costs)).~~
- (2) Continuances shall be for no longer than necessary, and shall not exceed ~~((twenty))~~ 20 business days, unless approved by the superintendent.
- (3) Hearings for ~~((offenders))~~ incarcerated individuals on escape status, in court-ordered custody, in transit to a facility in another jurisdiction, or otherwise unavailable may be continued for not more than ~~((twenty))~~ 20 business days after their return to department custody.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-310 Decision of hearing officer.** (1) In reaching a decision, the hearing officer will consider ~~((only))~~ the totality of the circumstances, the elements of the charged violation(s), all pertinent and exculpatory evidence presented at the hearing.

(2) The hearing officer is authorized to find an ~~((inmate))~~ incarcerated individual guilty of a lesser ~~((included offense))~~ WAC violation without issuing a new infraction report or conducting a new hearing.

(3) Where the evidence suggests an ~~((inmate))~~ incarcerated individual is guilty of an offense not charged and which is not a lesser ~~((included))~~ offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The ~~((inmate))~~ incarcerated individual may waive the right to a separate hearing and allow the hearing officer to conduct the hearing on the new charge.

(4) The ~~((offender))~~ incarcerated individual shall be informed of the hearing officer's decision in writing within three business days of the hearing, unless extended by the superintendent.

(5) The ~~((offender))~~ incarcerated individual shall be informed of ~~((his/her))~~ their right to appeal the hearing officer's decision to the superintendent.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-350 Sanctions—Authority to impose.** (1) If the hearing officer finds the ~~((offender))~~ incarcerated individual not guilty of a violation, disciplinary sanctions shall not be imposed on the ~~((offender))~~ incarcerated individual for that violation. Records pertaining to the violation shall not be placed in the ~~((offender's))~~ incarcerated individual's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the hearing officer finds the ~~((offender))~~ incarcerated individual guilty of a serious violation, the hearing officer may impose one or more of the sanctions listed in this section.

If the hearing officer determines that more than one violation occurred as a result of the same incident, ~~((he/she))~~ they shall not impose sanctions for the separate violations, but shall consider them together and impose penalties based on the most serious violation in the group.

(3) Allowable sanctions for serious violations are as follows. The hearing officer may consider factors such as prior documented behavior, infraction history, mental status, and overall facility and program adjustment when determining an appropriate sanction(s):

- (a) Any of the sanctions available for general violations;
  - (b) Any of the sanctions available under department policy;
  - (c) Loss of a privilege or privileges as outlined in department policy for a period not to exceed: Thirty consecutive days on the first offense, ~~((ninety))~~ 90 consecutive days on the second offense, and ~~((one hundred eighty))~~ 180 consecutive days on the third offense within a one-year period;
  - (d) Confinement to cell/room except for meals (or with meals in cell), attendance at work or school assignments, or religious services, or law library if approved for emergency/priority access per department policy, for a period not to exceed ~~((thirty))~~ 30 consecutive days;
  - (e) Recommendation to the facility risk management team for review of custody classification;
  - (f) ~~((Confinement on segregation status for a period not to exceed thirty consecutive days;~~
  - ~~((g) With assistant secretary approval, confinement on isolation status for a period not to exceed ten consecutive days. Where a serious violation occurs during a period of isolation, additional periods of isolation not to exceed ten consecutive days may be imposed. In situations where an offender is in isolation for more than ten consecutive days, the assistant secretary's prior approval is required unless the offender is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;~~
  - ~~((h))~~ Restitution per WAC 137-28-410;
  - ~~((i))~~ (g) Recommendation to the superintendent that ~~((he/she))~~ they deny good conduct time credit.
- The recommendation will be consistent with guidelines established by the department secretary. Any sanctions in excess of the guidelines require assistant secretary approval;
- ~~((j))~~ (h) Suspension or termination of visitation, for certain violations as outlined in department policy, for a period not to exceed: Thirty consecutive days for the first offense, ~~((ninety))~~ 90

consecutive days for the second offense, and ~~((one hundred eighty))~~ 180 consecutive days for the third offense within a one-year period. In cases of multiple or very serious violations, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

~~((k))~~ (i) Restriction, interruption, or termination of correspondence, telephone, and/or electronic communication for a period not to exceed: Thirty consecutive days for the first offense, ~~((ninety))~~ 90 consecutive days for the second offense, and ~~((one hundred eighty))~~ 180 consecutive days for the third offense in a one-year period. Termination of correspondence, telephone, and/or electronic communication may be permanent:

(i) At the recipient's request;

(ii) At the request of the parent or guardian of the recipient, if the recipient is a minor or an incapacitated person;

(iii) If correspondence perpetuates criminal activity; or

(iv) If the contact violates a court order.

~~((l))~~ (j) Urinalysis or breath alcohol testing for a period not to exceed ~~((ninety))~~ 90 days for drug or alcohol related violations.

(4) The hearing officer may review any decision ~~((he/she))~~ they previously made and may modify downward any sanction previously imposed.

(5) In all cases, regardless of whether an appeal is requested, the superintendent may review and reduce a sanction imposed. Once the superintendent has made a decision on the appeal, no modifications will be made by the hearing officer.

(6) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-360 Sanctions and mental status.** In determining an appropriate sanction, the hearing officer should consider the ~~((offender's))~~ incarcerated individual's mental health and ~~((his/her))~~ their intellectual, emotional, and maturity levels and what effect a particular sanction might have on the ~~((offender))~~ incarcerated individual in light of such factors. The hearing officer may request the assistance of other department staff members, including mental health staff members, in determining appropriate and/or alternate sanctions.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-370 Sanctions—Limitations.** (1) No ~~((offender))~~ incarcerated individual shall be infracted for violation of ~~((offender))~~ incarcerated individual conduct rules unless ~~((he/she has))~~ they have been provided reasonable advance notice of the prohibited behavior, unless the rule was adopted on an emergency basis.

(2) Disciplinary sanctions shall not include:

(a) Lowering the quantity or nutritional value of food;

(b) Corporal punishment or physical restraint;

- (c) Confinement to an environment with unhealthful temperatures;
- (d) Denial of adequate medical treatment.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-380 Serious infraction appeals.** (1) If the hearing officer finds the ~~((offender))~~ incarcerated individual guilty of a serious violation, only the ~~((offender))~~ incarcerated individual may appeal the decision and/or sanction(s) to the superintendent.

(a) An appeal request cannot be filed when the ~~((offender))~~ incarcerated individual has pled guilty to the violation.

(b) The appeal request must be in writing and must include the reason(s) why the ~~((offender))~~ incarcerated individual believes the action taken was incorrect and specify the desired relief.

(c) The appeal request must be filed within ~~((fifteen))~~ 15 business days of receiving the notice.

(d) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the superintendent may consider appeals filed beyond the ~~((fifteen))~~ 15 business day period.

(2) The superintendent will review the hearing record and act on the appeal request within ~~((ten))~~ 10 business days of receipt. The superintendent may affirm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s). The superintendent may also reverse the decision and remand the matter for a new hearing, in which case the sanction(s) imposed at the new hearing may not be more severe than the sanction(s) originally imposed.

(3) The ~~((offender))~~ incarcerated individual shall be promptly notified in writing of the superintendent's decision.

(4) Sanctions will not be stayed upon appeal.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-390 Hearing officer reports to the indeterminate sentence review board.** (1) When the hearing officer determines that an ~~((offender))~~ incarcerated individual subject to the jurisdiction of the indeterminate sentence review board is guilty of a serious violation, the hearing officer may recommend to the superintendent that ~~((he/she))~~ they not certify good conduct time credit for the ~~((offender))~~ incarcerated individual pursuant to RCW 9.95.070.

The hearing officer's recommendation will be consistent with guidelines established by the department secretary. Any sanctions for loss of good conduct credits in excess of the guidelines require assistant secretary approval.

(2) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with violations providing for actual time loss of ~~((twelve))~~ 12 months or more and consistent with guidelines established by the department secretary.

(3) Whenever the hearing officer finds an ~~((offender))~~ incarcerated individual under the jurisdiction of the indeterminate sentence

review board guilty of a serious violation and recommends either loss of good conduct time credits or an increase in the ~~((offender's))~~ incarcerated individual's minimum term, the records office must inform the indeterminate sentence review board of the hearing officer's decision and recommendation within ~~((ten))~~ 10 days, or within ~~((ten))~~ 10 days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the ~~((offender))~~ incarcerated individual is within ~~((forty-five))~~ 45 days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

(4) In all other cases where an ~~((offender))~~ incarcerated individual under the jurisdiction of the indeterminate sentence review board is found guilty of a serious violation, the records office must inform the indeterminate sentence review board of the hearing officer's decision within ~~((thirty))~~ 30 days, or within ~~((thirty))~~ 30 days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the ~~((offender))~~ incarcerated individual is within ~~((forty-five))~~ 45 days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-410 Restitution.** (1) If the hearing officer imposes restitution as a sanction, the amount of restitution owed shall be determined at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence regarding restitution. If continued, the ~~((offender))~~ incarcerated individual shall be present at the continued/reconvened hearing.

(2) The amount of restitution will be the replacement value of the item, the cost of repair, and/or the cost of any ~~((unnecessary))~~ expense caused by the ~~((offender's))~~ incarcerated individual's misconduct.

(3) The ~~((offender))~~ incarcerated individual may appeal the amount of restitution within the time limits of this chapter. If under appeal, the amount of the restitution will be held in the ~~((offender's))~~ incarcerated individual's account, but funds will not be withdrawn/withheld until the superintendent has decided the appeal.

(4) Restitution funds may be collected in the following ways:

(a) The funds may be withdrawn from the ~~((offender's))~~ incarcerated individual's account to make restitution, provided the ~~((offender's))~~ incarcerated individual's account is not reduced to less than ~~((ten-dollars))~~ \$10; or

(b) Twenty percent of all funds being placed in the ~~((offender's))~~ incarcerated individual's account may be taken until the restitution is paid in full.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 137-28-280            Temporary prehearing placement.

## WSR 23-17-107

## PROPOSED RULES

## BELLINGHAM TECHNICAL COLLEGE

[Filed August 17, 2023, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-07 [23-01-075] and 23-07-088.

Title of Rule and Other Identifying Information: Amending sections of chapters 495B-104, 495B-108, 495B-122, 495B-130, 495B-133, 495B-134 and 495B-280 WAC; and repealing chapters 495B-131, 495B-310, and 495B-132 WAC.

Hearing Location(s): On September 27, 2023, at 12:00 p.m., at Bellingham Technical College, College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225.

Date of Intended Adoption: October 19, 2023.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughlin@btc.edu, fax 360-752-7134, by September 18, 2023.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by September 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: General revisions to update language and locations. Repeal sections that are no longer relevant.

Reasons Supporting Proposal: The new language ensures that Bellingham Technical College is providing accurate information.

Statutory Authority for Adoption: Chapters 28B.10, 34.05 RCW; RCW 28B.50.140(13); 20 U.S.C. § 1092(f).

Statute Being Implemented: Chapter 28B.10 RCW.

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

Name of Proponent: Bellingham Technical College, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ronda Laughlin and Michele Waltz, CS 201 and CS 213, 360-752-8334.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 17, 2023

Ronda Laughlin

Executive Assistant to the President

**OTS-4774.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-104-010 Time and place of board meetings.** The board of trustees shall hold one regular meeting on the third Thursday of each month at 9:00 a.m. and such special meetings as may be requested by the ((~~chairman~~)) chair of the board or by a majority of the members of the board and announced in accordance with law. All board meeting dates may be found in the Washington State Register and at the college website (btc.edu).

All regular and special meetings of the board of trustees shall be held at Bellingham Technical College, ((~~Building G~~)) College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions.

No official business may be conducted by the board of trustees except during a regular or special meeting.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-104-020 Request for items to be placed on board agenda.** Anyone, other than a board member or a representative of the president's office wishing an item placed on the agenda of a board meeting, must have a written request in the office of the president ((~~no later than twelve o'clock noon five business days before~~)) at least two weeks in advance of the next scheduled meeting of the board. The president will relate the request to the ((~~chairman~~)) chair of the board as soon as feasible. The ((~~chairman~~)) chair will determine whether the item is to be placed on the agenda. The ((~~chairman~~)) chair or a designee will notify the individual initiating the request as to whether or not the item will be placed on the agenda.

#### OTS-4877.1

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-108-020 Appointment of presiding officers.** The president or president's designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the president or ((~~his or her~~)) their designee, or any combination of the above. Where more than one individual is designated to be the presiding officer, the president or president's designee shall designate one person to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.



AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-108-040 Application for adjudicative proceeding.** An application for adjudicative proceeding (~~(shall be in writing)~~) must specify the issue to be decided in the proceeding and be signed by the applicant or the applicant's representative. Application forms are available at the following address: 3028 Lindbergh Avenue, Bellingham, WA 98225.

Written application for an adjudicative proceeding (~~(should)~~) must be submitted to the above address within (~~(twenty)~~) 21 days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-108-050 Brief adjudicative procedures.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are adopted by reference. Brief adjudicative procedures shall be used in all matters related to:

- (1) ~~((Residency determinations;~~
- ~~(2) Challenges to contents of education records;~~
- ~~(3) Student conduct proceedings;~~
- ~~(4) Parking violations;~~
- ~~(5) Outstanding debts owed by students or employees;~~
- ~~(6) Loss of eligibility for participation in college sponsored events.))~~ Appeals from residency classifications made pursuant to RCW 28B.15.013;
- (2) Challenges to the contents of educational records pursuant to 34 C.F.R. § 99.21;
- (3) Appeals from actions from student conduct or disciplinary proceedings;
- (4) Appeals from actions due to parking and traffic infractions;
- (5) Appeals from actions due to outstanding debts of college employees or students;
- (6) Appeals from actions regarding loss of eligibility to participate in college-sponsored events;
- (7) Appeals from actions regarding mandatory tuition and fee waivers;
- (8) Appeals pursuant to any other formal rule adopted by Bellingham Technical College which specifically provides for a brief adjudicative procedure.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter. Adjudicative proceedings shall be open to the public, except as may be provided otherwise by law. A brief written statement of the reasons for the decision must be entered within 10 business days after the proceeding.

**OTS-4878.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-122-010 Policy.** If any person, including any faculty, staff, student, or former student, is indebted to the institution for an outstanding overdue debt, the college need not provide any further services of any kind to such individual(~~(r)~~) including, but not limited to, transmitting files, records, (~~(transcripts)~~) or other services which have been requested by such person. Official transcripts and registration privileges may not be withheld, regardless of debt, except as outlined in RCW 28B.10.293 (3) through (5).

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-122-020 Notification.** (1) Upon receiving a request for services where there is an outstanding debt due to the college from the requesting person, the college shall notify the person by first-class mail that the services will not be provided since there is an outstanding debt due. The person shall be told that until the debt is satisfied, requested services will not be provided.

(2) The letter of notification shall also state that the person has a right to a brief adjudicative proceeding (~~(before a person designated by the president of the college. The proceeding must be requested within twenty days of the date of mailing notification of refusal to provide services)~~) pursuant to chapter 495B-108 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495B-122-030 Procedure for brief adjudicative proceeding.

**OTS-4775.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-130-010 Location of schedules.** Detailed information and specific amounts to be charged for each category of students (~~(will)~~) can be found on the college website (btc.edu), with information on how to access current tuition rates in the college catalog, and in the following locations on the Bellingham Technical College campus:

- (1) The office of admissions;
- (2) The registration and records office;
- (3) The business office;

- (4) Student services office;
- (5) Financial aid office.

**OTS-4776.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-133-020 Organization—Operation—Information.** (1) Organization. Bellingham Technical College is established in Title 28B RCW as a public institution of higher education. The college is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the college. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

Bellingham Technical College  
3028 Lindbergh Avenue  
Bellingham, WA 98225

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses:

~~((Commercial Fishing  
Harbor Mall No. 17  
Bellingham, WA 98225~~

~~Fisheries Technology  
1800)) 1600 C Street  
Bellingham, WA 98225~~

(3) Information. Additional and detailed information concerning the educational offerings of the college may be obtained on the college website (btc.edu) or from the catalog, copies of which are available at the following address:

Bellingham Technical College  
3028 Lindbergh Avenue  
Bellingham, WA 98225

**OTS-4777.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-134-010 Rules coordinator.** The rules coordinator for Bellingham Technical College as designated by the president is the ~~((administrative))~~ executive assistant to the president.

## OTS-4879.2

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-015 Definitions.** For the purposes of this policy, the following definitions of terms apply:

(1) "Student" means any individual who is or has been in attendance at Bellingham Technical College and for whom the college maintains education records.

(2) "Education records" are defined as those records, files and documents (in handwriting, print, tapes, film, microfiche or other medium) maintained by Bellingham Technical College which contain information directly related to the individual student. Education records include only the following:

(a) Records pertaining to admission, advisement, registration, grading, and progress toward a degree or certificate that are maintained by the registrar.

(b) Testing information used for advisement purposes by the counseling center.

(c) Information concerning payment of fees as maintained by the registrar.

(d) Financial aid information as collected by the financial aid office.

(e) Information regarding students participating in student government that is maintained by the student programs office.

(3) "Directory information" means the student's name, (~~address, telephone number, date and place of birth,~~) major field of study, (~~eligibility for and participation in officially recognized activities, organizations,~~) dates of attendance, (~~honor roll, degrees, certificates, and awards received, and the most recent previous educational agency or institution attended by the student~~) degree or certificate earned, term degree or certificate awarded, or honors. Directory information may be disclosed at the discretion of the college and without the consent of the student unless (~~he or she elects~~) they elect to prevent disclosure as provided for in WAC 495B-280-070.

(4) "Written consent" means a written authorization for disclosure of student education records which is:

(a) Signed by the student, or the legal custodian of the student if the student is a minor;

(b) Dated;

(c) Which specifies the records to be disclosed; and

(d) Which specifies to whom disclosure is authorized.

(5) "Personally identifiable" means data or information which includes: The name of the student, the student's parent(s), or other family members; a personal identifier such as the student's Social Security number or student number; or a list of personal characteristics which would make the student's identity easily traceable.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-030 Procedure to inspect education records.** (1)

Students may inspect and review their education records upon request to the appropriate college official as designated in WAC 495B-280-110.

(2) Students must submit to the appropriate college official a written request which identifies as precisely as possible the record or records (~~(he or she wishes)~~) they wish to inspect.

(3) The appropriate college official will make the needed arrangements for access as promptly as possible and notify the student of the time and place where the records may be inspected. Access must be given in (~~(forty-five)~~) 45 days or less from the receipt of the request.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-050 Limits on rights to review and inspect and obtain copies of education records.** (1) When a record contains information about more than one student, the student may inspect and review only the records which relate to (~~(him or her)~~) them.

(2) Bellingham Technical College reserves the right to refuse to permit a student to inspect the following records:

(a) The financial statement of the student's parents;

(b) Letters and statements of recommendation for which the student has waived (~~(his or her)~~) their right of access, or which were placed in file before January 1, 1975;

(c) Records connected with an application to attend Bellingham Technical College if that application was denied; and

(d) Those records which are excluded from the Federal Rights and Privacy Act definition of education records.

(3) Bellingham Technical College reserves the right to deny transcripts or copies of records not required to be made available by the Federal Educational Rights and Privacy Act in any of the following situations:

(a) The student has an unpaid financial obligation to the college;

(b) There is an unresolved disciplinary action against the student.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-080 Requests for corrections, hearings, adding statements to education records.** Students have the right to request to have records corrected that they believe are inaccurate, misleading, or in violation of their privacy rights. Following are the procedures for the correction of records:

(1) A student must submit a written request to amend (~~(his or her)~~) their education record to the appropriate college official responsible for the custody of the record as designated in WAC 495B-280-110. The request must identify the part of the record

((he/she wants)) they want changed and specify why the record is believed to be inaccurate, misleading or in violation of ((his-or-her)) their privacy or other rights.

(2) A student whose request for amendment of ((his-or-her)) their education record has been denied may request a hearing by submitting a written request to the ((dean)) vice president of student services within ((ten)) 10 days following the denial. The written request must be signed by the student and shall indicate the reasons why the records should be amended. The ((dean)) vice president of student services or designee shall notify the student of the hearing within ((thirty)) 30 days after receipt of a properly filed request. In no case will the notification be less than ((ten)) 10 days in advance of the date, time and place of the hearing.

(3) The hearing shall be a brief adjudicative proceeding as provided in RCW 34.05.482 and 34.05.485 through 34.05.494 and shall be conducted by the student services or other appropriate committee (the chair of the committee shall be an official of the college who does not have a direct interest in the outcome of the hearing). At the hearing, the student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The student may be assisted by one or more individuals, including an attorney.

(4) The student services or other appropriate committee will prepare a written decision, within ((thirty)) 30 days after the conclusion of the hearing, based solely on the evidence presented at the hearing. The rules of evidence need not be applied at the hearing. The decision will include a summary of the evidence presented and the reasons for the decision. A copy of the decision shall be made available to the student.

(5) If the student services or other appropriate committee decides the information is inaccurate, misleading, or in violation of the student's right of privacy, the custodian of the record will amend the record and notify the student, in writing, that the record has been amended.

(6) If the student services or other appropriate committee decides that the challenged information is not inaccurate, misleading, or in violation of the student's right of privacy, the committee will notify the student in writing that the student has a right to place in the record a rebuttal statement commenting on the challenged information and/or a statement setting forth reasons for disagreeing with the decision.

(7) The student's rebuttal statement will be maintained as part of the student's education records as long as the contested portion is maintained. If the contested portion of the education record is disclosed, the statement will also be disclosed.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-100 Waiver.** A student may waive any of ((his-or-her)) their rights under this chapter by submitting a written, signed, and dated waiver to the office of the registrar. Such a waiver shall be specific as to the records and persons or institutions covered. A waiver continues in effect according to its terms unless revoked in writing which is signed and dated.

**OTS-4784.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495B-131-010 Scholarships.

**OTS-4783.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495B-132-010 Financial aid.

**OTS-4880.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495B-310-010 Preamble.  
WAC 495B-310-020 Informal procedure.  
WAC 495B-310-030 Formal procedure.  
WAC 495B-310-040 Other remedies.

## WSR 23-17-109

## PROPOSED RULES

## WASHINGTON STATE PATROL

[Filed August 17, 2023, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-076.

Hearing Location(s): On September 27, 2023, at 9:00 a.m, at Washington State Patrol (WSP), Helen Somers Building, 106 11th Street S.E., Room 1011, Olympia, WA 98507.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov), by September 26, 2023.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov), by September 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed new chapter 446-09 WAC Firearms background check, under the Brady Handgun Violence Prevention Act of 1993 (Brady Act), and RCW 43.43.580(5), any person denied the transfer of a firearm based on the results of a firearms background check has the right to appeal that denial.

Reasons Supporting Proposal: This request for rule-making authority is to allow the WSP firearms background division to develop and promulgate those rules necessary to meet the requirements of the Brady Act, and to operate the centralized firearms background check program established under RCW 43.43.580.

Statutory Authority for Adoption: RCW 43.43.580.

Statute Being Implemented: RCW 43.43.580.

Rule is necessary because of federal law, 27 C.F.R. Parts 178 and 179.

Name of Proponent: WSP, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: WSP, Olympia, Washington, 360-704-7841.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (a) (i)-(ii) and (b) (iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 16, 2023  
John R. Batiste  
Chief

OTS-4759.2



**Chapter 446-09 WAC  
FIREARMS BACKGROUND CHECK**

NEW SECTION

**WAC 446-09-010 Right to appeal.** If the appellant believes they have been erroneously denied a firearms transfer due to a determination made by the Washington state patrol firearms background division, they have the right to appeal that determination, within three years of the submission of the original background check.

(1) The appellant may submit their appeal by:

(a) Obtaining an appeal form at [www.wsp.wa.gov/firearms-background-division](http://www.wsp.wa.gov/firearms-background-division).

(b) The appeal document must be notarized to provide proof of identity.

(c) The appellant must submit the appeal form along with an image of the identification to [firearmappeal@wsp.wa.gov](mailto:firearmappeal@wsp.wa.gov) or Washington State Patrol, Firearms Background Appeals, P.O. Box 42619, Olympia, WA 98503.

(2) The Washington state patrol firearms background research and appeals unit will provide the denial reason to the appellant to the address or via email provided in the appeal form.

(3) If the appellant believes the information used to make the original determination is incomplete or incorrect in any respect, the appellant must make a request for correction directly to the appropriate court of record or provide documents proving the information used was incorrect or not applicable to the appellant.

(4) If the prohibiting factor(s) has been corrected, the appellant must forward the new documentation to [firearmsappeal@wsp.wa.gov](mailto:firearmsappeal@wsp.wa.gov) or Washington State Patrol, Firearms Background Appeals, P.O. Box 42619, Olympia, WA 98503.

(5) Upon receipt of new information from the appellant, the Washington state patrol firearms background division research and appeals unit will review all appeal requests and make a final determination based on all available information, which may include a new denial if other prohibiting information is discovered. This process will be a records review only, not a hearing.

(6) The appellant will be notified of the appeal decision by mail or via email.

## WSR 23-17-110

## PROPOSED RULES

## WASHINGTON STATE PATROL

[Filed August 17, 2023, 1:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-008.

Hearing Location(s): On September 27, 2023, at 10:00 a.m., at Washington State Patrol (WSP), Helen Somers Building, 106 11th Street S.E., Room 1011, Olympia, WA 98507.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov), by September 26, 2023.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov), by September 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A cornering lamp function provided by the original equipment manufacturer (OEM) is typically a function within the headlamp or using an existing lamp (such as a fog lamp). FMVSS 108 requires headlamps to be mounted not less than 22 inches nor more than 54 inches from the ground, measured from the center of the lamp. The cornering lamp mounting height limitation of 30 inches in the current Washington regulation does not accommodate for some SUVs or higher vehicles which have the headlamp mounted above 30 inches, yet still within the FMVSS limit of 54 inches. This prohibits the OEM the ability of offering a cornering lamp function within a headlamp or at the same height as a headlamp on higher vehicles that is compliant with federal rules and allowable in all other states.

Reasons Supporting Proposal: Updates are to ensure consistency and clarity with statutory changes.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

Statute Being Implemented: RCW 43.37.320.

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

Name of Proponent: WSP, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: WSP, Olympia, Washington, 360-596-4017.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (a) (i)-(ii) and (b) (iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 16, 2023  
John R. Batiste  
Chief

## OTS-4632.1

AMENDATORY SECTION (Amending WSR 08-19-104, filed 9/17/08, effective 10/18/08)

**WAC 204-21-120 Cornering lamps.** Cornering lamps:

- (1) Must meet SAE Standard (~~(J852a)~~) J852.
- (2) Must be on the front of the vehicle near the side or the side near the front.
- (3) (~~Must be mounted no lower than twelve inches nor higher than thirty inches.~~)
- (~~4~~) Must, if they have means to adjust and aim the lamp, be mounted so the center of the high intensity portion of the beam is within (~~(forty to fifty)~~) 40 to 50 degrees from the longitudinal axis of the vertical toward the front. The vertical aim must be within the center of the high intensity zone, (~~(ten to fourteen)~~) 10 to 14 inches below the level of the lamp center.
- (~~5~~) (4) Must, if they don't have aiming mechanisms, be mounted in a fixed position on the vehicle in accordance with the manufacturer's instructions.

## WSR 23-17-111

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed August 17, 2023, 2:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-079.

Title of Rule and Other Identifying Information: Chapter 182-135 WAC, Recovery residence program.

Hearing Location(s): On September 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_E7tAxNWnSVCG-SIhvxxsWg](https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SIhvxxsWg). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: September 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 26, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this chapter to include program definitions, as well as rules regarding eligible providers and recovery residence referrals.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Maureen Bailey, P.O. Box 42730, Olympia, WA 98504-2730, 360-725-0487.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose costs on businesses.

August 17, 2023  
Wendy Barcus  
Rules Coordinator

OTS-4766.2

**Chapter 182-135 WAC**  
**RECOVERY RESIDENCE ((REVOLVING LOAN)) PROGRAM**

AMENDATORY SECTION (Amending WSR 21-17-089, filed 8/13/21, effective 9/13/21)

**WAC 182-135-0100 ((General.)) Purpose and scope.** (1) The health care authority operates programs to support people who are in recovery from substance use disorder ((as described in RCW 41.05.760)). Recovery residences provide housing for people in recovery from substance use disorder. These residences are safe, established homes that meet the standards set by the authority for the accreditation process.

(2) This chapter addresses recovery residence referrals, accreditation, and start-up loans.

NEW SECTION

**WAC 182-135-0110 Definitions.** The following definitions apply to this chapter:

**"Accredited"** means an organization approved by the National Alliance of Recovery Residences (NAAR).

**"Appropriate client"** means a person in recovery from substance use disorder who meets the requirements established by a recovery residence on the registry.

**"Approved recovery residence"** means a home-like environment free from alcohol and illicit drug use with a focus on peer support, assistance with obtaining addiction services, and other recovery services and support that:

(a) Is approved through the health care authority's contracted accreditation process; and

(b) Appears on the registry.

**"Licensed or certified service provider"** means a person licensed, certified, registered, or otherwise authorized by the department of health and the relevant health profession, to provide services under Title 18 RCW.

**"Refer"** means providing an appropriate client with option-based information pertaining to potential recovery residences and does not include client placement.

**"Registry"** means a list of recovery residences that are accredited and agency-approved, as described in RCW 41.05.760.

NEW SECTION

**WAC 182-135-0120 Recovery residence referrals.** A licensed or certified service provider may refer an appropriate client only to a recovery residence that is included in the registry, except as provided in WAC 182-135-0130.

NEW SECTION

**WAC 182-135-0130 Approved recovery residences—Exception.** If an approved recovery residence is not located in an appropriate client's desired county, a licensed or certified service provider may refer the client to another suitable placement or service.

AMENDATORY SECTION (Amending WSR 21-17-089, filed 8/13/21, effective 9/13/21)

**WAC 182-135-0200 Operating fund.** (1) **Purpose.** The health care authority has established the recovery residence operating revolving loan to maintain an ongoing revolving fund, as authorized by 42 U.S.C. Sec. 300x-25(a) and as described in RCW 41.05.762.

(2) **Fund.** The fund identified in subsection (1) of this section lends money to pay for the operating start-up costs associated with recovery residence programs. These costs include, but are not limited to:

- (a) One-time rent or mortgage payments;
- (b) Utility security deposits;
- (c) Salaries for on-site staff;
- (d) Minimal maintenance costs; and
- (e) Furnishings purchased for recovery residences.

(3) **Maximum loan amount.** A loan from the fund is for an amount of up to four thousand dollars.

(4) **Eligible recipients.** To be an eligible recovery residence recipient, an entity must:

- (a) Be on the (~~recovery residence~~) registry published on the authority's website or be actively seeking certification and registration under RCW 41.05.760;
- (b) Be a Washington state nonprofit organization;
- (c) Operate a recovery residence for a group of at least six people;
- (d) Prohibit the use of alcohol, marijuana, or any illegal drug in the residence;

- (e) Have a policy in place to address any use of alcohol, marijuana, or an illegal drug by residents; and

- (f) Allow the use of any prescribed medication for physical health, mental health, and substance use disorders.

(5) **Requirements for residents.** Residents must:

- (a) Pay for the cost of recovery residence housing, including any rent or fees; and

- (b) Through a majority vote, establish policies governing residence in the housing, including how residence applications are approved.

(6) **Application requirement.** To be an applicant, an entity that meets the requirements of subsection (4) of this section must apply for a recovery residence operating loan using the application process described on the authority's website.

(7) **Loan repayments.**

- (a) Each recovery residence loan made under this section must be repaid by the residents of the recovery residence that received the funds. The loan must be paid in full within two years from the date the loan was made.

(b) Residents must repay the loan through monthly installments set by the authority.

(8) **Assessment of penalties.** The authority may assess a reasonable penalty for each failure to pay the monthly installment described in subsection (7) of this section by the date specified in the loan agreement between the authority and the recovery residence operator involved in the agreement.

(9) **Appeals.**

(a) An applicant or recipient may appeal an adverse decision notice and request an administrative hearing under chapter 182-526 WAC by following the instructions included in the notice.

(i) An applicant may appeal a denial of a loan request as described in (a) of this subsection.

(ii) A recipient may appeal the following actions including, but not limited to:

(A) Late payment fees;

(B) Default due to nonpayment; or

(C) Default due to losing Washington alliance for quality recovery residences accreditation.

(b) An applicant or recipient of this program has (~~ninety~~) 90 days from the receipt of the adverse decision to appeal and must follow the process contained in the notice.

**WSR 23-17-121**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed August 18, 2023, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-068.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-474-0012 What is a state supplemental payment and who can get it? and 388-478-0055 How much do I get from my state supplemental payments (SSP)?

Hearing Location(s): On September 26, 2023, at 10:00 a.m., virtually via Teams or call in. Hearings are being held virtually. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than September 27, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by September 26, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS Rules Consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov, by September 12, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed amendments provide clarity regarding the state supplemental payment standard rate for individuals who are receiving care in a medical institution or residential setting. This rate is based on the Washington state institutional personal needs allowance standard which increased on July 1, 2023, due to the passage of HB 1128 (chapter 201, Laws of 2023). These amendments are currently in effect via emergency rules under WSR 23-14-065.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 74.08A.250.

Statute Being Implemented: HB 1128 (chapter 201, Laws of 2023).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gary Fryer, P.O. Box 45470, Olympia, WA 98504-5470, 253-720-5306.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal



statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

August 18, 2023  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4987.2

AMENDATORY SECTION (Amending WSR 15-16-022, filed 7/24/15, effective 8/24/15)

**WAC 388-474-0012 What is a state supplemental payment and who can get it?** (1) The state supplemental payment (SSP) is a state-funded cash assistance program for certain clients who the Social Security Administration determines are eligible for supplemental security income (SSI).

(2) You can get an SSP if:

(a) You are a grandfathered SSI recipient under WAC 388-474-0001;

(b) You are an individual with an ineligible spouse under WAC 388-474-0001;

(c) You receive SSI because you are age (~~(sixty-five)~~) 65 or older under WAC 388-474-0001;

(d) You receive SSI because you are blind under WAC 388-474-0001;

(e) You receive SSI because you are disabled under WAC 388-474-0001;

(f) You are determined eligible for SSP by the developmental disabilities administration; (~~(e)~~)

(~~(f)~~) (g) You are eligible for and receive SSI as a foster child receiving specific services through children's administration behavior rehabilitation services (BRS) for part or all of a month, and not eligible for foster care reimbursement under Title IV-E of the Social Security Act (~~(g)~~); or

(h) You are an SSI recipient residing in a medical institution and your SSI has been reduced based on the institutional SSI payment standard.

AMENDATORY SECTION (Amending WSR 20-23-053, filed 11/13/20, effective 1/1/21)

**WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?** (1) ~~The SSP is a ((payment from the state)) state-funded cash assistance program issued to certain individuals who the Social Security Administration (SSA) determines are eligible for supplemental security income (SSI) ((eligible people)) as described in WAC 388-474-0012.~~

~~(2) ((If you converted to the federal SSI program from state assistance in January 1974 because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a minimum income level (MIL) client.~~

~~A change in living situation, cost-of-living adjustment (COLA), or federal benefit rate (FBR) can affect a grandfathered MIL client. A grandfathered MIL client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:~~

~~(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal COLA since then; or~~

~~(b) The current payment standard.~~

~~(3) The monthly) Monthly SSP rate standards for eligible persons ((under)) as described in WAC 388-474-0012 ((and individuals residing in an institution)) are:~~

<del>((SSP-eligible persons</del>	<del>Standard</del>
<del>Individual (aged 65 and older)</del>	<del>\$38.25</del>
<del>Individual (blind as determined by SSA)</del>	<del>\$38.25</del>
<del>Individual with an ineligible spouse</del>	<del>\$38.25</del>
<del>Grandfathered (MIL)</del>	<del>Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.))</del>

<del>((Medical institution</del>	<del>Monthly SSP Rate</del>
<del>Individual</del>	<del>\$40.00))</del>

(a) \$38.25 for:

(i) Individuals with an ineligible spouse;

(ii) Aged 65 and older;

(iii) Blind as determined by SSA; or

(iv) Disabled as determined by SSA.

(b) Between \$0.54 and \$199.77 for grandfathered clients as defined in 388-474-0001 and varies by individual based on federal requirements.

(c) \$70.00 for individuals residing in a medical institution. It is based on increasing the federal SSI personal needs allowance (PNA) of \$30.00 up to the current Washington state institutional PNA standard described in subsection (5) of WAC 182-513-1105. The current state PNA standard for institutional apple health is located at <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.

(3) A change in living situation, cost-of-living adjustment (COLA), or federal benefit rate (FBR) can affect a grandfathered client. A grandfathered client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal COLA since then; or

(b) The current payment standard.

(4) ~~((We may adjust the))~~ SSP rate standards may be adjusted at the end of the calendar year to comply with WAC 388-478-0057.

~~((5) The medical institution SSP rate is based on increasing the federal SSI personal needs allowance (PNA) up to the current Washington state institutional PNA standard described in WAC 182-513-1105. The state rate may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors and disability social security recipients as published by the federal social security administration. This adjustment is subject to state legislative funding. The current PNA rule used in institutional apple health is located at <https://www.heca.wa.gov/health-care-services-supports/program-standard-income-and-resources>.)~~)

**WSR 23-17-125**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 2019-07—Filed August 21, 2023, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-06-030 on February 28, 2019.

Title of Rule and Other Identifying Information: WAC 220-440-210 Black bear timber damage depredation permits.

Hearing Location(s): On September 28-30, 2023, at 8:00 a.m., hybrid, at Yakima Convention Center, 10 North 8th Street, Yakima, WA 98901. Information on how to register to testify at the public hearing is available at <http://wdfw.wa.gov/about/commission.meetings>, or contact the commission office at 360-902-2267.

Date of Intended Adoption: On or after October 27, 2023.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email [black-bear-timber-damage@PublicInput.com](mailto:black-bear-timber-damage@PublicInput.com), fax 360-902-2162, <https://publicinput.com/black-bear-timber-damage>, comment by phone 855-925-2801, project code 5474, SEPA comment [TimberDamageRules@PublicInput.com](mailto:TimberDamageRules@PublicInput.com), by October 2, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <http://wdfw.wa.gov/accessibility/requests-accommodation>, by October 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 220-440-210 Black bear timber damage depredation permits, if adopted, would repeal an existing rule and replace it with a new rule to provide a permitting process to issue permits to persons to lethally remove black bears to reduce damage to commercial timber. Peeling and consuming tree parts by black bears often results in permanent damage or death to the tree. This damage results in a financial loss to the tree owner. The proposed rule, if adopted, would identify how permits are applied for, applications are reviewed and issued or denied, conditioned, and administered. A black bear timber damage permit issued under the proposed rule would allow a person to remove one or more black bears as conditioned on the removal permit.

The proposed rule, if adopted, would not apply to federal employees and agents while acting in their official capacities for the purpose of protecting private property.

Reasons Supporting Proposal: A CR-101 was filed on February 28, 2019, when the Washington department of fish and wildlife (WDFW) began considering revisions to WAC 220-440-210 when it was challenged in a lawsuit. The court of appeals eventually concluded that current text in WAC 220-440-210 exceeded WDFW's statutory authority. On March 18, 2023, the fish and wildlife commission voted in response to a rule-making petition to initiate rule making to amend WAC 220-440-210 Black bear timber damage, with a proposal to initiate rule making on black bear timber damage. Black bear timber damage removal permits are a tool to assist landowners with removal of bears causing timber damage in the spring of the year. Washington state black bear population is robust and an annual spring permitting process for bear removals is sustainable. WDFW is proposing a rule that includes a process for application for permits and for review and issuance of permits. The proposed rule includes a prohibition on the harvest of offspring and fe-

males with offspring that would minimize the potential of orphaning cubs.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.36.030, 77.08.030, 77.15.410, and 77.15.750.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.36.030, 77.08.030, 77.15.410, and 77.15.750.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
Scott Bird  
Rules Coordinator

## OTS-4870.2

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-440-210 Black bear timber damage depredation permits—Requirements, restrictions, and issuance.** ~~((This section applies to any person participating in a director-authorized black bear timber depredation hunt pursuant to RCW 77.12.240 or 77.15.245.~~

~~(1) Definitions: As used in this section and in the context of bear depredation removals for damage to timberlands, the following definitions apply:~~

~~(a) "Damage to timberlands" means there is evidence that bears have damaged private commercial timber that is confirmed through criteria outlined by the department.~~

~~(b) "Removal" means the act of killing one or more bear.~~

~~(2) Black bear removal criteria:~~

~~(a) A landowner or the landowner's designee may submit a request for removal to the department following the procedures established by the department.~~

~~(b) Areas permitted for black bear timber depredation action must have confirmed bear caused timber damage as defined in criteria developed by the department.~~

~~(c) The department will verify reported damage.~~

~~(d) The department will consider forest management objectives and shall ensure bear removals are consistent with population management objectives.~~

~~(3) Hunter selection:~~~~(a) Landowners or the landowner's designee may only select hunters authorized by the department to participate in a black bear timber depredation removal effort on their property.~~~~(b) The landowner or the landowner's designee and the hunters participating in the removal will be identified as permittees on permits issued for bear removal.~~~~(4) Permit required for participation in bear removal:~~~~(a) If approved for a bear removal action, the department will issue a permit for bear removal. The approved selected hunter(s) must be in possession of the bear timber depredation permit while conducting the removal.~~~~(b) Only hunters whose names appear on the permit may participate in the black bear timber depredation removal.~~~~(5) General requirements:~~~~(a) Removals must be reported within twenty-four hours of take as prescribed in the black bear depredation permit.~~~~(b) All harvested bears must be disposed of as conditioned on the permit.~~~~(c) Within seven days after harvest, the permittee must submit all animals, parts of animals and all permit materials as prescribed in the black bear timber depredation permit. If a bear is not harvested under the bear depredation permit and the permit expires, the permittees must return all permit materials to the department within seven days of expiration. Failure to comply with this subsection may render the permittee(s) ineligible for the next year's black bear depredation permit as determined by the department.~~~~(d) The black bear timber depredation permit belongs to the state of Washington. A violation of any condition of the permit may result in revocation of the permit and may render the permittee(s) ineligible for future black bear timber depredation permits as determined by the department.~~~~(e) A violation of subsection (4) or (5) of this section is punishable under RCW 77.15.245, 77.15.410, or 77.15.750, depending on the circumstances of the violation.) (1) Purpose. The purpose of the black bear timber damage permit is to reduce damage to commercial timber caused by black bears peeling and consuming tree parts resulting in permanent damage or death to the tree. A black bear timber damage permit allows a person to remove one or more black bears as conditioned on the permit. This section does not apply to federal employees and agents while acting in their official capacities for the purpose of protecting private property.~~~~(2) Black bear timber damage definitions. As used in this section and in the context of black bear damage removals for damage to commercial timber, the following definitions apply:~~~~(a) "Commercial timber" means trees that are grown for wood or paper product production where the land for growing is designated as forestland under RCW 84.33.130, or, as determined by WDFW meets the definition listed in RCW 84.33.035(5).~~~~(b) "Timber damage" means there is black bear damage evidence on private commercial timber from springtime of the current calendar year.~~~~(c) "Removal" means the act of killing one or more black bears.~~~~(d) "Use of bait" means the use of a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or~~

intend to hunt them. Bait does not include supplemental feeding in prior years.

(e) "Supplemental feeding" means the establishment and operation of black bear feeding stations, solely to prevent damage to commercial timber.

(f) "Use of dogs" means the use of one or more dogs for hunting under a black bear timber damage permit, or the possession of any dog while in the field under such permit.

(g) "Designated hunter" means a person who is named in a permit to hunt a black bear on behalf of the timber owner.

(3) **Permit conditions.**

(a) All permits issued under this section will be subject to the following conditions:

(i) Permittees and designated hunters must only use the lawful methods and implements allowed for hunting black bears in a general bear season;

(ii) Black bears retained for personal use under a permit count toward the annual black bear bag limit;

(iii) Black bears accompanied by cub(s) shall not be removed;

(iv) The use of bait or use of dogs in exercising the timber damage permit is prohibited;

(v) A black bear timber permit does not authorize trespass;

(vi) The permit is not valid on state or federally owned lands;

(vii) Supplemental feeding must cease, and all visible feed on the ground or in containers must be removed within the permit's designated damage hunt area boundary no later than January 1st of the permit year;

(viii) If the permit's designated damage hunt area is in a GMU located in grizzly bear recovery areas, as identified by the department, permittees and designated hunters must carry proof of successfully completing the annual WDFW online bear identification test or equivalent test from another state;

(ix) Permittees and designated hunters must be identified on, and possess the black bear timber damage permit, or a true copy of the valid permit at all times and in places that black bears are being hunted;

(x) Removals must be reported within 24 hours of taking a bear in accordance with the procedures established in the permit;

(xi) An access or other fee may not be charged to any designated hunter using a bear timber damage permit. Requiring a fully refundable key return deposit is not prohibited;

(xii) A black bear timber damage permit is only valid when signed by the permittee, any designated hunter, and the department permitting representative. Any designated hunter named in the permit must also sign the permit in order to hunt under the permit;

(xiii) The black bear timber damage permit belongs to the state of Washington and may not be transferred or sold;

(xiv) A violation of any condition of the permit may result in revocation of the permit and may render the permittee(s) ineligible for future black bear timber permits as determined by the department.

(b) Based upon WDFW's evaluation of the permit application materials and local environmental conditions, the department may establish permit-specific conditions in individual permits including, but not limited to:

(i) The time, manner, and place the permit is valid to remove one or more black bears;

- (ii) The identity of the designated hunters permitted to hunt under the permit;
  - (iii) Requirements for final disposition of the black bear carcass, as a whole or any black bear parts;
  - (iv) The number of black bears that can be removed under the permit; and
  - (v) Procedures for reporting of any removals, including submission of biological samples and reporting documents.
- (4) Applying for a black bear timber damage permit.**
- (a) An applicant must complete and submit an application using the current application form to the department's wildlife conflict section manager (or designee);
  - (b) A complete permit application package must contain the following:
    - (i) Name, age, phone, and email for the applicant;
    - (ii) List the timber owner and relationship of the applicant to the timber owner;
    - (iii) Name, contact information for any proposed designated hunters and a signed agreement that if a permit is issued, the designated hunter would be acting under the direction of and on the applicant's behalf;
    - (iv) Photos of current timber damage from the site where the permit is being requested;
    - (v) GPS coordinates for the documented timber damage on the site;
    - (vi) A map denoting the proposed permit area, the relative locations of documented timber damage, and the distance(s) and direction(s) to any known continuing supplemental bear feeding sites;
    - (vii) An attestation that supplemental feeding has not occurred within the area that the applicant is requesting to hunt within since January 1st of the current year, and that no feeding is occurring within the proposed permit boundary; and
    - (viii) Any additional information that WDFW determines is necessary to make the required determinations in subsection (5) of this section and to determine appropriate individual permit conditions under subsection (3)(c) of this section.
  - (c) The applicant must contact the WDFW wildlife conflict specialist at the appropriate geographic department regional office to arrange for property access for a department representative to visit the site and verify timber damage;
  - (d) The applicant may provide additional supporting information as to the extent of damage if the department proposes restrictions on a requested permit location or timing; and
  - (e) If the applicant seeks a permit in GMUs located in grizzly bear recovery areas, as identified by the department, the applicant and the proposed designated hunters must successfully complete the annual WDFW online bear identification test or equivalent test from another state and carry proof of successful completion.
- (5) WDFW required determinations.** Before the department issues a permit, the department's wildlife conflict section manager (or designee) must find:
- (a) The permittee has submitted a complete application and completed all steps in the application process;
  - (b) The applicant is at least 18 years of age and owns, is employed by, or leases commercial timber;
  - (c) Any proposed designated hunter, other than the applicant, possesses a valid unexpired Washington bear hunting license and tag;



(d) Reasonable belief that timber damage will continue if a permit is not issued; and

(e) Permit issuance shall not impair the department's ability to meet population objectives.

(6) **Permit denials.** The department may refuse to issue a black bear timber damage permit to an applicant if:

(a) Within the last year of the date of the application the applicant:

(i) Failed to follow the conditions of a prior black bear timber permit;

(ii) Failed to report removal success from a prior permit;

(b) The application fails to meet any of the above application requirements for a permit;

(c) The applicant did not allow public hunting access during the general black bear hunting season within the hunting season immediately prior to the permit request; or

(d) The department determines the requested permit would create a safety risk and/or a conservation concern.

(7) **Permittee-requested permit amendments.** A permit may not be changed, or altered without prior approval by the department. A permittee may submit a request in writing for permit amendments. These changes, if approved by the department's wildlife conflict section manager (or designee) in writing, may include:

(a) Change, or addition of designated hunter;

(b) Change to any geographic area; and

(c) Change to any permit-specific conditions developed pursuant to subsection (3) (b) of this section.

(8) **Permittee-requested permit renewal.** A permittee may submit a request in writing to the department's wildlife conflict section manager (or designee) for permit renewal. The permittee must submit the following documentation at least five days prior to the permit expiration date:

(a) A current, completed black bear timber damage permit application form with the updated information; and

(b) Documentation demonstrating new or continuing timber damage at the site.

(9) **Permit revocation.** The department may revoke a black bear timber damage permit for the following reasons:

(a) Failure to follow any of the conditions of a black bear timber permit;

(b) The department discovers an overarching safety concern for the permit area;

(c) The department discovers a conservation concern from continued use of the permit; or

(d) The department discovers false information was provided when the person originally applied for the permit.

(10) **Appeals.** For any permittee or applicant whose permit is denied, revoked, or modified under this section wishing to challenge a permitting decision, the provisions of this subsection shall apply.

Informal resolution:

(a) If the permittee or applicant would like to discuss a department permit denial, revocation, or modification, they may request a meeting by notifying the department wildlife conflict section manager in writing within 10 days of receiving the notice of department action;

(b) A department representative and the permittee or applicant will meet and attempt to come to mutual resolution;

Formal resolution:

(c) If the parties do not reach a resolution through informal discussions, or the permittee or applicant wishes to appeal the department's permit denial, revocation, or modification, they may request an administrative hearing within 30 days of the decision to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW;

Manner and content of request for an administrative hearing. Each request for adjudicative proceeding shall substantially comply with this subsection.

(d) The request shall be in writing;

(e) The request shall identify the order that the person seeks to contest. This can be done by reference to the number of the order, by reference to the subject and date of the order, or by reference to a copy of the order attached to the request;

(f) The request shall state the grounds upon which the person contests the order. If the person contests the factual basis for the order, the person shall allege the facts that the person contends are relevant to the appeal; and

(g) The request shall identify the relief that the person seeks from the adjudicative proceeding by specifying whether the person asks to have the order vacated, or provisions of the order corrected.

(11) A violation of this section is punishable under the appropriate statute, depending on the circumstances of the violation, including RCW 77.15.160(6), 77.15.410, 77.15.245, and 77.15.750(1).

(12) Nothing within this section limits the department in the exercise of its existing lawful authority to manage black bears for research, safety, protection of property from damage, including timber damage, or any other management purpose.

**WSR 23-17-126**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
 [Filed August 21, 2023, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-063.

Title of Rule and Other Identifying Information: Risk-limiting audit rule updates.

Hearing Location(s): On September 26, 2023, at 10:00 a.m., at Washington Secretary of State, Legislative Building, 416 Sid Snyder Avenue S.W., Olympia, WA 98504-0220. The hearing will be conducted using Microsoft Teams. To join the hearing, a person can call 1-206-899-2560 and enter the conference ID 274 724 493 888#. People will be able to listen to the hearing and comment.

Date of Intended Adoption: September 27, 2023.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email fina.ormond@sos.wa.gov, fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email fina.ormond@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarification of risk-limiting audit procedures for state and county races.

Reasons Supporting Proposal: Consistency in administrative rules to ensure all elections offices within the state are utilizing uniform processes in administering risk-limiting audits.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
 Randy Bolerjack  
 Deputy Secretary of State

**OTS-4840.2**

AMENDATORY SECTION (Amending WSR 22-12-035, filed 5/25/22, effective 6/25/22)

**WAC 434-261-116 ((Preparing for a risk-limiting audit.) Risk-limiting audits for state races and measures.** (1) At least 45 days

~~((before))~~ prior to a primary or election, ((a county intending to conduct a risk-limiting audit must notify the secretary of state. This notification must include information about the districts and offices to be included in)) the secretary of state may call for a risk-limiting audit of an office that files with the secretary of state and/or a state measure. The secretary of state shall determine the date and time of the risk-limiting audit.

~~(2) ((After receiving notice from a county of the intent to conduct a risk-limiting audit and))~~ No later than 30 days ((before)) prior to the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in risk-limiting audits for that election. The secretary of state may establish different risk limits for ballot comparison audits and ballot polling audits, and for audits of ((statewide)) federal, state, and county contests. In ballot comparison audits, the risk limit will not exceed five percent for ((statewide)) federal and state contests, and 10 percent for county contests.

~~(3) ((Observers are allowed in the same manner as RCW 29A.60.170 and WAC 434-261-020.~~

~~(4) The county))~~ Counties involved in the audit must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(4) For a ballot comparison audit, counties must verify that the number of individual cast vote records in its cast vote record export equals the aggregate number of ballot cards reflected in the county's ballot manifest at the time the unofficial results are produced.

~~(5) ((The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county))~~ Counties must maintain and document uninterrupted chain-of-custody for each ballot storage container.

~~(6) No later than ((the sixth day after election day, the))~~ 5:00 p.m. on the day prior to the risk-limiting audit, each county must pause or finish tabulating all ballots cast by voters registered in the county received and ready for counting((. The results produced at this time constitute the unofficial results to be used in the risk-limiting audit. The county may, but is not required to, include in the unofficial results any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately after producing the unofficial results, and to the extent permitted by its voting system, the county must also generate and preserve:

~~(a) An unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes, if conducting a ballot polling audit; or~~

~~(b) A cast vote record export, if conducting a ballot comparison audit.~~

~~(7) Counties conducting a ballot comparison audit must verify that the number of individual cast vote records in its cast vote record export equals the aggregate number of ballot cards reflected in the county's ballot manifest at the time the unofficial results are produced.~~

~~(8) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.~~

~~(9) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot comparison audit must submit as directed by the secretary of state:~~

~~(a) Its verified ballot manifest; and~~

~~(b) Its verified cast vote record export.~~

~~The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.~~

~~(10) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit as directed by the secretary of state:~~

~~(a) Its verified ballot manifest; and~~

~~(b) Its unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes.~~

~~The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.~~

~~(11) The secretary of state will convene a public meeting on the seventh day after election day to establish a random seed for use with the risk-limiting audit tool's pseudorandom number generator.~~

~~The seed is a number consisting of at least 20 digits, and each digit will be selected in order by sequential rolls of a 10-sided die. The secretary of state will designate individuals to take turns rolling the die. The secretary of state will publish online the random seed after it is established.~~

~~(12))~~, and submit as directed by the secretary of state:

~~(a) The verified ballot manifest; and~~

~~(b) Either:~~

~~(i) The verified cast vote record export, if conducting a ballot comparison audit; or~~

~~(ii) The unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes, if conducting a ballot polling audit.~~

~~The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.~~

~~(7) No later than 5:00 p.m. on the Friday after election day, the secretary of state will create a list of potential statewide contests using the criteria in (a) through (e) of this subsection, and then select by lot a statewide contest from that list. The secretary of state will also create for each county a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection((7)) and select a contest by lot for each county from that list. These will be considered the target contests for the risk-limiting audit. The secretary of state will publish online a complete list of all target contests.~~

~~The secretary of state will consider at least the following factors in selecting the potential target contests:~~

~~(a) Contests that contain two or more positions/candidates;~~

~~(b) The geographical scope of the contests;~~

~~(c) The number of ballots counted in the contests;~~

~~(d) The closeness of the reported tabulation outcome of the contests; and~~

~~(e) The ability of the county staff to complete the audit before the canvass deadline.~~

~~((13) In addition to the randomly selected contest(s) and in coordination with the secretary of state's office, counties may choose to conduct a risk-limiting audit of a congressional or legislative district if all counties represented by the district agree to participate.~~

~~(14) The risk-limiting audit tool will randomly select the individual ballots to audit. The risk-limiting audit tool will use a pseudorandom number generator with the seed established under this section to identify individual ballots as reflected in the county ballot mani-~~

~~ests. No later than the seventh day after election day, the secretary of state will notify each county of the randomly selected ballots that each county must audit.)~~ (8) The county auditor may choose to conduct a risk-limiting audit of the county contest selected in subsection (7) of this section or use another audit method listed in RCW 29A.60.185 to satisfy the audit requirement for their county.

(9) No later than 5:00 p.m. on the Friday after election day, the secretary of state will hold a public event to establish a random seed for use with the risk-limiting audit tool. The secretary of state will publish online the random seed after it is established.

(10) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.

### OTS-4839.3

AMENDATORY SECTION (Amending WSR 22-12-035, filed 5/25/22, effective 6/25/22)

**WAC 434-261-115 ((Post-election audits-)) Risk-limiting audits for county races and measures.** (1) If the county auditor chooses to conduct a post-election risk-limiting audit under RCW 29A.60.185, the auditor must use one of the types of audits listed in RCW 29A.60.185.

(2) At least 45 days prior to a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state.

(3) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than 30 days prior to the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in risk-limiting audits for that election. The secretary of state may establish different risk limits for ballot comparison audits and ballot polling audits, and for audits of federal, state, and county contests. In ballot comparison audits, the risk limit will not exceed five percent for federal and state contests, and 10 percent for county contests.

(4) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(5) Counties conducting a ballot comparison audit must verify that the number of individual cast vote records in its cast vote record export equals the aggregate number of ballot cards reflected in the county's ballot manifest at the time the unofficial results are produced.

(6) The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(7) If no risk-limiting audit is called for by the secretary of state, the county auditor may choose the date and time of the risk-limiting audit, in coordination with the secretary of state, to begin no later than two days prior to county certification.

Each county conducting a county-level risk-limiting audit must submit as directed by the secretary of state:

- (a) The verified ballot manifest; and
- (b) Either:

(i) The verified cast vote record export, if conducting a ballot comparison audit; or

(ii) The unofficial results report, showing overvotes, undervotes and the number of valid write-in votes, if conducting a ballot polling audit.

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

(8) If no statewide office appears on the ballot, no later than 5:00 p.m. on the Friday after election day, the county auditor will create a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection, and then randomly select a contest from that list. This will be considered the target contest for the risk-limiting audit. The county auditor will inform the secretary of state which contest has been chosen, and the secretary of state will publish online a complete list of all target contests.

The county auditor will consider at least the following factors in selecting the potential target contests:

(a) Contests that contain two or more positions/candidates;

(b) The geographical scope of the contests;

(c) The number of ballots counted in the contests;

(d) The closeness of the reported tabulation outcome of the contests; and

(e) The ability of the county staff to complete the audit before the canvass deadline.

(9) In addition to the randomly selected contest(s) and in coordination with the secretary of state's office, counties may choose to conduct a risk-limiting audit of a shared district if all counties represented by the district agree to participate.

(10) No later than 5:00 p.m. on the Friday after election day, the secretary of state will hold a public event to establish a random seed for use with the risk-limiting audit tool. The secretary of state will publish online the random seed after it is established.

(11) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.

## OTS-4838.1

AMENDATORY SECTION (Amending WSR 22-12-035, filed 5/25/22, effective 6/25/22)

**WAC 434-261-114 Definitions.** As used in this rule, unless stated otherwise:

(1) "Audit board" means a team of two people assigned to review voter choices on ballots selected for audit.

(2) "Ballot comparison audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest (or contests) on randomly selected ballots, then compares them to the corresponding cast vote records until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

(3) "Ballot manifest" means a document that indicates how the ballots are organized and stored, including identification of each batch of ballots by the voting system batch number, as well as the number of ballots in each batch.

(4) "Ballot polling audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest on ballots selected randomly until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

(5) "Cast vote record" or "CVR" means a record of all voter markings produced by a single voter on a ballot card, presented in electronic form, and is defined as a ballot in accordance with RCW 29A.04.008.

(6) "Random seed" means a number string consisting of at least 20 digits, with each digit selected in order by sequential rolls of a 10-sided die.

~~(7)~~ "Reported tabulation outcome" means the presumed winning and losing candidates or voting choices of a ballot contest as reflected in preliminary results.

~~((7))~~ ~~(8)~~ "Unofficial results" means the tabulation results produced by the voting system at a specific point in time that will be used for comparison during the audit process.

~~((8))~~ ~~(9)~~ "Risk limit" means the largest statistical probability that an incorrect reported tabulation outcome is not detected in a risk-limiting audit.

~~((9))~~ ~~(10)~~ "Risk-limiting audit" or "RLA" means a post-election audit of votes on paper ballots and voter-verifiable paper audit trail (VVPAT) records that makes use of statistical principles and methods, is designed to limit the risk of certifying an incorrect election outcome, and is conducted in accordance with RCW 29A.60.185.

~~((10))~~ ~~(11)~~ "Risk-limiting audit tool" or "RLA tool" means the software and user interfaces provided by the secretary of state in order to conduct the risk-limiting audit.

~~((11))~~ ~~(12)~~ "Target contest" means a contest selected by the secretary of state or county auditor for a risk-limiting audit that will determine whether the risk limit has been met.



## WSR 23-17-128

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed August 21, 2023, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-060.

Title of Rule and Other Identifying Information: WAC 246-254-053 Radiation machine facility fees. The department of health (department) is proposing to increase fees to cover the costs of operating the radiation machine facility program. The department is also proposing changes to machine categories within the fee schedule.

Hearing Location(s): On September 26, 2023, at 1:30 p.m. The department will hold a virtual only hearing. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_kWQxzwLAQUyyFOKe2i21log](https://us02web.zoom.us/webinar/register/WN_kWQxzwLAQUyyFOKe2i21log). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 3, 2023.

Submit Written Comments to: Peter Beaton, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email [peter.beaton@doh.wa.gov](mailto:peter.beaton@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview>, by September 26, 2023.

Assistance for Persons with Disabilities: Contact Richard Montemarano, phone 360-522-3774, TTY 711, email [richard.montemarano@doh.wa.gov](mailto:richard.montemarano@doh.wa.gov), by September 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department completed an initial assessment of the radiation machine (X-ray) facilities program fiscal resources detailed in WAC 246-254-053 and determined the program is not generating sufficient revenue to cover the cost of the program and is therefore proposing a fee increase.

The department is also proposing changes to machine categories within the fee schedule which will allow the department to better track and manage X-ray machines across Washington. This also allows the department to be more efficient in regulatory and inspection processes.

Reasons Supporting Proposal: The department is authorized under RCW 43.20B.020, 43.70.250, and 70A.388.050 to administer the program and charge fees that are sufficient to cover the cost of administering the program. The department is also required under RCW 43.70.110 to charge licensing fees to businesses based on the cost of regulating the licensed activity. The fee increase is necessary because the program is currently not generating sufficient revenue to meet the cost of the program.

Proposed changes to machine categories will allow the department to be more efficient in regulatory and inspection processes.

Statutory Authority for Adoption: RCW 70A.388.050, 43.20B.020, 43.70.110, 43.70.250.

Statute Being Implemented: RCW 70A.388.050, 43.20B.020, 43.70.110, 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Richard Montemarano, 111 Israel Road S.E., Tumwater, WA 98501, 360-522-3774.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5) (b) (vi), a cost-benefit analysis is not required for proposed rules that set or adjust fees.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The proposed rule adjusts fees.

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-4744.1**

AMENDATORY SECTION (Amending WSR 19-05-074, filed 2/19/19, effective 3/22/19)

**WAC 246-254-053 Radiation machine facility fees.** (1) A registrant shall comply with chapter 246-224 WAC when registering radiation machine facilities. A registrant shall pay the following applicable radiation machine facility registration fees and radiation machine tube fees for each radiation machine facility and tube annually as identified in Table A and B of this section.

Table A

<b>((Radiation Machine Facility Registration Fees</b>		
<b>Type of Radiation Machine Facility</b>		<b>Registration Fee per Facility</b>
(a)	Dental, podiatric, veterinary uses	\$107
(b)	Hospital, medical, chiropractic uses	\$207
(c)	Industrial, research, educational, security, or other facilities	\$107
(d)	Mammography only	\$89
(e)	Bone densitometry only	\$89
(f)	Electron microscopes only	\$89
(g)	Bomb squad only	(\$89))
<u>Radiation Machine Facility Registration Fee</u>		<u>\$195</u>

Table B

<b>((Radiation Machine Tube Fees</b>		
<b>Type of Tube</b>		<b>Fee per Tube</b>
(a)	Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	\$27
(b)	Veterinary (radiographic, fluoroscopic, portable, mobile)	\$46
(c)	Podiatric uses (radiographic, fluoroscopic)	\$46
(d)	Mammography	N/A
(e)	Bone densitometry	N/A
(f)	Electron microscope	N/A
(g)	Bomb squad	N/A
(h)	Medical radiographic (includes R/F combinations, fixed, portable, mobile)	\$131
(i)	Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	\$131
(j)	Therapy (Grenz Ray, Orthovoltage, nonaccelerator)	\$131
(k)	Accelerators (therapy, other medical uses)	\$131
(l)	Computer tomography (CT, CAT scanner)	\$131
(m)	Stereotactic (mammography)	\$107
(n)	Industrial radiographic	\$46
(o)	Analytical, X-ray fluorescence	\$46
(p)	Industrial accelerators	\$46
(q)	Airport baggage	\$27
(r)	Cabinet (industrial, security, mail, other)	\$27
(s)	Other industrial uses (includes industrial fluoroscopic uses)	\$27))

<b>Radiation Machine Tube Fees</b>		
<b>Category</b>	<b>Machine Type</b>	<b>Fee</b>
<b>Dental</b>	<u>Intraoral</u>	<u>\$58</u>
	<u>Handheld</u>	<u>\$58</u>
	<u>Panoramic/Cephalometric</u>	<u>\$58</u>
	<u>Cone Beam CT</u>	<u>\$58</u>
	<u>Educational</u>	<u>\$58</u>
	<u>Radiographic/Other</u>	<u>\$58</u>
<b>Veterinary</b>	<u>Radiographic</u>	<u>\$77</u>
	<u>Portable</u>	<u>\$77</u>
	<u>Dental</u>	<u>\$77</u>
	<u>Cone Beam CT</u>	<u>\$77</u>
	<u>Fluoroscopic</u>	<u>\$112</u>
	<u>Computed Tomography</u>	<u>\$191</u>
<b>Podiatry</b>	<u>Radiographic</u>	<u>\$86</u>
	<u>Cone Beam CT</u>	<u>\$86</u>
	<u>Educational</u>	<u>\$86</u>
	<u>Handheld</u>	<u>\$86</u>
	<u>Fluoroscopic</u>	<u>\$231</u>

<b><u>Radiation Machine Tube Fees</u></b>		
<b><u>Category</u></b>	<b><u>Machine Type</u></b>	<b><u>Fee</u></b>
<b><u>Medical Radiographic</u></b>	<u>Fixed</u>	<u>\$246</u>
	<u>Mobile</u>	<u>\$246</u>
	<u>Portable</u>	<u>\$246</u>
	<u>Cone Beam CT</u>	<u>\$246</u>
	<u>Educational</u>	<u>\$246</u>
<b><u>Fluoroscopic</u></b>	<u>C-arm</u>	<u>\$231</u>
	<u>Micro Amperage (Mini) C-arm</u>	<u>\$231</u>
	<u>O-arm</u>	<u>\$231</u>
	<u>Specialty Rooms</u>	<u>\$231</u>
	<u>Under Table</u>	<u>\$231</u>
	<u>Educational</u>	<u>\$231</u>
<b><u>Therapy</u></b>	<u>Accelerator (Linear)</u>	<u>\$334</u>
	<u>Nonaccelerator</u>	<u>\$334</u>
	<u>Superficial Radiation Therapy (Dermatology)</u>	<u>\$334</u>
	<u>Educational</u>	<u>\$334</u>
	<u>Other</u>	<u>\$334</u>
<b><u>Computed Tomography</u></b>	<u>Diagnostic</u>	<u>\$783</u>
	<u>Simulation</u>	<u>\$490</u>
	<u>Attenuation Correction (PET/SPECT)</u>	<u>\$490</u>
	<u>Portable</u>	<u>\$783</u>
	<u>Mobile</u>	<u>\$783</u>
	<u>Educational</u>	<u>\$783</u>
<b><u>Mammography</u></b>	<u>Standard (including tomography)</u>	<u>\$0</u>
	<u>Stereotactic Mammography</u>	<u>\$55</u>
<b><u>Bone Densitometer</u></b>	<u>Standard</u>	<u>\$84</u>
	<u>Body Composition Scanner</u>	<u>\$84</u>
<b><u>Industrial</u></b>	<u>Cabinet X-Ray</u>	<u>\$133</u>
	<u>Blood Irradiator</u>	<u>\$133</u>
	<u>Specimen Analyzer</u>	<u>\$133</u>
	<u>Medical Examiner</u>	<u>\$133</u>
	<u>Vault (less than 1MeV)</u>	<u>\$167</u>
	<u>Vault (greater than 1MeV)</u>	<u>\$331</u>
	<u>Open Beam Radiography</u>	<u>\$133</u>
	<u>Particle Accelerator</u>	<u>\$331</u>
<b><u>Security</u></b>	<u>Body Scanner</u>	<u>\$133</u>
	<u>Baggage Scanner</u>	<u>\$133</u>
	<u>Bomb Squad</u>	<u>\$133</u>
	<u>Back Scatter</u>	<u>\$133</u>
<b><u>Analytical</u></b>	<u>Cabinet XRF</u>	<u>\$133</u>
	<u>Handheld XRF</u>	<u>\$133</u>
	<u>X-Ray Diffraction</u>	<u>\$133</u>

<b>Radiation Machine Tube Fees</b>		
<b>Category</b>	<b>Machine Type</b>	<b>Fee</b>
<b>Electron Microscopes</b>	Electron Microscopes	<u>\$0</u>

(2) Radiation shielding plan review fees. Radiation machine facilities regulated under the shielding plan requirements of WAC 246-225-030, 246-226-030, or 246-227-150 are subject to a (~~three hundred forty-four dollar~~) \$778 radiation shielding review fee for each X-ray room plan submitted:

(a) A registrant may request an expedited plan review for (~~one thousand dollars~~) \$2,339 for each X-ray room plan. An expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

(b) If a radiation machine facility regulated under WAC 246-225-030, 246-226-030, or 246-227-150 operates without submittal and departmental review of radiation shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of (~~six hundred fifty-six dollars~~) \$1,561 in addition to the \$778 radiation shielding review fee.

(3) Inspection fees.

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under fees as described in subsection (1) of this section.

(b) Radiation machine facilities requiring follow-up inspections due to uncorrected noncompliance events must pay an inspection follow-up fee of (~~one hundred eighteen dollars~~) \$1,281 for each reinspection required.

(4) The annual radiation machine facility registration fees and radiation machine tube fees are not transferable to another geographical location or registrant.



trainings include implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Other amendments are necessary to removed outdated language and clarify intent.

Statutory Authority for Adoption: RCW 43.70.613 and 18.205.060.

Statute Being Implemented: RCW 43.70.613; ESSB 5229 (chapter 276, Laws of 2021).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ted Dale, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2991.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ted Dale, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Removes out-of-date references. Requirements apply to health care providers, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-4696.2**

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-220 Continuing competency program requirements.** A substance use disorder professional, regardless of method of certification, must complete:

- (1) An enhancement plan as described in WAC 246-811-200(7);
- (2) Twenty-eight hours of continuing education as described in WAC 246-811-240; and
- (3) Twelve hours of other professional development activities as described in WAC ((~~246-811-047 and 246-811-200(2)~~) 246-811-200(7) and 246-811-260).

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-240 Number of continuing education hours required.**

- (1) A certified substance use disorder professional must complete ((~~twenty-eight~~) 28 hours of continuing education (CE) every two years.
  - (a) At least ((~~fourteen~~) 14 hours must be completed in one or more of the topic areas as described in WAC 246-811-030 ((~~2~~)) (3)(a) through (w).
  - (b) At least four hours must be in professional ethics and law.
  - (c) The additional ((~~ten~~) 10 hours shall be in areas relating to the various phases of their professional career.
  - (d) The training in suicide assessment listed in subsection (2) of this section shall count towards meeting the CE requirements.
  - (e) The health equity training listed in WAC 246-811-290 shall count towards meeting the CE requirements.
- (2) ((~~Beginning January 1, 2014, at least~~) Once every six years a certified substance use disorder professional must complete at least three hours of training in suicide assessment, including screening and referral, as specified in WAC 246-811-280.
  - (a) Except as provided in (b) of this subsection, the first training must be completed during the first full CE reporting period after ((~~January 1, 2014, or the first full CE period after~~) initial certification((~~, whichever occurs later~~)).
  - (b) An individual applying for initial certification as a substance use disorder professional ((~~on or after January 1, 2014,~~) may delay completion of the first required training for six years after initial certification if ((~~he or she~~) they can demonstrate completion of a three-hour training in suicide assessment, including screening and referral that:
    - (i) Was completed no more than six years prior to the application for initial certification; and
    - (ii) Meets the qualifications listed in WAC 246-811-280(1).
- (3) After January 1, 2024, substance use disorder professionals are required to complete two hours of health equity training every four years as specified in WAC 246-811-290.
- (4) Nothing in this section is intended to expand or limit the existing scope of practice of a certified substance use disorder professional or certified substance use disorder professional trainee credentialed under chapter 18.205 RCW.



AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-280 Suicide assessment training standards.** (1) A substance use disorder professional must complete a training in suicide assessment, including screening and referral. The training must be provided by a single provider and must be at least three hours in length, which may be provided in one or more sessions.

~~((a) Until July 1, 2017, the training must be approved by the American Foundation for Suicide Prevention; the Suicide Prevention Resource Center; an industry-recognized organization or an institution of higher learning listed in WAC 246-811-200; or an association which approves training programs based on observation and experiment or best available practices.~~

~~((b) Beginning July 1, 2017,)) The training must be on the department's model list for training programs in suicide assessment, treatment, and management which was developed in accordance with RCW 43.70.442. ((The model list is developed in accordance with rules adopted by the department that establish minimum standards for training programs. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.))~~

(2) A certified substance use disorder professional who is a state or local government employee is exempt from the requirements of this section if ~~((he or she))~~ they receive~~((s))~~ a total of at least three hours of training in suicide assessment, including screening and referral from ~~((his or her))~~ their employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

(3) A certified substance use disorder professional who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a substance use disorder program certified under chapter 70.96A RCW is exempt from the requirements of this section if ~~((he or she))~~ they receive~~((s))~~ a total of at least three hours of training in suicide assessment, including screening and referral from ~~((his or her))~~ their employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

#### NEW SECTION

**WAC 246-811-290 Health equity training standards.** (1) Beginning January 1, 2024, a substance use disorder professional must complete training in health equity as part of their continuing competency program. The substance use disorder professional must complete at least two hours of health equity training every four years. The training may be in-person or virtual but must meet the course requirements in WAC 246-12-830, including strategies to reduce implicit bias and assess the provider's ability to apply health equity concepts into practice.

(2) The hours spent completing training in health equity education count towards the 28 total hours of continuing education.

## WSR 23-17-131

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed August 21, 2023, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-013.

Title of Rule and Other Identifying Information: Chapter 16-160 WAC, Registration of materials for organic food production.

Hearing Location(s): On Wednesday, September 27, 2023, at 10:00 a.m., via Microsoft Teams. Join on your computer, mobile app, or room device [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZjU1ZWEzZWUtZTNhOC00ZGVmLWFjYzAtNWMM2MjJiZDJlZTg5%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjU1ZWEzZWUtZTNhOC00ZGVmLWFjYzAtNWMM2MjJiZDJlZTg5%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 217 869 248 329, Passcode njaxY; or call in (audio only) 564-999-2000 United States, Olympia, Phone Conference ID 931 022 358#)

context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 217 869 248 329, Passcode njaxY; or call in (audio only) 564-999-2000 United States, Olympia, Phone Conference ID 931 022 358#.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov), fax 360-902-1802, by September 26, 2023.

Assistance for Persons with Disabilities: Contact Leah Doyle, phone 360-902-2070, fax 360-902-2087, TTY 800-833-6388, email [ldoyle@agr.wa.gov](mailto:ldoyle@agr.wa.gov), by September 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of agriculture (WSDA) is proposing to restructure the existing fee schedule to cover the increasing cost of providing services. Under the proposed fee schedule, both the new application fee and the renewal fee will be comprised of two components, a company fee that is based on the gross annual income of the business in whole and a product fee that is charged based on the number of products being registered. The proposed product fee will be changed from the current rate of \$400 - \$500 per product for initial registration and \$200 - \$300 for renewal registration to a flat \$350 fee for both initial and renewing registrations.

Changes are being proposed to the inspection fees as well. Currently, inspection fees are assessed at a cost of \$40 per hour and the sum of travel costs. This proposal changes inspection costs to \$2,000 per inspection. Out-of-state inspections are assessed at \$3,000 in addition to any travel expenses which exceed \$3,000. Inspections are not part of the standard workflow, only being conducted if compliance concerns cannot be resolved without them. In order to offset the cost, if an inspection is needed for a small business, a \$1,500 discount to the inspection fee is available for small businesses, as defined by the Regulatory Fairness Act, chapter 19.85 RCW (RFA).

Additional revisions are being proposed to the way late renewal fees are being calculated. Late fees would be calculated on a per company basis, rather than a per product basis, which lowers the total potential late fee applicable to most businesses. A business which previously submitted a late renewal application for 10 products would have been subject to a \$1,000 late fee (\$100 per product) under the current rule. Under the proposed rule, this business would only be subject to a \$100 late fee.

The intent of these proposed changes is to increase total revenue, without placing a significant additional financial burden on smaller businesses.

In addition to a restructure of the fee schedule, other minor proposed changes to this chapter include:

1. Updating the WSDA's organic input material registration logo to provide consistency, and increase recognition, with WSDA logos allowed for use on organic and transitional crops and products. The use of the logo is optional and not required on approved products;
2. Changing the expiration dates on registration certificates from October 31 to December 31 to better match production seasons and cycles of the certified businesses sourcing organic compliant inputs;
3. Replacing references to "the National Organic Program" with "USDA organic regulations"; and
4. Minor updates to the application process to improve the implementation of services.

Reasons Supporting Proposal: WSDA is authorized to set and collect fees for registration, renewal of registration, inspections, and sampling for the brand name materials list. RCW 15.86.070 authorizes WSDA to increase by rule fees as necessary to cover costs of providing services.

The United States Department of Agriculture (USDA) organic regulations require organic products be produced and handled using only natural input materials, with an exception for a limited number of synthetic materials specifically included in the rule. Determining which brand name, formulated materials are allowed for use in organic production or handling can be a daunting task for farms and other organic businesses.

Started in 1998, the WSDA organic program is one of the leading organic material review organizations in the United States. As a service and resource to organic businesses, the WSDA organic program evaluates an input's composition and manufacturing process for compliance with the applicable sections of the USDA organic regulations. Registration of organic inputs is voluntary; registration is not required for a certified organic producer or handler to use a compliant input. However, input companies who choose registration benefit from having their approved inputs published online by WSDA. WSDA's published list of approved brand name inputs provides a valuable tool for farms and handling or processing businesses to easily identify inputs that will not jeopardize their compliance with organic standards. As of July 2023, the program registered almost 1,000 products from almost 300 different companies for use in organic agriculture.

WSDA is the only USDA accredited certification agency highlighted in USDA's National Organic Program's Handbook as a reputable source for determining the compliance of inputs for use in organic agriculture. Producers, handlers, and certifiers throughout the United States reference WSDA's organic input material registration list.

Registration fees fund organic input registration services; no general fund tax dollars are received to provide organic input registration services.

As required in chapter 15.86 RCW, user fees fund organic input registration services by WSDA. At present, fees are based solely on the type of product being registered without consideration of the complexity of the product or the scope of the company producing the product. As such, product fees were kept low to allow market access for smaller businesses.

Unfortunately, as the number of complex products has grown and the required oversight in the growing market has increased, the cost of providing registration services has outpaced the revenue received. The structure of the fee schedule, as well as the annual fees assessed

per registered product, does not provide sufficient revenue to support the expense of providing registration services.

For example, 80 percent of the annual expenses generated by the WSDA organic program are in staff salary and benefits. At least three full-time staff are required to provide adequate and quality organic input registration services at present. State salaries and benefit expenses have steadily risen since the last fee change in 2010. In fiscal year (FY) 2022, registration services generated \$241,000 in revenue. The estimated cost to support three input material registration staff for FY 2024 is \$459,300. The current fee schedule does not support the cost involved in providing organic input material registration.

The organic program has sought to delay any fee increases by implementing improvements and operating as efficiently as possible. To counter rising expenses, the WSDA organic program has worked to incorporate numerous efficiencies, including development of streamlined electronic renewal applications and implementation of a database designed specifically for organic certification and input material evaluations. The efforts by program management have delayed the need to make significant changes to chapter 16-160 WAC since 2010.

Statutory Authority for Adoption: RCW 15.86.130, 15.86.140.

Statute Being Implemented: Chapter 15.86 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brenda Book, 1111 Washington Street S.E., Olympia, WA, 360-902-2090.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement

**SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

WSDA is proposing changes to chapter 16-160 WAC. Proposed changes include restructuring the registration fee schedule, changes to the optional registered material logo, and other minor updates to definitions, terminology and the application process.

The USDA organic regulations require organic products be produced and handled using only natural input materials, with an exception for a limited number of synthetic materials specifically included in the rule. Determining which brand name, formulated materials are allowed for use in organic production or handling can be a daunting task for farms and other organic businesses.

Started in 1998, the WSDA's organic program is one of the leading organic material review organizations in the United States. As a service and resource to organic businesses, WSDA's organic program evalu-

ates an input's composition and manufacturing process for compliance with the applicable sections of the USDA organic regulations. Registration of organic input materials is voluntary; registration is not required for a certified organic producer or handler to use a compliant input. However, manufacturers of input materials who choose registration benefit from having their registered input materials published online by WSDA. WSDA's published list of approved brand name input materials provide a valuable tool for farms and handling or processing businesses to easily identify input materials that will not jeopardize their compliance with organic standards.

The organic industry has grown significantly in the last decade. In 2012, the farm gate value of organic crops from Washington state was \$355 million. By 2017, that number nearly doubled to \$667 million and to \$776 million by 2019. The demand for input materials that have been preapproved for use in organic production has grown with the expanding organic sector.

As required in chapter 15.86 RCW, user fees fund organic input registration services by WSDA; no general fund tax dollars are received to offset any of the costs associated with providing registration services. At present, fees are based solely on the type of product being registered without consideration of the complexity of the product or the scope of the company producing the product. As such, product fees were kept low to allow market access for smaller businesses.

Unfortunately, as the number of complex products has grown and the required oversight in the growing market has increased, the cost of providing registration services has outpaced the revenue received. The structure of the fee schedule, as well as the annual fees assessed per registered product, does not provide sufficient revenue to support the expense of providing registration services.

For example, 80 percent of the annual expenses generated by the WSDA's organic program are in staff salary and benefits. At least three full-time staff are required to provide adequate and quality organic input registration services at present. State salaries and benefit expenses have steadily risen since the last fee change in 2010. In fiscal year 2022, registration services generated \$241,000 in revenue. In July 2023, the estimated cost to support three input material registration staff for FY 24 is \$459,300. The current fee schedule does not support the cost involved in providing organic input material registration.

WSDA is proposing a restructuring of the existing fee structure to ensure quality services continue. WSDA is proposing to keep product fees low, but also incorporate a company fee, which will scale with reported income. The intent is to increase total revenue, without placing significant additional financial burden on smaller businesses. Additionally, WSDA's organic program, is proposing to revise late fees to be on a per company basis rather than a per product basis.

As part of this project, WSDA's organic program developed four goals to address specific issues with the current fee structure:

1. Simple and Transparent: The current fee structure has separate fees for different types of products. Since product type does not have a strong correlation with the amount of work required to evaluate compliance, it will be simpler to separate this decision from fees.

2. Balanced: The cost of providing registration services must be recovered by WSDA, while ensuring registration remains accessible and affordable for small or new businesses. The current fee structure is based entirely on the number of products being registered, which can

hinder the development of new products. The proposed fee structure would balance this by adding a company fee based on company size (total gross annual income) and reducing the emphasis on the number of products registered.

3. Consistent: Revenue from registration fees needs to be predictable so that resources can be secured proactively and services provided quickly. Replacing the current inspection fee, which is based on an hourly rate, with a flat fee will allow operations to consistently and accurately predict their inspection costs.

4. Effective: WSDA's organic program is a fee for service program. The cost of providing services must be recovered in full by the fees charged for the services provided. The current fee structure does not generate revenue sufficient to support the services provided.

In addition to a restructure of the fee schedule, other minor proposed changes to this chapter include:

1. Updating the WSDA's organic input material registration logo to provide consistency, and increase recognition, with WSDA logos allowed for use on organic and transitional crops and products. The use of the logo is optional and not required on approved products;

2. Changing of expiration dates on registration certificates from October 31 to December 31 to better match production seasons and cycles of the certified businesses sourcing organic compliant inputs;

3. Replacing references to "the National Organic Program" with "USDA organic regulations"; and

4. Minor updates to the application process to improve the implementation of services.

No professional services are needed by businesses in order to comply with these proposed changes.

**SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

NAICS Code	NAICS Business Description	Number of Businesses in WA	1% of Average Annual Payroll	0.3% of Average Annual Revenue
111331	Apple Orchards	690*	\$9,820.23 <sup>+</sup>	\$2,234.36 <sup>++</sup>
111998	All Other Miscellaneous Crop Farming	222*	\$11,702.08*	\$3,518.45 <sup>++</sup>
112111	Beef Cattle Ranching and Farming	224*	\$898.22*	\$379.34 <sup>++</sup>
112120	Dairy Cattle and Milk Production	269*	\$6,187.97*	\$21,237.13 <sup>++</sup>
112990	All Other Animal Production	208 <sup>++</sup>	\$718.62*	\$462.95 <sup>++</sup>
115112	Soil Preparation; Planting; and Cultivating	123 <sup>++</sup>	\$1,825.96 <sup>+</sup>	\$1,852.47 <sup>++</sup>
212312	Crushed and Broken Limestone Mining and Quarrying	7*	\$19,760.09 <sup>+</sup>	\$14,990.01 <sup>+</sup>
212393	Other Chemical and Fertilizer Mineral Mining	Redacted	Redacted*	Redacted <sup>+</sup>
238110	Poured Concrete Foundation and Structure Contractors	1453 <sup>++</sup>	\$5,027.07 <sup>+++</sup>	\$3,442.48 <sup>++</sup>
238210	Electrical Contractors and Other Wiring Installation Contractors	3218 <sup>++</sup>	\$9,599.33 <sup>+++</sup>	\$5,941.60 <sup>++</sup>
311119	Other Animal Food Manufacturing	40*	\$9,446.07 <sup>+</sup>	\$24,330.37 <sup>++</sup>
311613	Rendering and Meat Byproduct Processing	3 <sup>++</sup>	\$21,030.96 <sup>+</sup>	\$32,261.69 <sup>+</sup>
311999	All Other Miscellaneous Food Manufacturing	73 <sup>++</sup>	\$12,992.65*	\$28,280.31 <sup>++</sup>

NAICS Code	NAICS Business Description	Number of Businesses in WA	1% of Average Annual Payroll	0.3% of Average Annual Revenue
321999	All Other Miscellaneous Wood Product Manufacturing	282 ++	\$4,963.32*	\$10,315.61++
324110	Petroleum Refineries	17 ++	\$310,713.51*	\$1,503,441.17++
325110	Petrochemical Manufacturing	Redacted	Redacted+	Redacted++
325180	Other Basic Inorganic Chemical Manufacturing	20 ++	\$80,169.838*	\$146,705.92++
325199	All Other Basic Organic Chemical Manufacturing	15 ++	\$61,754.74*	\$82,389.50++
325311	Nitrogenous Fertilizer Manufacturing	22 ++	\$9,553.14+	\$54,489.98++
325312	Phosphatic Fertilizer Manufacturing	3 ++	Redacted*	\$303,827.12+
325314	Fertilizer (Mixing Only) Manufacturing	18 ++	\$9,831.85*	\$4,824.10++
325320	Pesticide and Other Agricultural Chemical Manufacturing	17 ++	28,209.30+++	\$56,658.42++
325612	Polish and Other Sanitation Good Manufacturing	19 ++	\$5,212.43*	\$7,213.50++
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	62 ++	\$8,489.72 +	\$23,918.87++
326199	All Other Plastics Product Manufacturing	169 ++	\$18,869.06 +	\$25,159.50++
327390	Other Concrete Product Manufacturing	50*	\$15,845.94 +	\$37,149.13++
327420	Gypsum Product Manufacturing	9 ++	\$38,415.66 +	\$64,963.43++
333241	Food Product Machinery Manufacturing	38 ++	\$31,206.27*	\$28,189.33++
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	29 ++	\$29,772.98 +	\$41,248.51++
339999	All Other Miscellaneous Manufacturing	963 ++	\$4,522.90*	\$9,874.17++
423310	Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers	420 ++	\$13,394.11 +	\$38,355.14++
423320	Brick; Stone; and Related Construction Material Merchant Wholesalers	175 ++	\$6,631.41 +	\$10,444.70++
423610	Electrical Apparatus and Equipment; Wiring Supplies; and Related Equipment Merchant Wholesalers	609 ++	\$12,820.83 +	\$17,865.28++
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	202 ++	\$10,547.39 +	\$21,575.72++
423830	Industrial Machinery and Equipment Merchant Wholesalers	1134 ++	\$8,940.67 +	\$16,393.09++
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1049 ++	\$2,245.72 +	\$9,143.34++
424440	Poultry and Poultry Product Merchant Wholesalers	55 ++	\$19,911.74 +	\$45,135.62++
424490	Other Grocery and Related Products Merchant Wholesalers	1,046 ++	\$7,269.70 +	\$25,663.43++
424510	Grain and Field Bean Merchant Wholesalers	51 ++	\$10,906.60 +	\$53,558.90++
424520	Livestock Merchant Wholesalers	36 ++	\$2,730.57*	\$4,275.53++
424590	Other Farm Product Raw Material Merchant Wholesalers	370 ++	\$3,948.77 +	\$7,750.68++
424690	Other Chemical and Allied Products Merchant Wholesalers	432 ++	\$8,414.12 +	\$20,277.66++
424910	Farm Supplies Merchant Wholesalers	350 ++	\$10,501.05 +	\$35,044.58++

NAICS Code	NAICS Business Description	Number of Businesses in WA	1% of Average Annual Payroll	0.3% of Average Annual Revenue
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	2,186 <sup>++</sup>	\$2,136.61 <sup>*</sup>	\$7,559.52 <sup>++</sup>
425120	Wholesale Trade Agents and Brokers	3661 <sup>*</sup>	\$5,498.01 <sup>+</sup>	\$6,017.82 <sup>++</sup>
444190	Other Building Material Dealers	1,293 <sup>++</sup>	\$8,788.86 <sup>+</sup>	\$10,571.42 <sup>++</sup>
444220	Nursery; Garden Center; and Farm Supply Stores	1,201 <sup>++</sup>	\$4,675.20 <sup>+</sup>	\$3,798.35 <sup>++</sup>
445220	Fish and Seafood Markets	90 <sup>++</sup>	\$2,546.62 <sup>*</sup>	\$4,834.38 <sup>++</sup>
445230	Fruit and Vegetable Markets	505 <sup>++</sup>	\$2,435.71 <sup>+</sup>	\$2,220.48 <sup>+</sup>
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	11,090 <sup>++</sup>	\$3,299.06 <sup>*</sup>	\$4,863.58 <sup>++</sup>
454390	Other Direct Selling Establishments	1,616 <sup>++</sup>	\$4,034.18 <sup>*</sup>	\$2,740.36 <sup>+</sup>
531311	Residential Property Managers	1,099 <sup>++</sup>	\$6,900.22 <sup>+</sup>	\$2,431.71 <sup>++</sup>
541330	Engineering Services	2,554 <sup>++</sup>	\$14,801.92 <sup>*</sup>	\$7,177.43 <sup>++</sup>
541690	Other Scientific and Technical Consulting Services	2,854 <sup>++</sup>	\$2,707.38 <sup>*</sup>	\$2,364.27 <sup>++</sup>
541714	Research and Development in Biotechnology (except Nanobiotechnology)	304 <sup>++</sup>	\$66,044.66 <sup>+</sup>	\$21,881.84 <sup>++</sup>
551112	Offices of Other Holding Companies	249 <sup>++</sup>	\$20,574.75 <sup>*</sup>	\$4,115.67 <sup>++</sup>
561499	All Other Business Support Services	2,014 <sup>++</sup>	\$11,413.97 <sup>+</sup>	\$8,117.81 <sup>++</sup>
562212	Solid Waste Landfill	25 <sup>++</sup>	\$110,043.02 <sup>+</sup>	\$18,449.23 <sup>++</sup>
562219	Other Nonhazardous Waste Treatment and Disposal	29 <sup>++</sup>	\$31,270.90 <sup>+</sup>	\$50,412.23 <sup>++</sup>
611310	Colleges; Universities; and Professional Schools	354 <sup>*</sup>	\$107,981.59 <sup>*</sup>	\$17,202.82 <sup>++</sup>

\* 2020 Dataset pulled from USBLS

+ 2020 Dataset pulled from ESD

++ 2020 Dataset pulled from DOR

+++ 2019 Dataset pulled from CBP

The cells in the table above showing as "redacted" reflect data that is suppressed by regulatory entities for confidentiality reasons in industries with a small number of businesses. If both the revenue and the payroll data are suppressed, the department will use \$100 as the minor cost threshold as specified in RCW 19.85.020(2).

A description of how affected Washington businesses, and their relevant North American Industry Classification System (NAICS) codes were identified can be found in section 4 of this statement.

**SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The fee restructuring component of the proposed revision to this rule is not likely to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. It should not cause any changes to sales or revenue.

While the proposed revision aims to restructure the existing fee structure for organic input material registration, it does not rely on any additional recordkeeping or administrative actions beyond those currently present in the existing rule.



The probable cost of compliance will be dependent primarily on the size of a business (total gross annual income) and the number of products registered:

The proposed fee schedule includes an annual product fee of \$350.00 due for each product seeking registration. There is an additional company fee due based on the total gross annual income of the business. The applicable income ranges and corresponding fee is included below.

Total gross annual income in previous calendar year	Company fee due
\$0 - \$249,999	\$125.00
\$250,000 – \$999,999	\$250.00
\$1,000,000 – \$4,999,999	\$500.00
\$5,000,000 – \$19,999,999	\$1,000.00
\$20,000,000 – \$49,999,999	\$1,750.00
\$50,000,000 – and up	\$2,400.00

Companies who do not wish to disclose their gross annual income bracket may instead choose to pay the maximum company fee of \$2,400.00.

Changes were made to the inspection fees as well. Previously, inspection fees were assessed at a cost of \$40 per hour and the sum of travel costs. This proposal changes inspection costs to be \$2,000 per inspection. Out-of-state inspections are assessed at \$3,000 in addition to any travel expenses which exceed \$3,000. Inspections are not part of the standard workflow, only being conducted if compliance concerns cannot be resolved without them. In order to offset the cost, if an inspection is needed for a small business, a \$1,500 discount to the inspection fee is available for small businesses, as defined by RFA.

Additional revisions are being proposed to the way late renewal fees are being calculated. Late fees would be calculated on a per company basis, rather than a per product basis, which lowers the total potential late fee applicable to most businesses. A business which previously might have submitted a late renewal application for 10 products would have been subject to a \$1,000 late fee (\$100 per product) under the current rule would only be subject to a \$100 late fee under the proposed rule.

The proposal also revises sections of the rule to remove ambiguity. For instance, the product specific application requirements have been separated into their own section to clarify a company does not need to resubmit company specific information, such as contact information, with each new product submitted. These changes to the rule only clarify the existing application process and do not result in any additional requirements. They should have no impact on the cost of compliance.

Finally, the proposal includes a revision to the optional logo, which may be used on products registered with WSDA's organic program. The use of this logo is not compulsory. Existing companies would not be required to revise existing labels. Instead, any new labels drafted would be required to replace the previous logo with the proposed logo, if the company wished to use a logo. WSDA's organic program does not perceive this revision to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. It should not cause any changes to sales or revenue.

**SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

To determine the affected industries, WSDA's organic program reviewed business licensing information available from the Washington state department of revenue (DOR). For each business either registered or seeking registration with WSDA's organic program as of July 1, 2020, WSDA's organic program reviewed their unified business identifier (UBI) to determine their status as a Washington state business and their NAICS code to determine the applicable industry.

Each business is reflected under only a single NAICS code. In the event a business had two or more NAICS codes, the code most applicable to input manufacturing and registration was selected.

WSDA compiled a list of the 60 different industries currently represented by organic input material registrants. WSDA then calculated the industry specific minor cost threshold by taking the greater of either one percent of average annual payroll as reported by either the Washington state employment security department (ESD), the United States Bureau of Labor Statistics (USBLS) or the United States Census Bureau's County Business Pattern (CBP) or 0.3 percent of average annual revenue as reported by DOR. In the event the information was redacted due to data suppression, WSDA's organic program used a minimum minor cost threshold of \$100.

WSDA's organic program then calculated both the current fees, using the existing fee structure, and the proposed fees using the proposed revision for each of the 176 registrants identified as Washington state businesses. Since gross annual income is not reported under the current system, this information was unavailable to calculate the proposed fees. Instead, each of the proposed fees were calculated using the largest income bracket (businesses with over \$50,000,000 in gross annual income). WSDA identified 15 businesses (8.5 percent) where the difference between the proposed fees and current fees would exceed the minor cost threshold.

The 15 businesses were present in seven different industries. If an industry includes a business with a proposed change that exceeds the minor cost threshold, that industry is included in bold in the table below.

NAICS	Industry Description	Minor Cost Threshold (MCT)	Largest Proposed Change	Average Proposed Change	Businesses registered or seeking registration
111331	Apple Orchards	\$9,820.23	\$2,550.00	\$2,550.00	1
111998	All Other Miscellaneous Crop Farming	\$11,782.08	\$2,850.00	\$2,850.00	1
<b>112111</b>	<b>Beef Cattle Ranching and Farming</b>	<b>\$898.22</b>	<b>\$2,850.00</b>	<b>\$2,625.00</b>	<b>2</b>
112120	Dairy Cattle and Milk Production	\$21,237.13	\$2,550.00	\$2,550.00	3
<b>112990</b>	<b>All Other Animal Production</b>	<b>\$718.62</b>	<b>\$2,550.00</b>	<b>\$2,550.00</b>	<b>3</b>
<b>115112</b>	<b>Soil Preparation; Planting; and Cultivating</b>	<b>\$1,852.47</b>	<b>\$2,700.00</b>	<b>\$2,625.00</b>	<b>4</b>
212312	Crushed and Broken Limestone Mining and Quarrying	\$19,760.09	\$3,750.00	\$3,150.00	2
<b>212393</b>	<b>Other Chemical and Fertilizer Mineral Mining</b>	<b>\$100</b>	<b>\$2,550.00</b>	<b>\$2,475.00</b>	<b>2</b>
238110	Poured Concrete Foundation and Structure Contractors	\$3,442.28	\$2,550.00	\$2,550.00	1

NAICS	Industry Description	Minor Cost Threshold (MCT)	Largest Proposed Change	Average Proposed Change	Businesses registered or seeking registration
238210	Electrical Contractors and Other Wiring Installation Contractors	\$5,941.60	\$2,750.00	\$2,750.00	1
311119	Other Animal Food Manufacturing	\$24,330.37	\$2,700.00	\$2,587.50	4
311613	Rendering and Meat Byproduct Processing	\$32,261.69	\$4,200.00	\$3,375.00	2
311999	All Other Miscellaneous Food Manufacturing	\$28,280.31	\$2,450.00	\$2,450.00	1
321999	All Other Miscellaneous Wood Product Manufacturing	\$10,315.61	\$2,700.00	\$2,700.00	2
324110	Petroleum Refineries	\$1,503,441.17	\$2,450.00	\$2,450.00	1
<b>325110</b>	<b>Petrochemical Manufacturing</b>	<b>\$100.00</b>	<b>\$2,400.00</b>	<b>\$2,400.00</b>	<b>1</b>
325180	Other Basic Inorganic Chemical Manufacturing	\$146,705.92	\$4,150.00	\$4,150.00	1
325199	All Other Basic Organic Chemical Manufacturing	\$82,389.50	\$3,000.00	\$3,000.00	1
325311	Nitrogenous Fertilizer Manufacturing	\$54,489.98	\$7,350.00	\$4,006.25	8
325312	Phosphatic Fertilizer Manufacturing	\$303,827.12	\$2,700.00	\$2,625.00	2
325314	Fertilizer (Mixing Only) Manufacturing	\$9,831.85	\$6,750.00	\$3,255.00	10
325320	Pesticide and Other Agricultural Chemical Manufacturing	\$56,658.42	\$3,050.00	\$2,687.50	4
325612	Polish and Other Sanitation Good Manufacturing	\$7,213.50	\$2,450.00	\$2,450.00	1
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	\$23,918.87	\$4,850.00	\$3,350.00	3
326199	All Other Plastics Product Manufacturing	\$25,159.50	\$2,550.00	\$2,550.00	1
327390	Other Concrete Product Manufacturing	\$37,149.13	\$2,700.00	\$2,625.00	2
327420	Gypsum Product Manufacturing	\$64,963.43	\$2,550.00	\$2,550.00	1
333241	Food Product Machinery Manufacturing	\$31,206.27	\$2,500.00	\$2,500.00	1
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	\$41,248.51	\$2,550.00	\$2,550.00	1
339999	All Other Miscellaneous Manufacturing	\$9,874.17	\$3,150.00	\$3,025.00	2
423310	Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers	\$38,355.14	\$2,700.00	\$2,700.00	1
423320	Brick; Stone; and Related Construction Material Merchant Wholesalers	\$10,444.70	\$2,550.00	\$2,550.00	1
423610	Electrical Apparatus and Equipment; Wiring Supplies; and Related Equipment Merchant Wholesalers	\$17,865.28	\$2,550.00	\$2,550.00	1
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	\$21,575.72	\$2,550.00	\$2,550.00	1
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$16,393.09	\$2,600.00	\$2,600.00	1

NAICS	Industry Description	Minor Cost Threshold (MCT)	Largest Proposed Change	Average Proposed Change	Businesses registered or seeking registration
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	\$9,143.34	\$2,550.00	\$2,550.00	2
424440	Poultry and Poultry Product Merchant Wholesalers	\$45,135.62	\$2,550.00	\$2,550.00	1
424490	Other Grocery and Related Products Merchant Wholesalers	\$25,663.43	\$2,550.00	\$2,550.00	1
424510	Grain and Field Bean Merchant Wholesalers	\$53,558.90	\$2,550.00	\$2,550.00	1
424520	Livestock Merchant Wholesalers	\$4,275.53	\$2,550.00	\$2,550.00	1
424590	Other Farm Product Raw Material Merchant Wholesalers	\$7,750.68	\$4,800.00	\$3,400.00	3
424690	Other Chemical and Allied Products Merchant Wholesalers	\$20,277.66	\$3,150.00	\$2,588.89	9
424910	Farm Supplies Merchant Wholesalers	\$35,044.58	\$6,850.00	\$2,943.18	44
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	\$7,559.52	\$4,050.00	\$2,850.00	6
425120	Wholesale Trade Agents and Brokers	\$6,017.82	\$2,800.00	\$2,675.00	2
444190	Other Building Material Dealers	\$10,571.42	\$2,550.00	\$2,550.00	1
444220	Nursery; Garden Center; and Farm Supply Stores	\$4,675.20	\$3,900.00	\$2,972.73	11
445220	Fish and Seafood Markets	\$4,834.38	\$2,550.00	\$2,550.00	1
<b>445230</b>	<b>Fruit and Vegetable Markets</b>	<b>\$2,435.71</b>	<b>\$2,700.00</b>	<b>\$2,700.00</b>	<b>1</b>
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$4,863.58	\$3,350.00	\$2,750.00	4
454390	Other Direct Selling Establishments	\$4,034.18	\$2,800.00	\$2,800.00	1
531311	Residential Property Managers	\$6,900.22	\$2,550.00	\$2,550.00	1
541330	Engineering Services	\$14,801.92	\$2,550.00	\$2,550.00	1
<b>541690</b>	<b>Other Scientific and Technical Consulting Services</b>	<b>\$2,707.38</b>	<b>\$3,300.00</b>	<b>\$3,075.00</b>	<b>2</b>
541714	Research and Development in Biotechnology (except Nanobiotechnology)	\$66,044.66	\$2,700.00	\$2,625.00	2
551112	Offices of Other Holding Companies	\$20,574.75	\$2,450.00	\$2,450.00	1
561499	All Other Business Support Services	\$11,413.97	\$2,600.00	\$2,525.00	2
562212	Solid Waste Landfill	\$110,043.02	\$2,550.00	\$2,550.00	1
562219	Other Nonhazardous Waste Treatment and Disposal	\$50,412.23	\$2,850.00	\$2,775.00	2
611310	Colleges; Universities; and Professional Schools	\$107,891.59	\$2,550.00	\$2,550.00	1

Inspections are not part of the standard workflow for this program. They are a tool which may be used to evaluate compliance as needed. The fees have been adjusted to ensure the costs of conducting inspections are recovered if an inspection is needed, however no inspections have been conducted in the last five years. The table above does not reflect the cost of inspections or the \$1,500 discount on inspec-

tion fees provided to businesses that meet the definition of "small business" in RFA.

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

RCW 19.85.040(1) requires WSDA to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per one hundred dollars of sales.

As a fee restructuring, without additional recordkeeping requirements the impact is relatively uniform across all businesses. There are no projected increases in equipment, supplies, labor, professional services, or administrative costs. There are no projected losses in sales or revenue.

Logically, gross annual income will correlate to business size, with larger businesses within the same industry likely reporting higher gross annual income. To this effect, the proposal reduces the proportionate impact on small business by charging a comparatively smaller fee to business reporting lower gross annual incomes.

However, the product fee is not adjusted for gross annual income and remains constant without regards to business size. This means the product fee is likely to have a larger impact (cost of fee compared to total gross annual income) for smaller businesses when compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

The table below compares businesses paying the lowest of the company fees, with businesses that have the largest income and paying the largest of the company fees. Ten products are used for both businesses to demonstrate the difference in total fees for small and large businesses.

Business size	Income Level	Company Fee	Number of Products	Total Product Fees	Total Fees	Cost Per \$100 of Sales
Small	\$200,000	\$125	10	\$3,500	\$3,625	\$1.81
Largest	\$50,000,00	\$2,400	10	\$3,500	\$5,900	\$0.01

Since the product fee is the same for all businesses, regardless of business size, WSDA's organic program projects that this fee restructure will have a greater impact in cost per one hundred dollars of sales on small businesses when compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

**SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.**

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements:* These regulatory requirements are set by the USDA National Organic Program and are outside the scope of the WSDA's organic program. Reducing, modifying, or eliminating regulatory requirements are not an option to reduce the cost of the rule on small businesses.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* The proposed rule does not change any of the current recordkeeping or reporting requirements. Reducing, modifying, or eliminating recordkeeping or reporting requirements are not an option to reduce the cost of the rule on small businesses.

(c) *Reducing the frequency of inspections:* The requirements for input materials used by organically certified operations is set by the USDA National Organic Program. As such, any changes to inspection frequency or schedule would be outside the scope of the WSDA's organic program and not an option to reduce the cost of the rule on small businesses.

(d) *Delaying compliance timetables:* WSDA's organic program is required by statute to recover the full cost of administering the program (RCW 15.86.070). This fee restructuring is being implemented to ensure compliance with this requirement. Delaying implementation or compliance timetables would prevent the program from fully recovering costs. In order to reduce costs on small businesses where we can, WSDA's organic program will implement flexible timetables on nonfee-related components such as use of the updated logo.

(e) *Reducing or modifying fine schedules for noncompliance:* The new fee structure substantially reduces the impact of late fees, the most common fee for noncompliance. Under the current fee structure, late fees are incurred on a per product basis at \$100 per month. After two months, late fees are often equivalent to the full renewal amount. Under the new fee structure, late fees are incurred on a per company basis. This will result in a substantial reduction of penalties for companies with multiple products.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* The current fee structure is based entirely on the type and number of products seeking registration. This means costs increase proportionally to the number of products you are registering without consideration to the size of your business or scope of the product line. WSDA's organic program hopes that by shifting some of the burden of fees from number of products to the size of the business, using a company fee based on gross annual income, that small businesses will be afforded more flexibility in developing and marketing their smaller product lines, as adding new products will have a lesser relative impact on their total fees. Additionally, new product and new company fees have been reworked to make their costs consistent with renewal fees. Under the previous fee structure, the fees for new products was larger than the fee for renewing products. Under the proposed fee structure the same product fee is due with your initial or renewal application annually. A \$1,500 discount to the inspection fee is available for small businesses, as defined by RFA. The standard inspection fee is \$2,000. This represents a 75 percent reduction for small businesses. There were no other mitigation techniques suggested by small businesses or small business advocates.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

The WSDA's organic advisory board (OAB) was established in 1987 to advise WSDA concerning the implementation of the organic program. OAB consists of small and large businesses in Washington state. It includes and supports: Organic farmers, processors, handlers, input material suppliers, and other interested parties. They provide feedback on how the program can improve the services.

A fee restructure has been a conversation with the WSDA OAB over the last decade due to the requirements for the program to recover expenses in response to increased costs. Ongoing work with this group helped inform the design of the new logo and established the goals for the fee increase.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

It is unlikely that the revisions will have any appreciable effect on a business's ability to comply with the requirements of the rule and should not result in the loss or creation of any jobs.

A copy of the statement may be obtained by contacting [no information supplied by agency].

August 21, 2023

Luisa F. Castro, Assistant Director  
Food Safety and Consumer Services Division

## OTS-4882.2

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-010 Purpose of this chapter.** This chapter specifies the process for registering companies and listing materials approved for use in organic production, processing and handling on the department's brand name materials list, also known as the organic input material list. This chapter is promulgated pursuant to chapter 109, Laws of 2010 to implement the brand name materials list.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-120 Applications.** (1) Registration with the department and listing of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the (~~brand name materials~~) department's organic input material list.

(2) (~~Registration~~) The listing of a material on the (~~brand name materials~~) organic input material list under this chapter does not guarantee acceptance for use in organic production, processing, or handling by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material (~~registered on the brand name materials~~) listed on the organic input material list.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-130 General application requirements.** (1) Manufacturers of materials used in organic production, processing or handling may submit an application for registration (~~on the brand name material list to the department.~~

~~(2) Manufacturers may submit applications to the department at:~~

~~Washington State Department of Agriculture  
Organic Food Program  
P.O. Box 42560  
Olympia, WA 98504-2560.~~

~~These forms may also be found on the department's website at:  
<http://agr.wa.gov/foodanimal/organic>~~

~~(3) Applications for registration will not be approved unless the applicant demonstrates that the material meets the requirements and standards of the National Organic Program and is approved for use in organic production, processing, or handling in accordance with the National Organic Program. Specifically, the material may not be a material prohibited for the use in the production or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.) with the department's organic program.~~

(2) Current registrants and potential applicants may submit applications for products to be listed on the organic input material list.

(3) The department approves product applications when the applicant demonstrates the material meets the requirements for products as outlined in WAC 16-160-165.

(4) All registrations and product listings expire on ((October)) December 31st of the registration year.

(5) During the term of registration, if at any time the registrant has no approved or pending product listings, the registration will be canceled.

(6) Requests for expedited review must be submitted on a form provided by the department. If approved, expedited review is billed as provided under WAC 16-160-200.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-140 Initial application requirements.** (1) ~~((Applications must be submitted on the form provided by the department, and must include:~~

~~(a)) To have products listed on the organic input material list, manufacturers must register with the department. To apply for registration, applicants must submit:~~

~~(a) An application form.~~

~~(b) A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC.~~

~~((b)) (c) The name and address of the registrant.~~

~~((e)) (d) A product application for each product to be listed on the organic input material list.~~

(2) Each product application must include:



(a) The brand name the material is sold under.

(b) Manufacturer information:

(i) Name and address of the manufacturer;

(ii) Contact information, including the name and phone number of the authorized representative of the registrant; and

(iii) List of all material manufactured at the same facility as the ~~((registered))~~ brand name material.

~~((d) The brand name that the material is sold under.~~

~~(e))~~ (c) A copy of the label or bill of lading accompanying the material and a statement of all claims made for it, including directions and precautions for use.

~~((f))~~ (d) The complete formula or any alternate formulations for the material, including active and inert ingredients:

(i) Supplier of each ingredient;

(ii) Percentage of ingredient in the final formula; and

(iii) Purpose of each ingredient in the formula.

~~((g))~~ (e) Ingredient information for each ingredient listed in the formula (including alternate formulas) sufficient to demonstrate compliance with ~~((the standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205):

(i) Manufacturing process; and

(ii) Formulation, including active and inert ingredients.

~~((h))~~ (f) A description of the manufacturing process for the material, including all substances used for the extraction and synthesis process, if appropriate. If the manufacturing facility manufactures materials other than the material listed in the application, the application must include a plan to prevent the contamination or commingling of materials allowed or prohibited in organic agriculture.

~~((i))~~ (g) A flow chart, indicating movement of material from incoming ingredient to outgoing final material. The flow chart may include, but is not limited to:

(i) Storage facilities;

(ii) Equipment location; and

(iii) Shipping facilities.

~~((j))~~ (h) The intended use of the material.

~~((k))~~ (i) The required fee for registration.

~~((l) Signature by authorized representative.~~

~~(m))~~ (j) Applicants seeking to list fertilizers and pesticides must submit verification of a valid registration from the department's pesticide management division. This requirement may be waived if the applicant verifies the product will not be sold or distributed in Washington state.

(k) The department may request additional information related to the items above as necessary to demonstrate that the material meets ~~((the standards of the National Organic Program.~~

~~(2) Applications for fertilizers and pesticides must submit verification of a valid registration from the WSDA pesticide management division.~~

~~(3) In addition to the information required in this section, a registrant who is packaging or distributing a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must submit a statement from the manufacturer of the material granting the department))~~ USDA organic regulations (7 C.F.R. Part 205).

(3) Registrants packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the

person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-150 Renewal application requirements.** (1) ~~((Renewal applications must be submitted on the form provided by the department, and must include the following:~~

~~(a-))~~ To renew a registration, registrants must submit:

(a) An application form;

(b) A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC;

~~((b-))~~ (c) The name(s) of the material(s) seeking renewal;

~~((c) Name and address of the manufacturing facility(ies) for each registered material;))~~

(d) Notification of any unreported changes to the ((original application)) company or product information; and

~~(e) ((Signature of authorized representative; and~~

~~(f-))~~ The required fee for renewal. Renewal applications post-marked after October 31st must include the appropriate late fee as listed under WAC 16-160-200.

(2) Registrants ~~((who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.))~~ packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180 every five years.

(3) Full disclosure of the complete formula of the material, including active and inert ingredients, and any other information necessary to demonstrate compliance is required every five years.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-160 Updating an application.** If any changes to the information provided in an initial or renewal application occurs at any time after the application is submitted, the registrant must immediately submit the corrected information to the department for review. This information includes, but is not limited to, changes in material formulation, ingredient suppliers, manufacturing facilities or processes, labels or other production or marketing processes. The corrected information must be provided in writing. Failure by the registrant to provide correction to the information provided in an application may result in suspension or revocation of the registration, either in part or in full.

NEW SECTION

**WAC 16-160-165 Product requirements.** Products listed on the organic input material list must meet all requirements in this section. If at any time a listed product or product application is found to be in violation of one or more of these requirements, the company's registration may be denied, suspended, or revoked as provided under WAC 16-160-220. Products must:

(1) Meet the requirements of the USDA organic regulations (7 C.F.R. Part 205) and be approved for use in organic production, processing, or handling in accordance with the USDA organic regulations (7 C.F.R. Part 205). Materials may not be prohibited for use in the production or handling of organics per section 205.105 of the USDA organic regulations, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.

(2) Be clearly distinguishable from other products.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-180 Inspections.** (1) By applying for registration on the brand name materials list, the registrant expressly grants to jurisdiction of the state of Washington in all matters related to the registration.

(2) By applying for registration on the brand name materials list, the registrant expressly grants the department or other organic certifying agent or inspection agent approved by the National Organic Program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the materials, inputs or ingredients are stored, produced, manufactured, packaged or labeled;

(b) Inspect records related to the sales, storage, production, manufacture, packaging or labeling of the material, inputs or ingredients; and

(c) Obtain samples of materials, inputs or ingredients.

(3) Inspections may be conducted as a condition of ongoing compliance, after receiving an initial or a renewal application, notification of a change to an application, upon receipt of a complaint, or as required by the National Organic Program. Inspections may be announced or unannounced.

(4) ~~((Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections. The signed consent must be on a form provided by the department.~~

~~(5))~~ Should the registrant or manufacturer refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled as provided under WAC 16-160-220. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records, or fails to provide samples as provided in this

~~section ((, or fails to provide the department with the consent described in subsection (4) of this section)).~~

~~((+6))~~ (5) Inspections must be documented on a form approved by the department. Inspections conducted by an inspection body other than the department will be accepted when a review determines that the inspection document is sufficient to demonstrate compliance with the ~~((standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205).

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-190 Recordkeeping requirements.** (1) Registrants must maintain records sufficient to verify that the materials are approved for use in organic production, processing, or handling and comply with the ~~((standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205). These records may include:

- (a) Records pertaining to incoming raw materials:
    - (i) Invoices/bills of lading;
    - (ii) Transportation documentation;
    - (iii) Material safety data sheets;
    - (iv) Storage documentation.
  - (b) Production records:
    - (i) Material formulations;
    - (ii) Dates of production;
    - (iii) Amount of ingredients used in each batch;
    - (iv) Amount of final materials;
    - (v) Sampling and/or laboratory analyses;
    - (vi) Lot identification and tracking;
    - (vii) Other records maintained during manufacturing.
  - (c) Finished material records:
    - (i) Packaging documentation;
    - (ii) Sales documentation;
      - Purchase orders;
      - Receipts;
      - Shipping documents;
    - (iii) Storage documentation.
- (2) Records shall be maintained for six years.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-200 Fees.** ~~((The following fees apply to applicants and registrants to the brand name materials list.~~

~~(1) **Initial material registration:**~~

~~(a) The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or postharvest material is five hundred dollars per material.~~

~~(b) The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is four hundred dollars per material.~~

~~(2) **Renewal registration:** The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock~~

production aid or postharvest material is three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is two hundred dollars per material.

(3) **Late fees:** Renewal applications postmarked after October 31st must include a late fee in addition to the renewal fee. Renewal applications received after February 2nd will not be accepted.

If your application is postmarked after October 31st but before:	Then the late fee is:
December 1	\$100
January 1	\$200
February 1	\$300

(4) **Inspections:** Inspections conducted by the department, including report writing, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management. Fees assessed for inspections conducted by third-party inspection agencies are established by that agency. Registrants may contact the inspection agency to determine the applicable fee for those inspections.

(5) **Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department of agriculture or at the cost for analyses performed by another laboratory.

(6) **Expedited evaluation fees:** Requests for expedited reviews may be submitted and, if approved, are billed at the rate of forty dollars per hour.) To receive or maintain registration, businesses must submit an application packet and fees to the department each year.

(1) **New application fee:** A new application fee is due with each annual application for registration.

(a) A new application fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

<u>Total gross annual income in previous calendar year</u>	<u>New company fee due</u>
<u>\$0 - \$249,999</u>	<u>\$125.00</u>
<u>\$250,000 - \$999,999</u>	<u>\$250.00</u>
<u>\$1,000,000 - \$4,999,999</u>	<u>\$500.00</u>
<u>\$5,000,000 - \$19,999,999</u>	<u>\$1,000.00</u>
<u>\$20,000,000 - \$49,999,999</u>	<u>\$1,750.00</u>
<u>\$50,000,000 - and up</u>	<u>\$2,400.00</u>

(b) Businesses who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A new application fee includes a product fee which is assessed based on the total number of products included in the application. The product fee is \$350 per product application.

(d) While a registrant's account is active, with either listed products or products pending evaluation, companies may submit applications for new products without incurring a company fee. The product fee is \$350 per product included in subsequent applications.

(2) **Renewal fee:** A renewal fee must be submitted annually by October 31st with each renewal application.

(a) A renewal fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

<u>Total gross annual income in previous calendar year</u>	<u>Renewing company fee due</u>
<u>\$0 - \$249,999</u>	<u>\$125.00</u>
<u>\$250,000 - \$999,999</u>	<u>\$250.00</u>
<u>\$1,000,000 - \$4,999,999</u>	<u>\$500.00</u>
<u>\$5,000,000 - \$19,999,999</u>	<u>\$1,000.00</u>
<u>\$20,000,000 - \$49,999,999</u>	<u>\$1,750.00</u>
<u>\$50,000,000 - and up</u>	<u>\$2,400.00</u>

(b) Companies who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A renewal fee includes a product fee which is assessed based on the total number of products being renewed. The product fee is \$350 per renewing product.

(d) Renewal applications and fees submitted after October 31st must include a late fee in addition to the appropriate company and product fees. Renewal applications submitted after February 2nd will not be accepted, and applicants must reapply as new applicants.

<u>If a renewal application is submitted after:</u>	<u>Late fee due</u>
<u>October 31st</u>	<u>\$100.00</u>
<u>November 30th</u>	<u>\$200.00</u>
<u>December 31st</u>	<u>\$300.00</u>

(3) **Inspection fee:** An inspection fee must be submitted after each inspection conducted by the department. The inspection fee is \$2,000.

(a) Small businesses, as defined by the Regulatory Fairness Act (chapter 19.85 RCW), qualify for a \$1,500 discount to their inspection fee.

(b) Out-of-state inspections, if necessary to determine compliance or requested by the operation, shall be charged to the operation at a rate of \$3,000 and include any travel expenses in excess of \$3,000. Out-of-state inspection fees do not replace, and are in addition to, the standard inspection fee as outlined under this section.

(4) **Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department or at the cost for analyses performed by another laboratory.

(5) **Expedited services:** New and renewing applicants may request expedited services. Expedited services are defined as inspections and reviews conducted outside of the normal timelines and may be provided by the department if sufficient capacity is available to expedite the work. Fees for expedited services do not replace, and are in addition to, any other required fees as outlined in this section.

(a) Expedited services not requiring an inspection are charged a rate of \$500 to receive an evaluation and certification decision within five business days from the acceptance of the request.

(b) Expedited services requiring an inspection prior to a certification decision are charged a rate of \$750. Expedited services under this subsection take production or handling dates into consideration. The review of the inspection report will be completed within five business days from the date of the inspection.

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-210 Labels and logos.** (1) A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in this section in the labeling of the material.

The logos found in this section may be printed in black and white as displayed in this chapter. Alternatively, a color version with blue leaves, circle and background may be used. Electronic copies of the logos are available by request from the department.

(2) Registered materials are not certified as organic by the department and are prohibited from making claims indicating products are "certified organic" or similar term.

(3) Materials that are not registered under this chapter are prohibited from using the statement or the logo in this section in the labeling of the material.

(4) In addition to the other limitations expressed in this chapter and chapter 15.86 RCW, registration does not imply the Washington department of agriculture endorses the use of the product, does not make any guarantee that the material performs as represented by the registrant, and does not guarantee acceptance for use in organic production by certifying agents other than the department.





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AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-220 Suspension, revocation, cancellation, and denial of registrations.** (1) Registrations (~~((on the brand name materials list))~~) with the department's organic program, and applications for registration, are governed by chapter 34.05 RCW. The director may deny, suspend, cancel, or revoke a registration (~~((on the brand name materials list))~~) with the department, in part or in full, if the director determines that a registrant has failed to meet the registration criteria established under chapter 15.86 RCW or chapter 16-160 WAC, or violated any other provision under chapter 15.86 RCW or chapter 16-160 WAC.

(2) (~~(Application or registrations)~~) Product applications or listings will be revoked, canceled, or denied if a material fails to meet the standards for approval or is no longer approved for use in organic production, processing, or handling by the National Organic Program.



## WSR 23-17-134

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed August 21, 2023, 12:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-014.

Title of Rule and Other Identifying Information: WAC 182-503-0535 Washington apple health—Citizenship and immigration status, and 182-507-0135 Immigration status requirement for refugee medical assistance (RMA).

Hearing Location(s): On September 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_E7tAxNWnSVCG-SIhvxxsWg](https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SIhvxxsWg). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than September 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 26, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-503-0535 and 182-507-0135 to update the parole period for certain Afghan refugees to qualify for refugee medical assistance. This change is required by federal law.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Section 1501, Consolidated Appropriations Act, 2023; Public Law 117-328, div. M, title V, § 1501.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Giovanni Delgado, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1919.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Section 1501, Consolidated Appropriations Act, 2023; Public Law 117-328, div. M, title V, § 1501. Failure to comply with federal law could result in loss of federal funds.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
Wendy Barcus  
Rules Coordinator

## OTS-4705.2

AMENDATORY SECTION (Amending WSR 22-20-074, filed 9/30/22, effective 10/31/22)

### **WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.**

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan (~~granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022~~) who, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, is evaluated as a qualified alien until March 31, 2023, or the end of their parole term, whichever is later, when granted parole:

(A) Between July 31, 2021, and September 30, 2023; or

(B) After September 30, 2022, and is:

(I) Their spouse or child; or

(II) The parent or guardian of an unaccompanied minor described under this subsection.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), (~~was~~) is evaluated as a qualified alien until the end of their parole term when:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(B) Granted parole into the United States after September 30, 2023, and is:

(I) The spouse or child of a person described in (b) (xiii) (A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b) (xiii) (A) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

(xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

**(2) Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(e) An undocumented person may be eligible for:

- (i) Alien medical programs;
- (ii) State-only funded apple health for kids; or
- (iii) State-only funded apple health for pregnant women.

**(3) The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

OTS-4706.2

AMENDATORY SECTION (Amending WSR 22-20-074, filed 9/30/22, effective 10/31/22)

**WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA).** (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; (~~(e)~~)

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059 (a) of the National Defense Authorization Act of 2006 (~~(-)~~);

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, (~~(2022)~~) 2023, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021; or

(k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), (~~(was)~~) is evaluated as a qualified alien when:

(i) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(ii) Granted parole into the United States after September 30, 2023, and is:

(A) The spouse or child of a person described in (k) (i) of this subsection; or

(B) The parent, legal guardian, or primary caregiver of a person described in (k) (i) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) of this section.

## WSR 23-17-136

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed August 21, 2023, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-043.

Title of Rule and Other Identifying Information: Compliance with contract goals—Counting participation.

Hearing Location(s): On September 29, 2023, at 10:00 a.m., at Nisqually Conference Room, 310 Maple Park Avenue S.E., 1st Floor Room 1D02, Olympia, WA 98501.

Date of Intended Adoption: October 5, 2023.

Submit Written Comments to: Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98501, email BayneJ@wsdot.wa.gov, fax 360-705-6801, 360-705-7090, by August 28, 2023.

Assistance for Persons with Disabilities: Contact Jackie Bayne, phone 360-705-7084, fax 360-705-6801, TTY 711, email BayneJ@wsdot.wa.gov, by August 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This establishes rules, as allowed under RCW 47.28.030(3), that will comply with rules adopted by the office of minority and women's business enterprises (OMWBE) under chapter 39.19 RCW. These rules include:

- (a) Counting participation;
- (b) Commercially useful function;
- (c) Termination and substitution;
- (d) Joint checks;
- (e) Good faith efforts;
- (f) Other program requirements; and
- (g) Penalties for noncompliance.

The rules will provide the framework for the regulation of enforceable OMWBE goals and the use of OMWBEs counting toward those goals.

Reasons Supporting Proposal: Establishing these rules will clear up confusion by Washington state department of transportation (WSDOT), contractors, and consultant about how participation is counted towards the minority, veteran, and women's business enterprises contract goals. These rules will also provide mechanisms for WSDOT to effectively monitor and verify how participation is counted and provide contractors and consultants better assurance that contract work will be eligible to count towards the goals.

Statutory Authority for Adoption: RCW 39.04.155, 43.19.727. 47.01.101, and 47.28.030; chapter 39.19 RCW.

Statute Being Implemented: RCW 47.01.101 and 47.01.260.

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: WSDOT has a proposed draft of the regulatory language that can be provided upon request.

Name of Proponent: WSDOT, office of equity and civil rights, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98504, 360-705-7090.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDOT is not listed in RCW 34.05.328 (5)(a)(i); no cost-benefit analysis is required.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: RCW 19.85.061, the enforceable OMWBE program is being developed to ensure compliance with Title VI of the Civil Rights Act of 1964 and is intended to bring WSDOT into compliance with federal regulations.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

RCW 34.05.310 (4)(e), WSDOT needs to adopt these rules to comply with the rules adopted by OMWBE under chapter 39.19 RCW. These rules are intended to ensure that minority and women business enterprises can successfully perform work on transportation-related projects. These rules apply to WSDOT's contracting process to reduce and discourage discrimination in WSDOT's contracting.

Is exempt under RCW 19.85.061.

Explanation of exemption: RCW 19.85.061, the enforceable OMWBE program is being developed to ensure compliance with Title VI of the Civil Rights Act of 1964 (Title VI, 42 U.S.C. § 2000d) and is intended to bring WSDOT into compliance with federal regulations.

Scope of exemption for rule proposal:

Is fully exempt.

August 17, 2023

Sam Wilson

Director, Business Support Services

**OTS-4770.2**

**Chapter 468-19 WAC  
MINORITY AND WOMEN BUSINESS ENTERPRISE ENFORCEABLE GOALS PROGRAM**

NEW SECTION

**WAC 468-19-010 Counting participation.** (1) When a business certified by the office of minority and women's business enterprises as a minority or women business enterprise (MWBE) pursuant to RCW 39.19.120 participates in a contract (construction or consultant service agreement), only count the value of the work performed by the MWBE.



(2) Count the entire amount of that portion of the contract that is performed by the MWBE's own forces. Include the cost of supplies and materials obtained by the MWBE for the work of the contract, including supplies purchased or equipment leased by the MWBE (except supplies and equipment the MWBE purchases or leases from the prime contractor or its affiliate).

(3) Count the entire amount of fees or commissions charged by a MWBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, toward MWBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(4) When a MWBE participates as a broker (i.e., arranging a transaction or service but does not provide a work product or enhancement), only the dollar value of the fee or commission charged or 20 percent of the total dollar value of expenditures by the MWBE (whichever is greater) counts toward the MWBE goal.

(5) Do not count the cost of the materials and supplies themselves toward MWBE goals.

(6) When a MWBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MWBE goals only if the MWBE's subcontractor is itself a MWBE. Work that a MWBE subcontracts to a non-MWBE firm for more than 25 percent does not count toward MWBE goals.

(7) Do not count payments to a MWBE when the MWBE firm participates as an extra participant in a transaction, through which funds are passed in order to give the appearance of participation by the MWBE firm and an attempt to count toward the enforceable MWBE goal. Pass-throughs are not countable towards the MWBE goal and are a violation of the program requirements.

(8) When a MWBE firm performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work, commensurate with the firm's interest in the joint venture, of the contract that the MWBE performs with its own forces toward the goal.

(9) Count expenditures with MWBEs for materials or supplies toward MWBE goals as provided in the following:

(a) If the materials or supplies are obtained from a MWBE manufacturer, count 100 percent of the cost of the materials or supplies toward MWBE goals. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) If the materials or supplies are purchased from a MWBE supplier, count 100 percent of the cost of the materials or supplies toward MWBE goals. A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(10) Determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a supplier or a broker) on a contract-by-contract basis.

(11) Count expenditures to a MWBE toward MWBE goals only if the MWBE is performing a commercially useful function (CUF) on that contract.

(12) If a firm is certified as a MWBE at the time of initiation of their contract work, count the firm's participation toward the MWBE goals.

(13) If a firm becomes certified during the performance of their work, count the firm's participation from the date of certification.

(14) Do not count the dollar value of work performed under a contract with a firm 60 days after it has ceased to be certified.

(15) When a MWBE is removed from the MWBE program during the contract, all prior participation of that MWBE shall continue to count towards the MWBE goal, as long as the contract with the MWBE was executed prior to the removal notice.

(16) Do not count the participation of a MWBE toward a prime contractor's final compliance with its MWBE obligations on a contract until the amount being counted has actually been paid to the MWBE.

#### NEW SECTION

**WAC 468-19-020 Commercially useful function (CUF).** (1) A MWBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a CUF, the MWBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Paying for materials are subject to the joint check rules established herein.

(2) A MWBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of MWBE participation.

(3) If a MWBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or the MWBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, WSDOT will presume it is not performing a commercially useful function.

(4) When a MWBE is presumed not to be performing a CUF pursuant to subsection (3) of this section, the MWBE may present evidence to rebut this determination. It may be determined that the firm is performing a CUF given the type of work involved and normal industry practices.

(5) The following factors are used in determining whether a MWBE trucking company is performing a commercially useful function:

(a) The MWBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MWBE goals.

(b) The MWBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(c) The MWBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(d) The MWBE may lease trucks from another MWBE firm, including an owner-operator who is certified as a MWBE. The MWBE who leases trucks from another MWBE receives credit for the total value of the transportation services the lessee MWBE provides on the contract.

(e) The MWBE may also lease trucks from a non-MWBE firm, including from an owner-operator. The MWBE that leases trucks equipped with drivers from a non-MWBE is entitled to credit for the total value of transportation services provided by non-MWBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by MWBE-owned trucks or leased trucks with MWBE employee drivers. Additional participation by non-MWBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the WSDOT office of equity and civil rights.

(i) The MWBE may lease trucks without drivers from a non-MWBE truck leasing company. If the MWBE leases trucks from a non-MWBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

(ii) For purposes of this paragraph, a lease must indicate that the MWBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MWBE, so long as the lease gives the MWBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MWBE.

#### NEW SECTION

**WAC 468-19-030 Termination and substitution.** (1) The prime contractor cannot change the scope or reduce the amount of work committed to an MWBE without good cause. Reducing MWBE commitment is considered termination, and therefore subject to the termination procedures, described herein.

(2) In the event that work committed to an MWBE firm underruns the original planned quantities, the prime contractor may be required by WSDOT to substitute other remaining work to another MWBE.

(3) In instances where WSDOT makes changes that result in reductions to work that was committed to an MWBE, the prime contractor may be directed to subcontract other remaining contract work for possible MWBE participation.

(4) Termination of a MWBE is only allowed in whole or in part for good cause and with prior written approval of WSDOT. If the prime contractor terminates or substitutes a MWBE without the prior written approval of WSDOT, the prime contractor may not be entitled to payment for work committed to, but not performed/supplied by the MWBE.

(5) Prior to requesting approval to terminate or substitute a MWBE, the prime contractor shall give notice in writing to the MWBE with a copy to WSDOT of their intent to terminate the MWBE and the reasons for doing so. The MWBE shall have five days to respond to the prime contractor's notice. The MWBE's response shall either support the termination or advise WSDOT and the prime contractor of the reasons it objects to the termination of its subcontract or MWBE commitment.

(6) If the request for termination is approved, the prime contractor is required to make a good faith effort (GFE) to find another

MWBE to perform at least the same dollar amount of work under the contract as the MWBE that was terminated. A plan to replace the MWBE commitment or GFE shall be submitted to WSDOT within seven calendar days of the approval of termination.

(7) Good cause typically includes situations where the MWBE is unable or unwilling to perform the work of its subcontract.

(a) Good cause may exist if:

(i) The MWBE fails or refuses to execute a written contract.

(ii) The MWBE fails or refuses to perform the work of its contract in a way consistent with normal industry standards.

(iii) The MWBE fails or refuses to meet the prime contractor's reasonable nondiscriminatory bond requirements.

(iv) The MWBE becomes bankrupt, insolvent, or fails to pay their suppliers, unions, other creditors, or employees.

(v) The MWBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal law or applicable state law.

(vi) The MWBE is ineligible to receive credit for the type of work involved.

(vii) The MWBE voluntarily withdraws from the project and provides written notice of its withdrawal.

(viii) The MWBE's work is deemed unsatisfactory by the agency and not in compliance with the contract.

(ix) The MWBE's owner dies or becomes disabled, with the result that the MWBE is unable to complete its work on the contract.

(b) Good cause does not exist if:

(i) The prime contractor seeks to terminate an MWBE so that the prime contractor can self-perform the work.

(ii) The prime contractor seeks to terminate an MWBE so the prime contractor can substitute another MWBE or non-MWBE after the contract has been awarded to the MWBE.

(iii) The failure or refusal of the MWBE to perform its work on its contract results from the bad faith or discriminatory action of the prime contractor (e.g., the failure of the contractor to make timely payments or the unnecessary placing of obstacles in the path of the MWBE's work).

#### NEW SECTION

**WAC 468-19-040 Joint checks.** (1) Joint checks may only be used by a MWBE to pay for materials or supplies.

(a) A joint check is a check between a MWBE and the prime contractor to the supplier of materials/supplies, only.

(b) The check is issued by the prime contractor as payer to the MWBE and the material supplier jointly for items to be incorporated into the project.

(c) The MWBE must release the check to the supplier, while the prime contractor acts solely as the guarantor.

(2) A joint check agreement must be approved by the WSDOT and requested by the MWBE involved. The MWBE joint check agreement between the parties involved must include the conditions of the arrangement and the expected use of the joint checks.

(3) The prime contractor shall not directly pay the supplier for materials or supplies used by the MWBE.

(4) If the procedures described herein are not followed, the MSVWBE may be determined to not be providing a CUF.

#### NEW SECTION

**WAC 468-19-050 Good faith efforts.** (1) The prime contractor shall utilize the MWBEs to perform the work and supply the materials for which each is committed through an executed contract, unless prior written approval by WSDOT has been received by the contractor. The prime contractor shall not be entitled to any payment for work or material completed by the prime contractor or other subcontractors that was committed to be completed by an MWBE.

(2) The prime contractor shall make a good faith effort (GFE) to achieve the MWBE contract goals. The following is a list of the types of actions which would be considered as part of the prime contractor's GFE to achieve MWBE participation. It is not intended to be an exclusive or exhaustive list. Other factors or types of efforts may be relevant in certain cases.

(a) Prime contractor solicited, through all reasonable and available means, the interest of all certified MWBEs who had the capability to perform the work of the contract.

(b) The prime contractor solicited interest with sufficient time to allow MWBEs to respond to the solicitation.

(c) The prime contractor determined with certainty that MWBEs were interested in taking appropriate steps to follow up initial solicitations with potential MWBEs.

(d) Where appropriate, breaking out the contract work items into economically feasible units to facilitate MWBE participation; even when the prime contractor might otherwise prefer to perform these work items with its own forces.

(e) Provided interested MWBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(f) Not rejecting MWBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

(g) Made efforts to assist interested MWBEs in obtaining bonding, lines of credit, or insurance as required by WSDOT or the prime contractor.

(h) Made efforts to assist interested MWBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(i) Effectively used the services of available community organizations; contractor's groups; local, state, and federal small business assistance offices; and other organizations to provide assistance in recruitment and placement of MWBEs.

(j) Documentation of GFE must include copies of each MWBE and non-MWBE quotes submitted to the prime contractor when a non-MWBE selected over a MWBE for work on the contract.

#### NEW SECTION

**WAC 468-19-060 Other program requirements.** (1) The prime contractor shall submit a monthly inclusion report to WSDOT, documenting

each MWBE on the contract, the MWBE's original and current contract value, invoice to date, and total payments to date.

(2) The prime contractor shall provide an inclusion manager responsible for developing, overseeing, and managing a contract inclusion program and the inclusion plan, which describes and defines the process for attaining the MWBE goals.

(3) The inclusion plan shall be submitted to WSDOT within 30 days of initiating contract work, and be updated annually, thereafter, until project physical completion.

#### NEW SECTION

**WAC 468-19-070 Penalties for noncompliance.** If a person, firm, corporation, or business does not comply with any provision of this chapter or with a contract requirement established under this chapter, WSDOT may impose one or more of the following penalties: Withholding payment, suspension or revocation of the prime contractor's prequalification in accordance with chapter 468-16 WAC, or suspension or termination of the contract.

**WSR 23-17-138**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-09—Filed August 21, 2023, 3:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-057 on October 14, 2020.

Title of Rule and Other Identifying Information: Periodic status review (PSR) of Western gray squirrel, WAC 220-200-100 and 220-610-010.

Hearing Location(s): On September 29-30, 2023, at 8:00 a.m., hybrid, at Yakima Convention Center, 10 North 8th, Yakima, WA 98901. Information on how to register to testify at the public hearing is available at <http://wdfw.wa.gov/about/commission.meetings>, or contact the commission office at 360-902-2267.

Date of Intended Adoption: On or after October 28, 2023.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email [gray-squirrel@PublicInput.com](mailto:gray-squirrel@PublicInput.com), fax 360-902-2162, phone 855-925-2801, project code 6483, public comment URL <https://publicinput.com/gray-squirrel>, SEPA email [graysquirrelsepa@PublicInput.com](mailto:graysquirrelsepa@PublicInput.com), by October 2, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <http://wdfw.wa.gov/accessibility/requests-accommodation>, by October 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule amendment proposal, if adopted, reclassifies the Western gray squirrel from threatened to endangered.

Anticipated effects include communicating a higher level of conservation concern for the species, their conservation needs, and recovery actions with partners and the public. Additionally, there is also an increased penalty for unlawful taking under RCW 77.15.120.

Finally, the Western gray squirrel already has a recovery plan required by WAC 220-610-110.

If the status change is adopted, Western gray squirrel will be removed from the list of threatened species in WAC 220-200-100 "Wildlife classified as protected shall not be hunted or fished" and added to the list of endangered species under WAC 220-610-010.

Reasons Supporting Proposal: Important known threats to the Western gray squirrel populations in Washington are:

- Habitat loss;
- Habitat degradation and fragmentation;
- Small population size and isolation; and
- Disease and highway mortality.

Western Gray Squirrel habitat loss is linked to timber extraction, wildfire, and land conversion. Climate change is both a current and potential future threat to habitat. Examples include stand-replacement fire, changes in resulting stand composition, and effects on food supply such as production of fungi and seeds.

The southern Puget Trough population has increased since 2007s recovery plan. However, it is still very limited in size and constrained by the area and fragmentation of its habitat. In addition, the final PSR describes continued habitat loss of >20 percent in the

other two isolated core population areas on the east slope of the cascades due to timber extraction and wildfire. A primary threat identified in the original listing of the species was habitat loss, which has only increased since listing.

Because of the species' small total population size and the isolation of the three populations, continuing threats of wildfires and timber harvest, and a likely decline in habitat of >20 percent in both the North Cascades and Klickitat regions, it is recommended that the Western gray squirrel be uplisted to endangered in Washington.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
Scott Bird  
Rules Coordinator

## OTS-4886.1

AMENDATORY SECTION (Amending WSR 23-12-051, filed 6/1/23, effective 7/2/23)

**WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.** Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
((western gray squirrel	<i>Sciurus griseus</i> ))
sea otter	<i>Enhydra lutris</i>
green sea turtle	<i>Chelonia mydas</i>



Common Name	Scientific Name
Mazama pocket gopher	<i>Thomomys mazama</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
American white pelican	<i>Pelecanus erythrorhynchos</i>
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order Cetacea, including whales, porpoises, and mammals of the order Pinnipedia not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damag-

ing commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

### OTS-4562.1

AMENDATORY SECTION (Amending WSR 23-06-035, filed 2/23/23, effective 3/26/23)

**WAC 220-610-010 Wildlife classified as endangered species.** Endangered species include:

Common Name	Scientific Name
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
Columbian sharp-tailed grouse	<i>Tympanuchus phasianellus columbianus</i>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>

Common Name	Scientific Name
Pinto abalone	<i>Haliotis kamtschatkana</i>
Greater sage grouse	<i>Centrocercus urophasianus</i>
Ferruginous hawk	<i>Buteo regalis</i>
Cascade red fox	<i>Vulpes vulpes cascadenis</i>
<u>western gray squirrel</u>	<i>Sciurus griseus</i>

**WSR 23-17-144**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed August 22, 2023, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-128.

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

Hearing Location(s): On September 26, 2023, at 10:00 a.m. Join electronically <https://lni-wa-gov.zoom.us/j/89846174265?pwd=ekEvalRRZ2tZU05vbzg5WTZoU3pPZz09>, Meeting ID 898 4617 4265, Passcode Sept2623!; or join by phone 253-215-8782 US (Tacoma), Meeting ID 898 4617 4265, Passcode 425312916. The virtual and telephonic hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Jo Anne Attwood, Department of Labor and Industries (L&I), Insurance Services, Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email [JoAnne.Attwood@lni.wa.gov](mailto:JoAnne.Attwood@lni.wa.gov), fax 360-902-4988, by September 26, 2023, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email [JoAnne.Attwood@lni.wa.gov](mailto:JoAnne.Attwood@lni.wa.gov), by September 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Classification development's goal is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules. Classification development studied some subclassifications for potential reduction in number; and reviewed classification and reporting rules for improvement and clarification.

The purpose of this rule making is not to make substantive changes to how employers are classified and amendments will not increase employer rates.

As part of this rule making, L&I reviewed these chapters for need, clarity, and consistency to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

Also as a part of this rule making, L&I proposes updating the trucking reporting and classification rules based on recommendations from a cross-divisional workgroup. These updates propose clarifying L&I's practice of determining interstate or intrastate trucking based on where the driver drives rather than the location of the load being hauled.

Lastly, L&I proposes changing the word "servant" to "worker" in Classification 6510 Domestic servants/home care assistance employed in or about the private residence of a homeowner, as "worker" is a more respectful term. We've had requests from industry to change this language. We look forward to any opportunity in the future to update RCW 51.12.020 to make the same improvement.

**Proposed amendments include:**

WAC Numbers	WAC Description	What is Changing	Reason for Change
296-17-31004	Coverage requirements	Add reference to licensed plumbing contractors where appropriate.	Alignment with SB 5088 from the 2023 legislative session. Plumbing contractors were previously registered contractors under chapter 18.27 RCW, but they are now licensed plumbing contractors under chapter 18.106 RCW.
296-17-31014	Farming and agriculture	Update reporting rule for the farm internship program based on changes in 2023 legislation.	L&I is updating this rule to implement SSB 5156. 2023's SSB 5156 changed the farm internship program from a pilot to a permanent program. Some of the qualifying requirements that appear in our reporting rule changed in the new law.
296-17-35203 296-17A-1102	Special reporting instruction Trucking	<ul style="list-style-type: none"> <li>• Change terms <i>establishments</i> and <i>firms</i> to <i>businesses</i>.</li> <li>• Change formatting so that each subclass has a full description of its scope.</li> <li>• Update definitions of <i>interstate truck driving</i> and <i>intrastate truck driving</i>.</li> <li>• Add common duties and goods hauled to scopes descriptions.</li> <li>• Clarify that any workers that ride in the truck along with the driver are included in the scope of Classification 1102.</li> <li>• Clarify that Classification 1102 includes driving the truck while the vehicle isn't carrying a load.</li> <li>• Clarify classification exclusions.</li> <li>• Add note that references WAC 296-17-31015 General inclusions.</li> <li>• Remove note that caused confusion about application of Classification 5206 with 1102: <i>All hours for workers who spend any time driving or riding in trucks for businesses subject to this classification must be reported in Classification 1102.</i> <ul style="list-style-type: none"> <li>o A worker who is sometimes a driver can work an entire shift in the yard or shop and have those hours correctly reported in Classification 5206-80.</li> </ul> </li> </ul>	A small workgroup, with representatives from employer services, field audit, and firm appeals, was asked to update this WAC to clarify L&I's practice of determining interstate or intrastate trucking based on where the driver drives rather than the location of the load being hauled. The group also made updates to improve clarity and formatting.
296-17A-2903	Wood boat: Manufacturing, repair, or refinish	Remove "repairing" as an exclusion in 2903-28.	Correcting error from a 2016 reformatting of Classification 2903-28 that had added "or repairing" to the exclusion for manufacture of fiberglass boats. Repair is not included in the manufacture of fiberglass boats classification.
296-17A-5301	Accounting or bookkeeping services	Add "or interpreter" to subclassification 5301-21 Word processing, secretarial, or tutoring.	Documenting L&I's practice of classifying interpreter service businesses in subclassification 5301-21 Word processing, secretarial, or tutoring.
296-17A-6121	Acute care hospitals— Without a fully implemented safe patient handling program (to be assigned only by the hospital underwriter)	Remove direction that this classification can only be assigned by the hospital underwriter.	L&I no longer has a hospital underwriter. This classification may be assigned by any underwriter.
296-17A-6411	Stores	Replace "marijuana" with "cannabis."	Cannabis, rather than marijuana, is the word used by the liquor and cannabis board (LCB). Changing to align with LCB. We will update staff advisements if this rule amendment is adopted.
296-17A-6504	Thrift stores operated by charitable or other nonprofit organizations	Add "Applies to:" to subclass 01.	Correct typographical error. This was overlooked when reformatting last year.
296-17A-6510	Domestic servants/home care assistants employed in or about the private residence of a homeowner	Change the word "servants" to "workers." Domestic workers rather than domestic servants. Reformat rule.	The word "workers" is more respectful than the word "servants." L&I received requests from the industry to change this language. We hope in the future to have the opportunity to update RCW 51.12.020 to make the same improvement. Reformat to comply with current standardized format.

WAC Numbers	WAC Description	What is Changing	Reason for Change
296-17A-0601  296-17A-1303  296-17A-1801  296-17A-3602  296-17A-4305  296-17A-5108	Electrical wiring in buildings; electrical wiring, N.O.C.; permanent flood lighting: Installation  Telecommunication service providers—All other employees, N.O.C.  Lead smelting, sintering, or refining; calcium carbide manufacturing  Electrical, telegraph or radio component, telephone set: Manufacture, assembly, or repair  Garbage works or landfill: Reduction or incineration  Cable or wire rope: Drawing and manufacturing	Reduce the number of subclassifications and reformat rules.	L&I is combining subclassifications as part of our plan to reduce the overall number of subclassifications in the classification plan to ease administrative burden for customers and staff. Some reasons for collapsing: <ul style="list-style-type: none"> <li>• Low number of employers/hours reporting in subclassification (low credibility from actuarial view).</li> <li>• Subclassification does not represent separate risks from overall risk classification.</li> <li>• Low loss data.</li> <li>• No longer need to track these subclassifications separately.</li> </ul> If the current format of these rules is a barrier to clarity, they are also being reformatted to make them easier to understand, apply, and follow.
296-17A-0103	Drilling or blasting: N.O.C.	Reformat to comply with current standardized format. Reformat the rule so that subclassifications are expanded with the appropriate information rather than title only.	Reformatting classifications to reflect standardized format established in 2019 for easier readability. In addition, some of our classifications were formatted so that they were only identified by title rather than having narrative. This has caused some confusion for L&I staff and they have requested we update the classifications so that every subclassification provides all the information, rather than title only.
296-17A-0104 296-17A-0105  296-17A-0106  296-17A-0107  296-17A-0112  296-17A-0210  296-17A-0212  296-17A-0214  296-17A-0217  296-17A-0301  296-17A-0303  296-17A-0504  296-17A-0511  296-17A-0519  296-17A-0602  296-17A-0701	Dredging, N.O.C.  Fence erection or repair: N.O.C.; parking meter installation; and placement of wire mesh on slopes for slope protection  Tree care and pruning services, N.O.C.  Utility line and pipelaying construction, underground, N.O.C.  Commercial production of sand, gravel, clay and stone products  Asphalt paving or surfacing: Highway, street or roadway  Asphalt paving or surfacing, N.O.C.  Concrete paving and repaving: Highways, streets or roadways, N.O.C.  Concrete flatwork—Construction and/or repair: N.O.C.  Lawn type sprinkler systems: Installation, service or repair  Plastering, stuccoing and lathing buildings, N.O.C.  Waterproofing, N.O.C.: Buildings or structures  Glass installation in buildings  Sheet metal work in building construction N.O.C.  Elevators or elevator door bucks: Installation, service and/or repair  New dam construction: All operations in dam site area		

WAC Numbers	WAC Description	What is Changing	Reason for Change
296-17A-1004	Log storage and log sorting yards		
296-17A-1005	Shake and/or shingle mills		
296-17A-1006	Land surveying services, N.O.C.		
296-17A-1103	Coal and solid fuel dealers —Yard operations		
296-17A-1104	Auto or truck wrecking or dismantling		
296-17A-1105	Septic tank pumping		
296-17A-1701	Ore reduction, by wet or dry process without application of heat at mine		
296-17A-1702	Coal mines and mines N.O.C., underground; coke ovens		
296-17A-1703	Open cut mining—All types; placer or hydraulic mining		
296-17A-1704	Quarries, N.O.C.		
296-17A-2203	Laundries—Commercial or industrial: N.O.C.		
296-17A-3101	Ready mix concrete dealers		
296-17A-3405	Precision machined parts and products, N.O.C.: Manufacturing		
296-17A-5209	Boiler or tank construction		
296-17A-6107	Veterinary hospitals or clinics		
296-17A-6206	Golf courses, N.O.C.		
296-17A-6410	Janitorial supply dealers		
296-17A-6502	Banks; credit unions; savings and loan associations		
296-17A-6503	Labor unions or employee representative associations		
296-17A-6512	Home care services/ consumer directed employer program		
296-17A-6601	Detective agencies		
296-17A-6704	Parking lot operations		
296-17A-6706	Athletic teams: Operations and facilities		
296-17A-6907	Household furnishings moving and storage		
296-17A-6908	Lightweight paper products, N.O.C.: Manufacturing		
296-17A-7308	Animal shelters or services, dog pounds and humane societies		
296-17A-7100	Exempt limited liability company members, N.O.C.	Clarify that corporate officers with optional coverage engaged exclusively in outside sales is to be reported in [Classification] 6303.	Correcting an oversight from a previous reformatting that changed meaning and consistency in Classifications 7100 and 7101.
296-17A-7101	Corporate officers, N.O.C.	Clarify that LLC members with optional coverage reporting in classification 6303 meet the standard exception requirements for Classification 6303 in WAC 296-17-31018.	Adding reference to reporting rule to align with same language in Classification 7101.

Reasons Supporting Proposal: L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). The proposed rule will amend some classifications to

increase ease of reporting, and ensure consistent and equitable treatment to businesses.

This rule making will potentially benefit all state fund employers by making it easier to do business with L&I. This rule making will also allow L&I staff to provide more consistent service to our customers.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, 360-902-4777; Implementation: Keith Bingham, Tumwater, Washington, 360-902-4826; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules adjust rates pursuant to legislative standards in RCW 51.16.035. This rule amends the risk classifications under chapter 296-17A WAC. Each risk classification has an assigned rate that is used to calculate an employer's workers' compensation premium.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The rule is fully exempt from a small business economic impact statement under RCW 34.05.310 (4)(f), as the proposed rules adjust rates as required by RCW 51.16.035. This rule amends the risk classifications under chapter 296-17A WAC. Each risk classification has an assigned rate that is used to calculate an employer's workers' compensation premium.

Scope of exemption for rule proposal:

Is fully exempt.

August 22, 2023

Joel Sacks

Director

## OTS-4537.2

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

**WAC 296-17-31004 Coverage requirements. (1) I own a business. Am I required to have workers' compensation insurance coverage for my employees?** Nearly every employer doing business in the state of Washington is required to have workers' compensation insurance for his/her employees. Washington law (RCW 51.12.020) does exempt certain types of employment from coverage. If you employ only individuals who are ex-



cluded from mandatory workers' compensation insurance coverage, you are not required to have workers' compensation insurance coverage.

(2) **I hire contractors to perform work for me. Do I need to be concerned about premiums on their work?** Yes. There are two ways you may be liable for premiums on the work they do.

First, they may be "workers" for whom you are required to report and pay premiums. The law defines worker to include both your employees and independent contractors you hire, when the essence of the contract is personal labor. See RCW 51.08.070, 51.08.180, 51.08.181, and 51.08.195 for more guidance about when independent contractors will be considered workers.

Second, the Industrial Insurance Act imposes premium liability on anyone who contracts with another to have work performed. Even if the contractor you hire is not your worker (for example, if the contractor uses one or more workers on the job), you could be liable for their premiums if they fail to pay.

(3) **Is there any way for me to protect myself from being held liable for premiums owed by construction contractors I hire?** Yes, if you are a registered construction contractor or licensed electrical or plumbing contractor, and you hire a registered construction contractor or a licensed electrical or plumbing contractor to do construction work that requires licensing or registration, you can protect yourself from being found liable for the premiums on the work that contractor does for you if:

(a) They have a principal place of business eligible for IRS deduction;

(b) They keep books and records that reflect all items of income and all expenses of the business; and

(c) You have verified that they have an industrial insurance account in good standing, or are a self-insured employer approved by the department.

(4) **What does "in good standing" mean?** For someone's account to be in good standing, they must:

(a) Be registered with the department of labor and industries for industrial insurance coverage with the state fund;

(b) Have a certificate of coverage, also known as a liability certificate, that has not been revoked or canceled;

(c) Have submitted all reports and supplements required by the department within the past year; and

(d) Be current with all payments due to the state fund, or are current with an approved written payment agreement with the department regarding all unpaid amounts due the state fund.

(5) **How do I know that someone's account is considered to be "in good standing"?** You can find out whether someone's account is in good standing by visiting the department's website or calling your account manager. If the account is in good standing, the website will state "account is current."

(6) **I use the same subcontractors over and over. Do I have to verify that they have an industrial insurance account in good standing every time I use them?** No. In RCW 51.12.070 protection for construction contractors only requires that you have confirmed a subcontractor's account within a year prior to letting a contract. When you check out your subcontractors on the department's website or by calling your account manager, a confirmation number will be provided as proof you checked them out. This confirmation number is valid for one year from the time it is issued.

If you are notified by the department of labor and industries that a subcontractor's account is no longer in good standing, you may be liable for their industrial insurance premiums from the date of notification forward.

(7) **Can I, as a construction contractor, be held liable if I verify that the accounts of construction contractors I hire are in good standing, but they fail to confirm the accounts of the construction subcontractors they hire?** No. If you make sure you and your construction subcontractors meet the requirements of RCW 51.12.070, you cannot be held liable if they fail to make sure their construction subcontractors meet the requirements.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

**WAC 296-17-31014 Farming and agriculture. (1) What is the classification approach for farming?**

We classify farming and agricultural operations by the type of crop or livestock raised. Farmers and ranchers often have several basic classifications assigned to their account covering various types of crops or livestock.

**Note:** If we assign multiple classifications to your farm or agriculture business, take special care in maintaining the records required in the auditing and recordkeeping section of **WAC 296-17-35201 Recordkeeping and retention**. If you fail to keep the required records, we will assign all worker hours for which the records were not maintained to the highest-rated classification applicable to your business or the highest-rated classification a worker was exposed to.

(2) **Who do the farming and agriculture rules apply to?**

If we assign one or more of the following classifications to your business, this rule applies to you: 4802, 4803, 4804, 4805, 4808, 4809, 4810, 4811, 4812, 4813, 7301, 7302, and 7307.

(3) **If I am involved in diversified farming, can I still have one classification assigned to my account to cover all of the farming I am involved in?**

Yes, you can request assignment of a single classification to cover all of your farming operations by contacting your account manager.

(4) **How will the department determine what single farming classification will be assigned to my business?**

The approach used to assign a single classification to a farming business is similar to that used for construction contractors. We prorate based on the information you provide. We need you to estimate the number of hours to be worked by your employees by type of crop or livestock being cared for. We use this information to estimate the premium which would be paid using multiple classifications. The total premium is then divided by the total estimated hours to produce an average rate per hour. We then select the classification assigned to your business which carries the hourly premium rate which is the closest to the average rate determined by your estimated hours. However, classification 4806 is not to be assigned to any grower as the single farming classification. See **WAC 296-17A-4806**.

**Note:** See WAC 296-17-31013(4) for an example how single classifications are determined.

(5) **How will I know what single farming classification you have assigned to my business?**

We will send you a written notice of the basic classification that will apply to your entire operation.

(6) **If I requested a single classification for my farming operation, can I change my mind and use multiple classifications?**

Yes, but let your account manager know you decided against using the single classification and will report the work by type of crop or livestock. This will avoid any potential confusion if you are audited.

(7) **I have workers who do not use or operate any tools or equipment; can I classify these workers separately?**

The special exception classification 4806 is available to farms classified in 4802 or 4803. It is limited to harvesting operations where all of the workers pick or harvest by hand without the use of any:

- Cutting tools, such as knives or clippers;
- Machinery;
- Ladders, climbing equipment, or stools.

(8) **What is a farm labor contractor?**

A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating, and fertilizing. Generally, work involves manual labor tasks as opposed to machine operations.

(9) **I am a farm labor contractor. How is my business classified?**

If you are supplying only laborers to a farm, we will assign the same classification given to the farm for the work performed. However, if you supply both machine operators and the machinery to a farm, the machine operators are assigned to classification 4808-11, Custom farm services by contractor, since machinery work carries the same hazard regardless of the crop.

(10) **Farm internship (~~(pilot project)~~) program. Who may participate in the farm internship (~~(pilot project established by)~~) program in RCW 49.12.470?**

Small qualifying farms (~~(with annual sales of less than \$250,000 per year located in certain qualifying counties as identified by RCW 49.12.470)~~) who meet the requirements in RCW 49.12.470 receive a special certification from the department (~~(may)~~) to have three or less farm interns. (~~(Employers who qualify may report up to three farm interns.)~~) Farm internship (~~(project)~~) program risk classifications are: WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816. The farm internship (~~(project)~~) program is administered by the employment standards division of L&I.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

**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:** If the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the em-

player 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 cover-

age 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~~) 160 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~~) 160.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable. This subsection does not apply to workers working for trucking industry employers when those workers are not included in the scope of classification 1102.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier or with any workers engaged in intrastate truck driving 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.~~) workers:

- With the Washington state fund; or
- Be self-insured with the state of Washington; or
- Provide workers' compensation insurance, that does not exclude

Washington, for their Washington workers 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~~) workers 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))~~ 520 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) "Interstate carrier" means a carrier that hires drivers engaged in interstate trucking.

(vi) "Interstate truck driving" is operating a truck hauling goods either to or from an out-of-state destination.

(vii) "Intrastate carrier" means a carrier that hires drivers engaged in intrastate trucking.

(viii) "Intrastate truck driving" is operating a truck hauling goods between locations within the boundaries of Washington state. Intrastate truck driving includes when the origin or destination of the load is out-of-state but the driver does not continue out-of-state with the load.

For purposes of this section the content of the load or the existence of any actual load is not material, so long as the driver is engaged in work for the employer.

(ix) "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))~~ (x) "Washington" shall be used to limit the scope of the term "~~((employees))~~ worker." When used with the term "~~((employees))~~ worker" 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 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 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)~~) 30 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 non-paid 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)~~) 24-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~~) 520 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~~) 780 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~~) 35 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~~) \$10,000, the contractor primarily responsible for the overall project shall, 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~~) \$10,000 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 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 online at the department's website ([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  
 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:

$$\text{Total owner hours} \div (\text{owner hours} + \text{worker hours}) = \% \text{ of owner discount.}$$

$$\% \text{ of owner discount} \times (\text{total footage of job} - \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

(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))~~ 36 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 that

find errors in their reporting and paying premiums, and 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~~) 24 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;
- Clinics, or physicians' offices where patients are not regularly kept as bed patients for (~~twenty-four~~) 24 hours or more;
- Nursing homes, as defined and which come within the scope of chapter 18.51 RCW;
- Birthing centers, which come within the scope of chapter 18.46 RCW;
- Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW;
- 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~~) 24-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for (~~thirty~~) 30 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~~) 30-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~~) 30 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 [www.lni.wa.gov/OutofState](http://www.lni.wa.gov/OutofState).

(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~~) 30 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) **Horse racing industry rules.** These rules apply to persons licensed by the Washington horse racing commission (WHRC) and governed by WAC 260-36-250.

(a) **Who is responsible for paying industrial insurance premiums?**

(i) The trainer will be responsible to pay the industrial insurance premiums owed. Premiums will be paid to the WHRC monthly, at the end of the coverage month or before the trainer leaves the track taking his/her horses when leaving before the end of the coverage month. WHRC will submit premiums to the department of labor and industries on a quarterly basis. The employee must be properly licensed by the WHRC for the duties being performed. This includes all exercise riders and pony riders who need steward approval of their license application, whether at the track or at the farm.

(ii) Licensed trainers shall be assessed:

(A) One unit of premiums in classification 6625 for each licensed groom or assistant trainer employed at any one time;

(B) One unit of premiums in classification 6626 for licensed exercise riders and pony riders charged per stall for each day the trainer has a horse housed in a stall at a licensed track during a licensed meet; and

(C) One unit of premiums in classification 6627 for licensed exercise riders and pony riders for each calendar day a licensed exercise rider or pony rider works under contract for the trainer at a location other than at a licensed track during a licensed meet.

(b) **What does the trainer do when an employee leaves the job?**

Trainers must notify the WHRC within (~~forty-eight~~) 48 hours when any employee leaves their employ. If a trainer fails to notify the WHRC timely, the trainer will be responsible for the full premium payment until notification is made.

(c) **When are track employees covered under horse racing classifications?**

(i) Track employees are only covered on the grounds of a Washington race track during its licensed race meet and periods of training. The licensed race meet and periods of training apply to that period of time when the WHRC has authority on the grounds, including the period before the live race meet begins, when horses are exercised in preparation for competition, and through the end of the licensed race meet.

(ii) Covered track employees who are licensed exercise riders or pony riders may work off the grounds of a Washington race track, but only after obtaining a farm employee license. The trainer must notify the WHRC when the employee will be working off the grounds, so that the additional per-day farm employee premium can be calculated and assessed to the trainer for each day the track employee works off the grounds.

(iii) Employees working on the grounds of a Washington race track prior to or after this period must be covered as farm employees (classification 6627) to be able to make a claim against the horse racing industry account, or the trainer can cover such employees under another account (classification 7302).

**(d) Who can be covered under the farm employee classification (6627)?**

(i) Licensed exercise riders and pony riders working at the farm must be assigned to a trainer and not the farm. Such employees cannot be assigned to the owner of the farm or training center unless the owner is licensed as a trainer.

(ii) Covered farm employees who are licensed exercise riders or pony riders may come to the Washington race track to assist the trainer during the live race meet and periods of training. As long as a farm employee is covered at the farm, and the trainer notifies the WHRC when the employee will be working at the track, the farm employee may work at the track without additional premium being owed.

**(e) Are employees covered while working in another state?**

(i) Trainers with employees from Washington may continue coverage when they are at another recognized race track in another state if the other jurisdiction has a reciprocal agreement with the state of Washington. The trainer must pay the premiums for grooms and assistant trainers in classification 6625, and for exercise riders and pony riders at the farm in the farm classification, 6627. For a list of states with reciprocal agreements with the state of Washington, see WAC 296-17-31009.

(ii) Trainers will need to continue to report Washington employees to the WHRC prior to the start of each month so an assessment can be made.

(iii) Failure to report, or to report correctly, may result in the trainer being referred to the stewards or the executive secretary of the WHRC for action.

(iv) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

**(f) Must horse owners pay industrial insurance premiums in Washington?** Licensed owners shall be assessed (~~((one hundred fifty dollars))~~) \$150 per year for (~~((one hundred))~~) 100 percent ownership of one or more horses. Partial owners shall be assessed prorated amounts of the (~~((one hundred fifty dollar))~~) \$150 fee. In no event shall a licensed owner be required to pay more than (~~((one hundred fifty dollars))~~) \$150. This fee helps fund workers' compensation coverage for injured workers. It does not extend any coverage to owners.

**OTS-4223.4**

AMENDATORY SECTION (Amending WSR 19-17-069, filed 8/20/19, effective 10/1/19)

**WAC 296-17A-0103 Classification 0103.**

**0103-09 Drilling or blasting: N.O.C.**

**Applies to:**

~~((Businesses engaged in drilling operations for others not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to, well drilling for oil, gas or water; exploratory well drilling; and drilling of holes in rock for shot holes. Such drilling generally contemplates the digging of a hole using a rotating or pounding type tool. Equipment used by drilling contractors includes earth auger drills, jackhammers, drilling rigs, and bits which will vary in size depending upon the terrain or material to be drilled and the depth and size of holes to be drilled. This classification also includes blasting operations not covered by another classification (such as the blasting of rock in connection with highway, street or road construction).))~~

**Exclusions:**

- ~~• Drilling operations performed in connection with concrete or building construction which is to be reported separately in the construction classification applicable for the work being performed;~~
- ~~• Drilling done in connection with all types of underground or surface mining and quarry operations which is to be reported separately in the applicable mining classification;~~
- ~~• Blasting performed as part of building demolition which is to be reported separately in classification 0518;~~
- ~~• All types of pile construction work, which is reported separately in:~~
  - ~~—0202-02, Pile construction: Driven method;~~
  - ~~—0202-06, Pile construction: Drilled method.~~

**0103-10 Geophysical exploration: Seismic detection of the mechanical properties of the earth**

~~Applies to establishments engaged in geophysical exploration, by seismic detection, of the earth's subsurface. Work contemplated by this classification involves a seismograph work crew consisting of a party chief, a permit person, a surveyor, drillers, shooters, observers and a computer analyst. The seismic method utilizes a dynamite blast that simulates a miniature earthquake. The recorder of the vibrations is the sensitive earthquake detector which records the intense vibrations on a rapidly moving tape. The data collected from the tapes and photographic records are interpreted and a contour map of the rocks and their foundation to depths of several thousand feet is developed.~~

~~This classification excludes geophysical exploration without seismic detection which is to be reported separately in classification 1007.)~~

- ~~• Businesses engaged in drilling operations for others not covered by another classification (N.O.C.); and~~
- ~~• Blasting operations not covered by another classification (such as the blasting of rock in connection with highway, street, or road construction).~~

**Types of drilling include, but are not limited to:**

- ~~• Drilling of holes in rock for shot holes;~~
- ~~• Exploratory well drilling; and~~
- ~~• Well drilling for oil, gas, or water.~~

**Work activities include, but are not limited to:**

- Digging holes using equipment.

**Equipment used include, but are not limited to:**

- Auger drills;
- Bits (size will vary depending upon the terrain or material to be drilled and the depth and size of holes to be drilled);
- Drilling rigs; and
- Jackhammers.

**Exclusions:**

- Drilling operations performed in connection with concrete or building construction is classified in the construction classification applicable for the work being performed;
- Drilling done in connection with all types of underground or surface mining and quarry operations is classified in the applicable mining classification;
- Blasting performed as part of building demolition is classified in 0518; and
- Pile construction is classified in:  
0202-02, Pile construction: Driven method; or  
0202-06, Pile construction: Drilled method.

**0103-10 Geophysical exploration: Seismic detection of the mechanical properties of the earth****Applies to:**

Businesses engaged in geophysical exploration, by seismic detection, of the earth's subsurface.

**Work crew occupations include, but are not limited to:**

- Computer analyst;
- Drillers;
- Observers;
- Permit person;
- Shooters;
- Surveyors; and
- Party chief.

**Work activities include, but are not limited to:**

- Using the seismic detection method - dynamite blasts simulate miniature earthquakes. Earthquake detectors record the vibrations.
- Taking photographic records.
- Interpreting the data collected to develop a contour map of the rocks and their foundation, often to depths of several thousand feet.

**Exclusion:**

- Geophysical exploration without seismic detection is classified in 1007.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0104 Classification 0104.****0104-12 Dredging, N.O.C.**

~~((Applies to contractors engaged in providing dredging services to others that are not covered by another classification (N.O.C.).~~

~~Work contemplated by this classification includes cleaning, deepening or widening a body of water such as a harbor or other waterway. Scooping or suction machinery is generally employed in the dredging process to remove sand, clay, mud or other material from the body of water that is being dredged.~~

~~This classification excludes diving operations which are to be reported separately in classification 0202; underground mining operations which are to be reported separately in classification 1702; and dredging for the production of sand, gravel, or shale which is to be reported separately in classification 0112.~~

~~**Special note:** Dredging projects could occur on or adjacent to navigable waters (a harbor, river, canal) which is defined as those which form a continuous highway for interstate or international commerce. Workers who perform the work activities from a vessel could be subject to the Admiralty Law which recognizes such work crews and workers as a master or member of a vessel, and subject to federal law known as the Jones Act. Every person on board a vessel is deemed a seaman if connected with the operation while on navigable water. The term vessel has been interpreted by the courts to include any type of man-made floating object such as a floating derrick or dredge, or type of pontoon which is a flat bottom boat or portable float. Workers who perform the work activities from the shoreline or from adjacent areas such as an existing dock or bridge may or may not be subject to federal law covered under the U.S. Longshore and Harbor Workers Act. Usually, dredging projects involve a variety of types of work crews such as those working from a floating derrick or dredge, a pontoon, a shoreline dredge, workers who are on shore distributing the discharged material, as well as the maintenance and repair of the dredge and equipment. Care should be exercised prior to assignment of this classification as the workers could be subject to either or both of these acts. The criteria used in determining federal law and coverage is based on the most current federal court decisions and case law.)~~

**Applies to:**

Businesses engaged in providing dredging services to others that are not covered by another classification (N.O.C.).

**Work activities include, but are not limited to:**

- Cleaning, deepening, or widening a body of water such as a harbor or other waterway;
- The dredging process removes sand, clay, mud, or other material from the body of water that is being dredged.

**Machinery used, but are not limited to:**

- Scooping dredges;
- Suction dredges.

**Exclusions:**

- Worker hours engaged in diving operations must be reported separately in classification 0202;
- Underground mining operations are classified in 1702; and
- Dredging for the production of sand, gravel, or shale is classified in 0112.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**Special note:** Dredging projects could occur on or adjacent to navigable waters (a harbor, river, canal) which is defined as those which form a continuous highway for interstate or international commerce. Workers who perform the work activities from a vessel could be

subject to the Admiralty Law which recognizes such work crews and workers as a master or member of a vessel, and subject to federal law known as the Jones Act. Every person on board a vessel is deemed a seaman if connected with the operation while on navigable water. The term vessel has been interpreted by the courts to include any type of man-made floating object such as a floating derrick or dredge, or type of pontoon which is a flat bottom boat or portable float. Workers who perform the work activities from the shoreline or from adjacent areas such as an existing dock or bridge may or may not be subject to federal law covered under the U.S. Longshore and Harbor Workers Act. Usually, dredging projects involve a variety of types of work crews such as those working from a floating derrick or dredge, a pontoon, a shoreline dredge, workers who are on shore distributing the discharged material, as well as the maintenance and repair of the dredge and equipment. Care should be exercised prior to assignment of this classification as the workers could be subject to either or both of these acts. The criteria used in determining federal law and coverage is based on the most current federal court decisions and case law.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0105 Classification 0105.**

**0105-13 Fence erection or repair: N.O.C.; parking meter installation; and placement of wire mesh on slopes for slope protection**

~~((Applies to contractors engaged in the erection and repair of all types of metal, wood, plastic, or vinyl fences not covered by another classification (N.O.C.). Work contemplated by this classification includes the use of a tractor with a propelled auger, or a mechanical or manual post hole digger. The poles or posts are set in the ground with small quantities of sand, gravel or concrete. Occasionally, a fence contractor may pour a concrete footing around the perimeter of the fence to be constructed. Work of this nature, when done in connection with a fence construction project, is included within the scope of this classification. This classification also includes the installation or removal of entire parking meter units, and the placement of wire mesh on slopes for slope protection.~~

~~This classification excludes contractors engaged in the erection or repair of brick, masonry or stone fences or planters which are to be reported separately in classification 0302; erection or repair of concrete fences or planters which are to be reported separately in classification 0217; and service or repair of parking meters which is to be reported separately in classification 0606.)~~

**Applies to businesses engaged in:**

- Erection and repair of all types of metal, wood, plastic, or vinyl fences not covered by another classification (N.O.C.);
- Installation or removal of entire parking meter units; and
- Placement of wire mesh on slopes for slope protection.

**Work activities include, but are not limited to:**

- Use of tractor with a propelled auger;
- Use of mechanical or manual post hole digger;
- Setting poles or posts into the ground with sand, gravel, or concrete; and

• Pouring a concrete footing around the perimeter of the fence to be constructed. Work of this nature, when done in connection with a fence construction project, is included within the scope of this classification.

**Exclusions:**

• Erection or repair of brick, masonry or stone fences, or planters are classified in 0302;

• Erection or repair of concrete fences or planters are classified in 0217; and

• Service or repair of parking meters is classified in 0606.

**Special note:** It is common for contractors subject to this classification to sell kennel kits, fence repair parts and fencing materials. Sales of fencing materials by a fence contractor are included in classification 0105. Classifications 2009, 6309 or similar store classifications are not to be assigned to a contracting business.

AMENDATORY SECTION (Amending WSR 14-24-049, filed 11/25/14, effective 1/1/15)

**WAC 296-17A-0106 Classification 0106.**

~~((0106-00 Tree care and pruning services, N.O.C.~~

~~Applies to specialist contractors engaged in providing a variety of tree care services such as tree topping and tree pruning that are not covered by another classification (N.O.C.). Work contemplated by this classification generally takes place in residential areas, parking lots, business parks, shopping malls, or settings adjacent to non-forestry or timberland roadways. A primary purpose of this work is to remove tree or branch hazards from power lines, structures, or buildings. This classification includes, but is not limited to:~~

~~• Incidental ground operations such as picking up branches and limbs;~~

~~• Operating mobile chip machines used in connection with a tree care service;~~

~~• Spraying or fumigating of trees;~~

~~• Debris removal and stump removal when conducted by employees of an employer subject to this classification.~~

~~This classification excludes:~~

~~• Tree care services done in connection with an orchard operation which is to be reported separately in classification 4803 when performed by orchard employees;~~

~~• Tree care services done in connection with a nursery operation which is to be reported separately in classification 4805;~~

~~• Tree care services done in connection with a public or private forest or timberland which is to be reported separately in classification 5004;~~

~~• Tree care services done in connection with a Christmas tree farm operation which is to be reported separately in classification 7307; and~~

~~• Felling trees which is to be reported separately in classification 5001.)~~

**0106-00 Tree care and pruning services, N.O.C.**

**Applies to:**

Specialist contractors engaged in providing a variety of tree care services such as tree topping and tree pruning that are not covered by another classification (N.O.C).

A primary purpose of this work is to remove tree or branch hazards from power lines, structures, or buildings.

**Location of work areas includes, but is not limited to:**

- Business parks;
- Parking lots;
- Residential areas;
- Settings adjacent to nonforestry or timberland roadways;
- Shopping malls.

**Work activities include, but are not limited to:**

- Incidental ground operations such as picking up branches and limbs;
- Operating mobile chip machines used in connection with a tree care service;
- Spraying or fumigating of trees;
- Debris removal and stump removal when conducted by employees of an employer subject to the classification.

**Exclusions:**

- Tree care services done in connection with an orchard operation is classified in 4803, when performed by orchard employees;
- Tree care services done in connection with a nursery operation is classified in 4805;
- Tree care services done in connection with a public or private forest or timberland is classified in 5004;
- Tree care services done in connection with a Christmas tree farm operation is classified in 7307; and
- Worker hours engaged in felling trees are reported separately in classification 5001.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-0107 Classification 0107.**

~~((Utility line and pipelaying construction, underground, N.O.C.~~

~~**Applies to:** Contractors engaged in underground utility line, cable, and pipelaying or pipeline construction.~~

~~**Construction services performed by utility line construction and pipelaying contractors include, but are not limited to:**~~

- ~~• Installation and maintenance of underground communication and power lines, including main, extension and outside service connection lines by utility contractors;~~
- ~~• Installation and maintenance of underground gas, oil or water mains;~~
- ~~• Pipelines such as those extending cross country.~~

~~**Typical activities include, but are not limited to:**~~

- ~~• Digging narrow trenches;~~
- ~~• Laying pipe or conduit;~~
- ~~• Making connections;~~



- ~~Laying line or cable;~~
- ~~Filling or backfilling trenches.~~

~~**Typical machinery includes**, but is not limited to:~~

- ~~Backhoes;~~
- ~~Mechanical or manual trench diggers;~~
- ~~Dump trucks;~~
- ~~Automatic equipment which in one operation opens the trench, lays the line and backfills.~~

~~**Excluded activities in this classification:**~~

- ~~Land or road clearing and excavation (report in 0101);~~
- ~~Overhead television, power, or telephone lines including poles or towers (report in 0509 or the applicable utility company classification);~~
- ~~Asphalt surfacing/resurfacing (report in 0210 or 0212);~~
- ~~Concrete construction (report in applicable concrete construction classification(s));~~
- ~~Construction specialty services including the installation of guardrails, lighting standards and striping (report in 0219);~~
- ~~Installation and hookup of electrical wiring from where the utility company's lines end to the structure's power meter by the contractor wiring a building (report in 0601);~~
- ~~Construction of sewer lines, drainage systems, canals, ditches, or underground tanks (report in 0108);~~
- ~~Installation of cable in buildings (report in 0601).~~

For administrative purposes, classification ~~0107~~ is divided into the following subclassification(s): ~~0107-00~~; and ~~0107-01~~.

~~**0107-00 Utility line construction: Underground, N.O.C.**~~  
~~**0107-01 Pipelaying, N.O.C.)**~~

~~**0107-00 Utility line construction: Underground, N.O.C.**~~

**Applies to:**

Contractors engaged in underground utility line or cable construction.

**Work activities include, but are not limited to:**

- Installation and maintenance of underground communication and power lines, including main, extension and outside service connection lines by utility contractors;
- Laying line or cable;
- Digging, filling or backfilling trenches.

**Machinery includes, but is not limited to:**

- Automatic equipment, which in one operation opens the trench, lays the line and backfills;
- Backhoes;
- Dump trucks;
- Mechanical or manual trench diggers.

**Exclusions:**

- Land or road clearing and excavation are classified in 0101.
- Overhead television, power, or telephone lines including poles or towers are classified in 0509 or the applicable utility business classification.
- Asphalt surfacing/resurfacing is classified in 0210 or 0212.

- Concrete construction is classified in the applicable concrete construction classification(s).
- Construction specialty services including the installation of guardrails, lighting standards and striping are classified in 0219.
- Installation and hookup of electrical wiring from where the utility company's lines end to the structure's power meter by the contractor wiring a building are classified in 0601.
- Construction of sewer lines, drainage systems, canals, ditches, or underground tanks are classified in 0108.
- Installation of cable in buildings is classified in 0601.
- Laying pipe or pipeline construction is classified in 0107-01.

### **0107-01 Pipe laying, N.O.C.**

#### **Applies to:**

Contractors laying pipe or pipeline construction.

#### **Work activities include, but are not limited to:**

- Installation and maintenance of underground pipes or pipelines to include gas, oil, or water main pipelines and other pipelines extending cross country;
- Laying pipes or pipelines;
- Digging, filling, and backfilling of trenches for pipes.

#### **Machinery used includes, but is not limited to:**

- Backhoes;
- Dump trucks;
- Mechanical or manual trench diggers.

#### **Exclusions:**

- Land or road clearing and excavation is classified in 0101.
- Overhead television, power, or telephone lines including poles or towers are classified in 0509 or the applicable utility business classification.
- Asphalt surfacing/resurfacing is classified in 0210 or 0212.
- Concrete construction is classified in the applicable concrete construction classification(s).
- Construction specialty services including the installation of guardrails, lighting standards and striping are classified in 0219.
- Installation and hookup of electrical wiring from where the utility company's lines end to the structure's power meter by the contractor wiring a building is classified in 0601.
- Construction of sewer lines, drainage systems, canals, ditches, or underground tanks are classified in 0108.
- Installation of cable in buildings is classified in 0601.
- Construction of underground utility lines or cable is classified in 0107-00.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

### **WAC 296-17A-0112 Classification 0112.**

#### **0112-00 Commercial production of sand, gravel, clay and stone products**

~~((Applies to establishments engaged in the production of sand, gravel, clay and stone products. Material may be excavated in an open or surface type pit at the production site, or from a mine or quarry operation. Sand, gravel and stone is washed, crushed, sorted, graded~~

and screened. Sand or gravel in its natural state usually requires only screening with the larger stones being removed. The larger stones are crushed and rescreened. Clay is screened and graded. Refined products are stored in bins, hoppers, piles or yards prior to delivery by truck or rail to customers. This classification includes dealers who stockpile or store products in a yard type of environment prior to delivery to the customers when done in connection with the production of such products. Equipment includes, but is not limited to, scrapers, shovels, front end loaders, trucks, conveyors, jaw crushers, gyrators, roll crushers, and shaking tables.

This classification excludes establishments engaged in selling custom soil mixes, bark, decorative rock, sand, or gravel purchased from others which are to be reported separately in classification 1103.

**Special note:** Classifications 0112 and 1103 are not to be assigned to the same business unless all the conditions of the general reporting rule covering the operation of a secondary business have been met.

#### **0112-01 Humus or peat digging**

Applies to establishments engaged in the digging or stripping of humus or peat. Humus is a brown or black organic substance consisting of decayed vegetable matter that provides nutrients for plants and increases the water retention of soil. Peat is a partially carbonized vegetable matter found in bogs and used as fertilizer and fuel. Work contemplated by this classification involves stripping material from the surface or bogs with mechanical equipment such as, but not limited to, power shovels, scrapers, drag lines, clamshell diggers or cranes, and hydraulic dredges. The material is conveyed from the pit or bog to hoppers by trucks or belt conveyors. At times it is necessary to grade, screen and dry the material prior to storage or delivery to customers. This classification includes dealers who stockpile or store material in a yard type of environment prior to delivery to customers when done in connection with the digging or stripping of such products.

**Special note:** Classifications 0112 and 1103 are not to be assigned to the same business unless all of the conditions of the general reporting rule covering the operation of a secondary business have been met.

#### **0112-02 Pit, crusher and bunker operations for road, street and highway construction**

Applies to establishments engaged in pit, crusher and bunker operations in connection with highway, street or roadway construction projects. Generally, this type of operation is located in close proximity to the project site and is only set up for the duration of the project. Work contemplated by this classification includes excavating open or surface pits, scraping or stripping the surface, crushing, and bunker (storage) of material. Products extracted from the pit or surface include boulders, stone, rock, gravel, aggregate, sand, dirt or clay. These products can be used directly without any further refinements or could be washed, sorted, crushed and/or screened. Products are stored in bunkers or piles until needed. These products are used in a variety of ways as part of the roadway project such as, but not limited to, making preliminary roads into an area, filling in low or uneven areas, use as natural barriers, and bringing the roadbed and surrounding areas to grade. Equipment includes, but is not limited to, power shovels, scrapers, bulldozers, front end loaders and other earth

moving equipment, trucks, conveyors, jaw crushers, gyrators, roll crushers, shaking tables, etc.

**Special note:** This classification is not assigned to contractors making the materials for their own road construction project.

**0112-03 Sand, gravel, or shale: Digging, N.O.C.**

Applies to establishments engaged in the digging or dredging of sand, gravel or shale that is not covered by another classification (N.O.C.). The material is excavated from surface pits with mechanical equipment such as power shovels, drag lines, clamshell diggers or cranes, or obtained from nonnavigable waters by means of hydraulic dredges, clamshell dredges, etc. The material is conveyed from the bank, pit or dredge to hoppers by trucks, belt conveyors, narrow gauge railroads or pipelines. It is then washed, graded, screened and stored in bins, hoppers, or piles prior to delivery by truck or rail to customers. Sand or gravel in its natural state usually requires only screening with the larger stones being removed. In some instances, the larger stones may be crushed and rescreened which is included in this classification. This classification includes dealers who stockpile or store material in a yard type of environment prior to delivery to customers when done in connection with the digging or stripping of such products.

This classification excludes underground mining operations which are to be reported separately in classification 1702.

**Special note:** Classifications 0112 and 1103 are not to be assigned to the same account unless all the conditions of the general reporting rule covering the operation of a secondary business have been met.)

**Applies to:**

Businesses engaged in the production of sand, gravel, clay, and stone.

**Work processes and activities include, but are not limited to:**

- Excavating material from an open or surface type pit at the production site, or from a mine or quarry operation;
- Washing, crushing, sorting, grading and screening sand, gravel, and stone. Sand or gravel in its natural state usually requires only screening with the larger stones being removed;
- Crushing larger stones and rescreening;
- Screening and grading clay;
- Storing refined products in bins, hoppers, piles, or yards;
- Delivery to customers, including by truck or rail;
- This classification includes dealers who stockpile or store products in a yard type of environment prior to delivery to the customers when done in connection with the production of such products.

**Equipment includes, but is not limited to:**

- Conveyors;
- Front end loaders;
- Gyrators;
- Jaw crushers;
- Roll crushers;
- Scrapers;
- Shaking tables;
- Shovels;
- Trucks.

**Special note:** Classifications 0112 and 1103 are not assigned to the same business unless all the conditions of the general reporting rule covering the operation of a secondary business have been met.

**Exclusions:**

- Selling custom soil mixes, bark, decorative rock, sand, or gravel when purchased from others is classified in 1103.
- Underground mining operations are classified in 1702.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**0112-01 Humus or peat digging**

**Applies to:**

Businesses engaged in the digging or stripping of humus or peat.

**Work processes and activities include, but are not limited to:**

- Stripping material from the surface or bogs with mechanical equipment;
- Moving material from the pit or bog to hoppers by trucks or belt conveyors;
- Grading, screening, and drying the material when necessary prior to storage or delivery;
- Delivery to customers, including by truck or rail;
- This classification includes dealers who stockpile or store material in a yard type of environment prior to delivery to customers when done in connection with the digging or stripping of such products.

**Equipment includes, but is not limited to:**

- Clamshell diggers or cranes;
- Conveyors;
- Drag lines;
- Hydraulic dredges;
- Power shovels;
- Scrapers;
- Trucks.

**Special note:** Classifications 0112 and 1103 are not assigned to the same business unless all of the conditions of the general reporting rule covering the operation of a secondary business have been met.

**Exclusion:**

- Selling custom soil mixes, bark, decorative rock, sand, or gravel when purchased from others is classified in 1103.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**0112-02 Pit, crusher, and bunker operations for road, street, and highway construction**

**Applies to:**

Businesses engaged in pit, crusher, and bunker operations in connection with highway, street, or roadway construction projects. Generally, this type of operation is located in close proximity to the project site and is only set up for the duration of the project. Products extracted from the pit or surface include boulders, stone, rock, gravel, aggregate, sand, dirt, or clay.

**Work processes and activities include, but are not limited to:**

- Excavating open or surface pits by scraping or stripping the surface;

- Crushing material;
- Washing, sorting, crushing, or screening material when needed;
- Storing materials in bunkers or piles until needed;
- Delivery to customers, including by truck or rail;
- These products are used in a variety of ways as part of the roadway project such as, but not limited to, making preliminary roads into an area, filling in low or uneven areas, using as natural barriers, and bringing the roadbed and surrounding areas to grade.

**Equipment used includes, but is not limited to:**

- Bulldozers;
- Conveyors;
- Front end loaders and other earth moving equipment;
- Gyrators;
- Jaw crushers;
- Power shovels;
- Roll crushers;
- Scrapers;
- Shaking tables;
- Trucks.

**Special note:** This classification is not assigned to contractors making the materials for their own road construction project.

**0112-03 Sand, gravel, or shale: Digging, N.O.C.**

**Applies to:**

Businesses engaged in the digging or dredging of sand, gravel, or shale that is not covered by another classification (N.O.C.).

**Work processes and activities include, but are not limited to:**

- Excavating material from surface pits or obtaining material from nonnavigable waters with mechanical equipment;
- Moving material from the bank, pit, or dredge to hoppers by trucks, belt conveyors, narrow gauge railroads, or pipelines;
- Washing, grading, and screening material. Sand or gravel in its natural state usually requires only screening with the larger stones being removed;
- Crushing larger stones and rescreening;
- Storing material bins, hoppers, or piles;
- Delivery to customers, including by truck or rail;
- This classification includes dealers who stockpile or store material in a yard type of environment prior to delivery to customers when done in connection with the digging or stripping of such products.

**Equipment used includes, but is not limited to:**

- Clamshell diggers;
- Clamshell dredges;
- Cranes;
- Drag lines;
- Hydraulic dredges;
- Power shovels;
- Trucks.

**Special note:** Classifications 0112 and 1103 are not assigned to the same account unless all the conditions of the general reporting rule covering the operation of a secondary business have been met.

**Exclusions:**

- Selling custom soil mixes, bark, decorative rock, sand, or gravel when purchased from others is classified in 1103;
- Underground mining operations are classified in 1702.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0210 Classification 0210.**

**0210-00 Asphalt paving or surfacing: Highway, street or roadway**

~~((Applies to contractors engaged in forms of asphalt paving or surfacing, resurfacing, scraping, sawing, cutting or patching operations performed on or in connection with new or existing highway, street, or roadway projects including approaches and bridges. The process begins after the roadbed or roadside grade has already been established and the subsurface or sub base has been prepared. Work contemplated by this classification is limited to laying crushed stone, placement of expansion joints, application of oil or other adhesive bonding materials, and the surface spreading and rolling of crushed aggregate. Equipment used by a contractor subject to this classification includes, but is not limited to, scrapers, graders, rollers, paving machinery, oil trucks and dump trucks.~~

~~This classification excludes preliminary roadbed or roadside construction such as clearing of right of ways, establishing grades, sub-surfaces or sub bases which is to be reported separately in classification 0101; asphalt surfacing/resurfacing not in connection with highway, street or roadway projects which is to be reported separately in classification 0212; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; and concrete construction which is to be reported separately in the classification applicable to the work being performed.))~~

**Applies to:**

Contractors engaged in forms of asphalt paving or surfacing, resurfacing, scraping, sawing, cutting, or patching operations performed on or in connection with new or existing highway, street, or roadway projects including approaches and bridges.

The process begins after the roadbed or roadside grade has already been established and the subsurface or sub base has been prepared.

**Work activities are limited to:**

- Laying crushed stone;
- Placement of expansion joints;
- Application of oil or other adhesive bonding materials; and
- Surface spreading and rolling of crushed aggregate.

**Equipment used include, but are not limited to:**

- Dump trucks;
- Graders;
- Oil trucks;
- Paving machinery;
- Rollers;
- Scrapers.

**Exclusions:**

- Preliminary roadbed or roadside construction such as clearing of right of ways, establishing grades, subsurfaces or sub bases is classified in 0101;
- Asphalt surfacing/resurfacing not in connection with highway, street or roadway projects is classified in 0212;
- Construction specialty services such as the installation of guardrails, lighting standards, and striping is classified in 0219;
- Concrete construction is classified in the 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-0212 Classification 0212.****0212-00 Asphalt paving or surfacing, N.O.C.**

~~((Applies to contractors engaged in asphalt paving or surfacing not in connection with highway, street, or roadway projects not covered by another classification (N.O.C.). This classification covers all forms of asphalt paving or surfacing, resurfacing, scraping, sawing, cutting or patching operations not in connection with highway, street, or roadway projects such as, but not limited to, parking lots, airport runways and landing strips, driveways, walking paths, bicycle trails, tennis courts, playgrounds, and golf cart paths. The process begins after the land grade has already been established and the subsurface or sub base has been prepared. Work contemplated by this classification includes the laying of crushed stone, placement of expansion joints, application of oil or other adhesive bonding materials, and the surface spreading and rolling of crushed aggregate. Equipment used by a contractor subject to this classification includes, but is not limited to, scrapers, graders, rollers, paving machinery, oil trucks and dump trucks. This classification also applies to the application of various types of cushion surfaces for playgrounds.~~

~~This classification excludes the preliminary clearing of land, establishing grades, subsurfaces or sub bases which are to be reported separately in classification 0101; asphalt surfacing/resurfacing in connection with highway, street, or roadway projects which is to be reported separately in classification 0210; application of asphalt sealant to roadways and parking lots which is to be reported separately in classification 0219; application of asphalt sealant to driveways which is to be reported separately in classification 0504-06; construction specialty services such as the installation of guardrails, lighting standards and striping which are to be reported separately in classification 0219; and concrete construction which is to be reported separately in the classification applicable to the work being performed.))~~

**Applies to:**

- Asphalt paving or surfacing, resurfacing, scraping, sawing, cutting, or patching operations not in connection with highway, street, or roadway projects and not covered by another classification (N.O.C.). The process begins after the land grade has already been established and the subsurface or sub base has been prepared.



• The application of pour-in-place types of cushion surfaces for playgrounds.

**Projects include, but are not limited to:**

- Airport runways;
- Bicycle trails;
- Driveways;
- Golf cart paths;
- Landing strips;
- Parking lots;
- Playgrounds;
- Tennis courts;
- Walking paths.

**Work activities include, but are not limited to:**

- Laying of crushed stone;
- Placement of expansion joints;
- Application of oil or other adhesive bonding materials;
- Surface spreading and rolling of crushed aggregate.

**Equipment used include, but are not limited to:**

- Dump trucks;
- Grader;
- Oil trucks;
- Paving machinery;
- Rollers;
- Scrapers.

**Exclusions:**

- Preliminary clearing of land, establishing grades, subsurfaces or sub bases is classified in 0101;
- Asphalt surfacing/resurfacing in connection with highway, street, or roadway projects is classified in 0210;
- Application of asphalt sealant to roadways and parking lots is classified in 0219;
- Application of asphalt sealant to driveways is classified in 0504-06;
- Construction specialty services such as the installation of guardrails, lighting standards and striping are classified in 0219;
- Concrete construction is classified in the classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 16-14-085, filed 7/5/16, effective 1/1/17)

**WAC 296-17A-0214 Classification 0214.** ((Concrete paving, repaving, and other concrete work associated with or connected to roadways (highways, streets, and other roads used for vehicles). This includes concrete work for:

- Highway approaches to roadways;
- Paving public or commercial parking lots (single-level and non-enclosed);
- Paving bridges;
- Curbs, gutters, and sidewalks along roadways;
- Median (divider) walls between roadways;
- Retaining walls along roadways.

The concrete paving and repaving reported in classification ~~0214~~ starts after the road's right of way has been cleared and excavated and its sub base is level and compressed.

Paving includes, but is not limited to, the following operations:

- ~~• Laying of crushed stone and grading or rolling the fill to level and compress;~~
- ~~• Placement of reinforcing steel or expansion joints;~~
- ~~• Set-up and tear down of forms;~~
- ~~• Pouring the concrete;~~
- ~~• Rolling and other finish work.~~

Operations reported in classification ~~0214~~ can also include work on existing surfaces; for example, scraping, sawing, drilling, or cutting concrete for:

- ~~• Repaving;~~
- ~~• Placing manholes, drainage grates, poles and posts;~~
- ~~• Repairing damaged concrete;~~
- ~~• Exposing underground pipes and utilities.~~

This classification does not include operations such as:

- ~~• Clearing right of ways, establishing grades, and preparing the sub base which are to be reported separately in classification **0101**;~~
- ~~• Constructing covered or multilevel, public, or commercial parking garages, which are reported separately in classification **0518**;~~
- ~~• Asphalt paving, surfacing/resurfacing which is to be reported separately in the classification applicable to the work being performed;~~

~~• Concrete flatwork not in connection with highway, street, or roadway projects which is to be reported separately in classification **0217**;~~

~~• Construction specialty services such as the installation of guardrails, lighting standards and striping which are to be reported separately in classification 0219.~~

Classification 0214 is a construction industry classification (see WAC 296-17-31013).

For administrative purposes, classification **0214** is divided into the following subclassification(s):

**0214-00 Concrete paving and repaving: Highways, streets or roadways, N.O.C.**

**0214-01 Concrete curbs, gutters, and sidewalks: Construction and repair in connection with highways, streets or roadways.**

**0214-02 Concrete median walls and retaining walls: Construction and repair in connection with highways, streets or roadways.**

**0214-03 Concrete sawing, drilling, and cutting: In connection with highways, streets or roadways.))**

**0214-00 Concrete paving and repaving: Highways, streets, or roadways, N.O.C.**

**Applies to:**

Businesses engaged in concrete paving and repaving of highways, streets, or roadways including approaches and bridges.

Paving and repaving begins after the road's right of way has been cleared and excavated and its subbase is level and compressed.

**Work includes, but is not limited to:**

- Laying of crushed stone and grading or rolling the fill to level and compress;
- Placement of reinforcing steel or expansion joints;
- Set-up and tear down of forms;

- Pouring the concrete;
- Rolling and other finish work;
- Placing manholes, drainage grates, poles, and posts;
- Repairing damaged concrete;
- Exposing underground pipes and utilities;
- Constructing curbs, gutters, sidewalks, median walls, and retaining walls when performed as part of the project;
- Cutting, drilling, sawing, or scraping concrete.

**Equipment includes, but is not limited to:**

- Dump trucks;
- Graders;
- Paving machinery;
- Rollers;
- Scrapers;
- Water trucks.

**Exclusions:**

- Worker hours clearing right of ways, establishing grades, and preparing the subbases are reported separately in classification 0101.
- Worker hours doing asphalt paving, surfacing/resurfacing are reported separately in the classification applicable to the work being performed.
- Worker hours doing concrete flatwork not in connection with highway, street, or roadway projects are reported separately in classification 0217.
- Worker hours doing installation of guardrails, lighting standards, and striping are reported separately in classification 0219.
- Worker hours constructing covered or multilevel, public or commercial parking garages are reported separately in classification 0518.

**0214-01 Concrete curbs, gutters, and sidewalks: Construction and repair in connection with highways, streets, or roadways**

**Applies to:**

Businesses engaged in the construction or repair of concrete curbs, gutters, and sidewalks in connection with highways, streets, or roadways including approaches and bridges.

Construction or repair of concrete curbs, gutters, and sidewalks begins after the roadbed or roadside grade has already been established and the subsurface or subbase has been prepared.

**Work includes, but is not limited to:**

- Constructing concrete curbs, gutters, or sidewalks;
- Placing reinforcing steel or expansion joints;
- Pouring and finishing of concrete;
- Setting up and tearing down of forms;
- Repaving;
- Placing manholes, drainage grates, poles, and posts;
- Repairing damaged concrete;
- Exposing underground pipes and utilities;
- Cutting, drilling, sawing, or scraping concrete.

**Exclusions:**

- Worker hours clearing right of ways, establishing grades, and preparing the subbases are reported separately in classification 0101.
- Worker hours doing asphalt paving, surfacing/resurfacing are reported separately in the classification applicable to the work being performed.

• Worker hours doing concrete flatwork not in connection with highway, street, or roadway projects are reported separately in classification 0217.

• Worker hours doing installation of guardrails, lighting standards, and striping are reported separately in classification 0219.

• Worker hours constructing covered or multilevel, public or commercial parking garages are reported separately in classification 0518.

**0214-02 Concrete median walls and retaining walls: Construction and repair in connection with highways, streets, or roadways**

**Applies to:**

Businesses engaged in the construction or repair of concrete median (divider) walls and retaining walls in connection with highway, street, or roadway projects including approaches and overpasses.

Construction or repair of concrete median (divider) walls and retaining walls begins after the roadbed or roadside grade has already been established and the subsurface or subbase has been prepared.

**Work includes, but is not limited to:**

- Placing reinforcing steel or expansion joints;
- Pouring and finishing of concrete to form median or divider walls, median strips, or retaining walls alongside the roadway;
- Setting up and tearing down of forms;
- Repaving;
- Placing manholes, drainage grates, poles, and posts;
- Repairing damaged concrete;
- Exposing underground pipes and utilities;
- Cutting, drilling, sawing, or scraping concrete.

**Exclusions:**

• Worker hours clearing right of ways, establishing grades, and preparing the subbases are reported separately in classification 0101.

• Worker hours doing asphalt paving, surfacing/resurfacing are reported separately in the classification applicable to the work being performed.

• Worker hours doing concrete flatwork not in connection with highway, street, or roadway projects are reported separately in classification 0217.

• Worker hours doing installation of guardrails, lighting standards, and striping are reported separately in classification 0219.

• Worker hours constructing covered or multilevel, public or commercial parking garages are reported separately in classification 0518.

**0214-03 Concrete sawing, drilling, and cutting: In connection with highways, streets, or roadways**

**Applies to:**

Businesses engaged in concrete sawing, drilling, and cutting in connection with concrete highway, street, or roadway projects including concrete curbs, gutters, sidewalks, median walls, and retaining walls.

Concrete sawing, drilling, and cutting occur on new or existing roadway and related projects.

**Work includes, but is not limited to:**

- Cutting, drilling, sawing, and scraping concrete;
- Exposing underground utility lines and systems;

- Placing manholes, drainage gates, poles, and posts;
- Repairing damaged concrete.

**Exclusions:**

- Worker hours clearing right of ways, establishing grades, and preparing the subbases are reported separately in classification 0101.
- Worker hours doing asphalt paving, surfacing/resurfacing are reported separately in the classification applicable to the work being performed.
- Worker hours doing concrete flatwork not in connection with highway, street, or roadway projects are reported separately in classification 0217.
- Worker hours doing installation of guardrails, lighting standards, and striping are reported separately in classification 0219.
- Worker hours constructing covered or multilevel, public or commercial parking garages are reported separately in classification 0518.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

**WAC 296-17A-0217 Classification 0217.** ((Applies to:

~~Contractors engaged in the construction and/or repair of:~~

- ~~Concrete flatwork not covered by another classification (N.O.C.);~~

~~Concrete foundations and flatwork for wood structural buildings;~~

~~Concrete sawing, drilling and cutting not covered by another classification (N.O.C.).~~

~~Work contemplated by this classification includes, but is not limited to:~~

- ~~Set-up and tear down of forms;~~
- ~~Placement of reinforcing steel and wire mesh;~~
- ~~Pouring and finishing of concrete;~~
- ~~Concrete sawing, drilling and cutting operations in connection with wood frame and nonwood frame buildings and structures. Projects could include, but are not limited to:~~
  - ~~Walkways, pathways, patios, fences and curbing;~~
  - ~~Concrete footings, stem walls, floor pads, cellar or basement floors, garage floors;~~
  - ~~Swimming pools and ponds;~~
  - ~~Sawing, cutting and drilling for ventilation boxes in the footings or stem walls;~~
  - ~~Cutting out for windows or doorways;~~
  - ~~Preparing to mount brackets for stairways or interior bearing walls;~~
  - ~~Cutting interior walls as part of a building renovation project;~~
  - ~~Cutting out for electrical and switch boxes;~~
  - ~~Repairing defective areas.~~

~~Excluded phases of work:~~

- ~~Worker hours engaged in land clearing or excavation work for a land clearing or excavation contract, which are classified in **0101**;~~
- ~~Worker hours engaged in concrete work contained within a building or structure made of concrete, masonry, iron or steel frame, such~~

~~as the foundation, floor slab, 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 are classified in 0518;~~

~~• Worker hours engaged in paver stone installation projects such as, but not limited to: Driveways, walkways, patios and pool decks, which are classified in 0301;~~

~~• Worker hours engaged in concrete work performed on or in connection with projects on highways, streets, or roadways, including sidewalks, curbs, gutters, median or retaining walls, or sawing, drilling or cutting operations as part of the roadway which are classified in 0214;~~

~~• Worker hours engaged in bridge construction which are classified in 0201;~~

~~• Worker hours engaged in new dam construction which are classified in 0701;~~

~~• Worker hours engaged in concrete landscape curbing which are classified in 0301.~~

~~For administrative purposes, classification 0217 is divided into the following subclassifications:~~

~~0217-00 Concrete flatwork – Construction and/or repair: N.O.C.~~

~~0217-01 Concrete foundation and flatwork construction and repair: Wood structural buildings~~

~~0217-02 Concrete sawing, drilling and cutting, N.O.C.))~~

**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.).

**Projects may include, but are not limited to:**

- Curbing;
- Fences;
- Pathways;
- Patios;
- Walkways.

**Work activities include, but are not limited to:**

- Placement of reinforcing steel and wire mesh;
- Pouring and finishing of concrete;
- Set-up and tear down of forms.

**Machinery and equipment include, but are not limited to:**

- Floats (for smoothing concrete);
- Laser levels;
- Mixers;
- Protective gear;
- Shovels;
- Vapor barriers;
- Wheel barrows.

**Exclusions:**

• Land clearing or excavation work for a land clearing or excavation contract is classified in 0101;

• Concrete work contained within a building or structure made of concrete, masonry, iron or steel frame, such as the foundation, floor slab, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the building or structure itself, is classified in 0518;

- Paver stone installation projects such as, but not limited to, driveways, walkways, patios and pool decks are classified in 0301;
- Concrete work performed on or in connection with projects on highways, streets, or roadways, including sidewalks, curbs, gutters, median or retaining walls, or sawing, drilling or cutting operations as part of the roadway is classified in 0214;
- Bridge construction is classified in 0201;
- New dam construction is classified in 0701;
- Concrete landscape curbing when done as part of a landscape project is classified in 0301;
- Concrete foundation and flatwork construction or repair in connection with wood frame construction are classified in 0217-01;
- Concrete sawing, drilling, or cutting is classified in 0217-02.

**0217-01 Concrete foundation and flatwork construction and repair: Wood structural buildings**

**Applies to:**

Contractors engaged in construction or repair of concrete foundation and flatwork in connection with a wood frame structure.

**Projects may include, but are not limited to:**

- Concrete footings, stem walls, floor pads, cellar floors, or garage floors;
- Swimming pools and ponds.

**Work activities include, but are not limited to:**

- Placement of reinforcing steel and wire mesh;
- Pouring and finishing of concrete;
- Set-up and tear down of forms.

**Machinery and equipment include, but are not limited to:**

- Floats (for smoothing concrete);
- Laser levels;
- Mixer;
- Protective gear;
- Shovels;
- Vapor barriers;
- Wheel barrows.

**Exclusions:**

- Land clearing or excavation work for a land clearing or excavation contract is classified in 0101;
- Concrete work contained within a building or structure made of concrete, masonry, iron or steel frame, such as the foundation, floor slab, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the building or structure itself, is classified in 0518;
- Paver stone installation projects such as, but not limited to, driveways, walkways, patios and pool decks are classified in 0301;
- Concrete work performed on or in connection with projects on highways, streets, or roadways, including sidewalks, curbs, gutters, median or retaining walls, or sawing, drilling or cutting operations as part of the roadway is classified in 0214;
- Bridge construction is classified in 0201;
- New dam construction is classified in 0701;
- Concrete landscape curbing when done as part of a landscape project is classified in 0301;
- Concrete flatwork not covered by another classification is classified in 0217-00;

- Concrete sawing, cutting, or drilling is classified in 0217-02.

**0217-02 Concrete sawing, drilling and cutting, N.O.C.**

**Applies to:**

Contractors engaged in concrete sawing, drilling, or cutting not otherwise classified (N.O.C.).

**Projects may include, but are not limited to:**

- Sawing, cutting, drilling in connection with wood frame and nonwood frame buildings and structures;
- Sawing, cutting and drilling for ventilation boxes in the footings or stem walls;
- Cutting out for windows or doorways;
- Preparing to mount brackets for stairways or interior bearing walls;
- Cutting interior walls as part of a building renovation project;
- Cutting out for electrical and switch boxes;
- Repairing defective areas.

**Machinery and equipment include, but are not limited to:**

- Cutters and edgers;
- Power drills and hammers;
- Saws;
- Specialty tools;
- Water pumps.

**Exclusions:**

- Land clearing or excavation work for a land clearing or excavation contract is classified in 0101;
- Concrete work contained within a building or structure made of concrete, masonry, iron or steel frame, such as the foundation, floor slab, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the building or structure itself, is classified in 0518;
- Paver stone installation projects such as, but not limited to, driveways, walkways, patios and pool decks are classified in 0301;
- Concrete work performed on or in connection with projects on highways, streets, or roadways, including sidewalks, curbs, gutters, median or retaining walls, or sawing, drilling or cutting operations as part of the roadway is classified in 0214;
- Bridge construction is classified in 0201;
- New dam construction is classified in 0701;
- Concrete landscape curbing when done as part of a landscape project is classified in 0301;
- Concrete flatwork not covered by another classification is classified in 0217-00;
- Concrete foundation and flatwork construction or repair in connection with wood frame construction are classified in 0217-01.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

**WAC 296-17A-0301 Classification 0301.** (~~Applies to:~~

~~Contractors engaged in the installation, service and repair of:~~

- ~~• Lawn type sprinkler systems;~~



- ~~• Agriculture sprinkler and irrigation systems, including above or below ground;~~
- ~~• New landscape construction or renovation projects;~~
- ~~• Invisible fence installation, which is used to confine animals within a given area;~~
- ~~• Paver stone installation projects such as, but not limited to: Driveways, walkways, patios and pool decks. Common types of pavers used include brick, concrete and stone.~~
- ~~Common methods of paver installation include:~~
  - ~~– **Interlocking concrete pavers**, which are primarily sand set, but in some cases mortar set;~~
  - ~~– **Permeable interlocking concrete pavers**, which are installed to help reduce stormwater runoff;~~
  - ~~– **Pedestal set pavers**, when used for roof top decks and plaza areas to increase living space, or to meet certain environmental requirements (not acting as a roofing system).~~
- ~~Work contemplated by this classification includes, but is not limited to:~~
  - ~~• Producing preliminary drawings of a landscape or renovation project;~~
  - ~~• Identifying area of land to be covered, to determine size and amount of pipe and sprinkler heads needed for irrigation/sprinkler system install;~~
  - ~~• Preparing the ground (may include tilling and spreading of top soils);~~
    - ~~• Trenching;~~
    - ~~• Burying wire in trench (invisible fencing);~~
    - ~~• Connecting low voltage transmitter box for invisible fencing;~~
    - ~~• Installing/repairing sprinkler systems;~~
    - ~~• Planting trees, plants or shrubs;~~
    - ~~• Planting or replacing grass from seed or sod;~~
    - ~~• Installing ground cover material or plastic to retard weeds;~~
    - ~~• Placing concrete borders;~~
    - ~~• Installing concrete, brick or stone pavers to create walkways, pathways, pool decks, or patios.~~
  - ~~Typical machinery includes, but is not limited to:~~
    - ~~• Electric power tools;~~
    - ~~• Fertilizer spreaders;~~
    - ~~• Hand tools/rakes;~~
    - ~~• Mowers;~~
    - ~~• Small front end loaders;~~
    - ~~• Tractors with till attachments;~~
    - ~~• Trenchers;~~
    - ~~• Wheelbarrows;~~
    - ~~• Vibrating plow or pipe pulling machine.~~
  - ~~**This classification includes:**~~
    - ~~• Incidental construction of rockery, extruded concrete curbing, fences, ponds, walls, arbors, trellises and gazebos when performed by employee of a landscape contractor as part of a landscape contract.~~
      - ~~– If these activities are conducted separately from a landscape contract and not part of a landscape project, they must be reported separately in the classification applicable to the work being performed.~~
    - ~~• Incidental construction of walls and rockery performed by employees of a paver stone installation contractor as part of a paver installation contract.~~

~~If these activities are conducted separately from a paver stone installation contract and not part of a paver stone project, they must be reported separately in the classification applicable to the work being performed.~~

**Note:** ~~Incidental work is a minor part of an overall project or contract.~~

**Example:** ~~A paver installation company creates the driveway, walkways, and patio at a residential home. The company finds that the lawn will slide onto the driveway unless a three foot tall retaining wall the length of the driveway is created. The creation of the retaining wall to protect the driveway is incidental to the paver installation project and may be reported in 0301.~~

**Excluded phases of work:**

- ~~• Worker hours engaged in open canal type irrigation systems, which are classified in 0108.~~
- ~~• Worker hours engaged in maintenance and cleaning of lawn sprinkler system pipes and heads done in connection with a landscape maintenance contract which are classified in 0308.~~
- ~~• Worker hours engaged in grading, clearing, or contouring of land which are classified in 0101.~~
- ~~• Worker hours engaged in bulkheads not adjacent to water, or similar structures built of rock, which are classified in 0302.~~
- ~~• Worker hours engaged in installation or on-site maintenance of roofing materials composed of impermeable barriers, sod, soil, and plants, sometimes termed landscape roofing, living roofing, or vegetative roofing, which are classified in 0507.~~
- ~~• Worker hours engaged in paver installation on a roof by a roofing contractor, when acting as part of the roofing system, which are classified in 0507.~~
- ~~• Worker hours engaged in installation or maintenance of a landscape roofing irrigation system, which are classified in 0507.~~
- ~~• Worker hours engaged in lawn care maintenance or chemical spraying or fumigating which are classified in 0308.~~

**Note:** ~~For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.~~

~~For administrative purposes, classification 0301 is divided into the following subclassifications:~~

~~0301-04 Lawn type sprinkler systems: Installation, service or repair~~

~~0301-06 Agricultural sprinkler/irrigation systems, N.O.C.: Installation, service or repair~~

~~0301-08 Landscape construction operations, N.O.C.)~~

**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.

Lawn sprinkler systems are installed at private residences or commercial businesses.

**Work includes, but is not limited to:**

- Identifying area of land to be covered, to determine size and amount of pipe and sprinkler heads needed for sprinkler system install;
- Installing heads, and timers;
- Laying/joining/repairing pipe;
- Planting or replacing grass from seed or sod;
- Trenching.

**Tools include, but are not limited to:**

- Electric power tools;
- Fertilizer spreaders;
- Hand tools/rakes;
- Mowers;
- Trenchers;
- Wheelbarrows;
- Vibrating plow or pipe pulling machine.

**Exclusions:**

- Worker hours engaged in construction of open canal type irrigation systems are reported separately in classification 0108.
- Installation, service, or repair of above or below ground agricultural/irrigation systems are classified in 0301-06.
- Worker hours engaged in installation or maintenance of a landscape roofing irrigation system, are reported separately in classification 0507.
- Maintenance and cleaning of lawn sprinkler system pipes and heads done in connection with a landscape maintenance contract are classified in 0308.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**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.).

These differ from lawn sprinkler systems as the size of pipes and pumps installed are larger to produce the water pressure to irrigate large areas of land.

**Sprinkler irrigation systems include, but are not limited to:**

- Above or below ground;
- Center pivot or linear move;
- Fixed or movable;
- Wheel or impulse.

**Tools include, but are not limited to:**

- Electric power tools;
- Fertilizer spreaders;
- Hand tools/rakes;
- Mowers;
- Small front end loaders;
- Tractors with till attachments;
- Trenchers;
- Wheelbarrows;
- Vibrating plow or pipe pulling machine.

**Exclusions:**

- Worker hours engaged in construction of open canal type irrigation systems are reported separately in classification 0108.
- Installation, service, or repair of lawn type sprinkler systems is classified in 0301-04.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**0301-08 Landscape construction operations, N.O.C.**

**Applies to:**

- Contractors engaged in new landscape construction or renovation projects not covered by another classification (N.O.C.).
- Contractors engaged in the installation of invisible fences, which are usually used to confine animals within a given area.
- Contractors engaged in the installation, service, and repair of paver stone installation projects such as, but is not limited to, driveways, walkways, patios, and pool decks.

**Work includes, but is not limited to:**

- Producing preliminary drawings of a landscape, renovation, or invisible fence project;
- Preparing the ground (may include tilling and spreading of top soils);
  - Trenching;
  - Burying wire in trench (invisible fencing);
  - Connecting low voltage transmitter box for invisible fencing;
  - Planting trees, plants, or shrubs;
  - Planting or replacing grass from seed or sod;
  - Installing ground cover material or plastic to retard weeds;
  - Placing concrete borders;
- Incidental construction of rockery, extruded concrete curbing, fences, ponds, walls, arbors, trellises and gazebos when performed by employee of a landscape contractor as part of a landscape contract. If these activities are conducted separately from a landscape contract and not part of the landscape project, they are reported separately in the classification applicable to the work being performed;
- Installing concrete, brick, or stone pavers to create walkways, pathways, pool decks, or patios;
- Incidental construction of walls and rockery performed by employees of a paver stone installation contractor as part of a paver installation contract. If these activities are conducted separately from a paver stone installation contract and not part of a paver stone project, they are reported separately in the classification applicable to the work being performed.

**Note:** Incidental work is a minor part of an overall project or contract.

**Example:** A paver installation company creates the driveway, walkways, and patio at a residential home. The company finds that the lawn will slide onto the driveway unless a three foot tall retaining wall the length of the driveway is created. The creation of the retaining wall to protect the driveway is incidental to the paver installation project and may be reported in 0301.

**Common types of paver installation include:**

- Interlocking concrete pavers, which are primarily sand set, but in some cases mortar set;
- Permeable interlocking concrete pavers, which are installed to help reduce storm water runoff;
- Pedestal set pavers, when used for roof top decks and plaza areas to increase living space, or to meet certain environmental requirements (not acting as a roofing system).

**Tools include, but are not limited to:**

- Electric power tools;
- Fertilizer spreaders;
- Hand tools/rakes;
- Mowers;

- Small front end loaders;
- Tractors with till attachments;
- Trenchers;
- Wheelbarrows.

**Exclusions:**

- Worker hours engaged in grading, clearing, or contouring of land are reported separately in classification 0101.
- Worker hours engaged in construction of open canal type irrigation systems are reported separately in classification 0108.
- Worker hours engaged in installation of bulkheads not adjacent to water, or similar structures built of rock, are reported separately in classification 0302.
- Worker hours engaged in installation or on-site maintenance of roofing materials composed of impermeable barriers, sod, soil, and plants, sometimes termed landscape roofing, living roofing, garden roofing, green/environmentally beneficial roofing, brown/biodiverse roofing, or vegetative roofing, are reported separately in classification 0507.
- Worker hours engaged in paver installation on a roof by a roofing contractor, when acting as part of the roofing system, are reported separately in classification 0507.
- Worker hours engaged in installation or maintenance of a landscape roofing irrigation system are reported separately in classification 0507.
- Worker hours engaged in lawn care maintenance or chemical spraying or fumigating are reported separately in classification 0308.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0303 Classification 0303.****0303-00 Plastering, stuccoing and lathing buildings, N.O.C.**

~~((Applies to contractors engaged in interior and exterior plastering, stuccoing and lathing work on buildings or structures not covered by another classification (N.O.C.). Work contemplated by this classification includes the lathing work which involves nailing thin wood or metal strips and wire mesh or Styrofoam panels to studs or joists to support the application of plaster or stucco, mixing of plaster or cement with water, and applying the mixture by hand trowel or low pressure spray apparatus to the lathing material.~~

~~This classification excludes masonry or brick work which is to be reported separately in classification 0302; interior painting which is to be reported separately in classification 0521; exterior painting which is to be reported separately in classification 0504; and concrete work which is to be reported separately in the classification applicable to the work being performed.)~~

**Applies to:**

Contractors engaged in interior and exterior plastering, stuccoing, and lathing work on buildings or structures not covered by another classification (N.O.C.).

**Work activities include, but are not limited to:**

- Lathing work which involves nailing thin wood or metal strips and wire mesh or Styrofoam panels to studs or joists to support the application of plaster or stucco;
- Mixing of plaster or cement with water; and
- Applying the mixture by hand trowel or low pressure spray apparatus to the lathing material.

**Exclusions:**

- Masonry or brick work is classified in 0302;
- Interior painting is classified in 0521;
- Exterior painting is classified in 0504; and
- Concrete work is classified in the classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

**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 of waterproofing or sealant material to surfaces or cracks and voids to eliminate leaks in all types of buildings or structures, regardless of height. 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 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 subaqueous work which 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:** ~~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 to remove dirt, moss, rust or old paint. Pressure washing involves a forced spray of air and water to remove unwanted surface materials. 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.~~

~~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 (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 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.~~

~~**Special note:** See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).)~~

**Applies to:**

Businesses engaged in waterproofing buildings or structures not covered by another classification (N.O.C.) regardless of the height of the building or structure.

**Structures waterproofed may include, but are not limited to:**

- Decks;
- Driveways;
- Fences;
- Floors;
- Foundations and foundation walls;
- Walkways;
- Walls.

**Surfaces waterproofed may include, but are not limited to:**

- Asphalt;
- Concrete;
- Metal;
- Plaster;
- Steel;
- Stone;
- Wood.

**Waterproof processes 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 material to fill cracks;
- Epoxy injection, which uses a caulk gun to inject a silicon material into cracks and is performed on the interior or exterior of the building or structure;
- Application with use of a brush, roller, or spray directly onto the surface of the material.

**Exclusions:**

• Excavation work performed in conjunction with a waterproofing contract is classified in 0101;

**Special note:** 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.

• Waterproofing operations performed in connection with roofing or subaqueous work are classified in the classification applicable to the work being performed;

• Worker hours engaged in the application of asphalt sealant or waterproof materials to roadways and parking lots are reported separately in classification 0219;

• Filling cracks or voids with like materials is classified 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 is classified in the classification applicable to the work being performed.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**0504-18 Pressure washing services or sandblasting, N.O.C.: Buildings or structures****Applies to:**

Businesses engaged in pressure washing or sandblasting buildings or structures, not covered by another classification (N.O.C.).

**Work activities include, but are not limited to:**

- Pressure washing, which involves a forced spray of air and water;
- Sandblasting, or abrasive blasting, which involves a forced spray of sand, steel, or glass;
- On multistory buildings: Cleaning roofs, gutters, and downspouts; and removal of moss or snow;
- Other incidental cleaning or washing.

**Materials removed include, but are not limited to:**

- Dirt;
- Moss;
- Old paint;
- Rust.

**Exclusions:**

- Worker hours engaged in multimedia blasting in a shop are 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 is classified in 0504-21;
- Pressure washing as a part of interior building painting contracts is classified in 0521;
- Worker hours engaged in cleaning or washing roofs of single story buildings or removing moss or snow from, single story buildings (when the cleaning or washing is not part of a painting or roofing contract) are reported separately in classification 6602;
- Waterproofing buildings or structures, N.O.C. is classified in 0504-06;
- 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., is classified in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**0504-20 Lead abatement****Applies to:**

Businesses engaged in lead abatement performed on structures where there are significant amounts of lead-based paint and lead dust.

**Work activities include, but are not limited to:**

- Must comply with various governmental regulations;
- Preliminary testing of the site to determine the presence of lead and the extent of the contamination;
- Determine which abatement procedure is right for the project;
- Perform abatement procedure;
- All preparation and all cleanup work.

**Abatement procedures may include:**

- 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;
- Chemical removal, abrasive removal, or hand scraping, which are methods to physically remove the lead paint.

**Exclusions:**

- Worker hours engaged in soil remediation work are reported separately in classification 0101;
- Worker hours engaged in asbestos abatement are reported separately in classification 0512;
- Lead abatement as part of a painting contract for interior/exterior of buildings or structures, or the interior/exterior of tanks is classified in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**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:**

Businesses engaged in painting the exterior of all types of buildings or structures not covered by another classification (N.O.C.), regardless of height, including cleaning, coating, or painting the interior/exterior of oil or gas storage tanks, beer vats, or sewage treatment tanks.

**Buildings and structures include, but are not limited to:**

- Bridges;
- Churches;
- Factories;
- Residential or commercial buildings;
- Single or multiple story buildings;
- Smokestacks;
- Stadiums;
- Stores;
- Towers;
- Warehouses.

**Work activities include, but are not limited to:**

- Applying paint by brush, roller, or spray to a variety of surfaces such as wood, concrete, steel, metal, plaster, stone, or other types of exterior surfaces;
- All preparation work;
- Set up of scaffolding or power lifts;
- Pressure washing;
- Removal of old paint or asbestos;
- Sandblasting;
- Taping or masking;
- Cleanup work.

**Exclusions:**

- Contractors engaged in waterproofing buildings or structures, N.O.C. are classified in 0504-06;

- Pressure washing services or sandblasting of buildings or structures are classified in 0504-18;
- Interior painting of buildings is classified in 0521;
- Painting of murals or other artwork on the interior of buildings is classified in 4109;
- Painting of murals or other artwork on the exterior of buildings is classified in 0403.

**Note:** See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov). For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0511 Classification 0511.**

**0511-00 Glass installation in buildings**

(Applies to contractors and glass merchants engaged in the installation and/or removal of glass in buildings and residences. This type of work is generally performed by a "glazier" who installs, removes, and/or boards up broken or damaged window or door glass. This classification includes a variety of glass, plastic and similar materials in buildings and residences, including exterior glass curtain walls on multistory buildings, skylights, mirrors, storm windows, window sashes and window/door glass. This classification also includes glass tinting or the application of tinted plastic film to glass windows and doors in buildings or residences.

This classification excludes glass merchants which are to be reported separately in classification 1108; the installation of auto glass which is to be reported separately in classification 1108 when performed at or away from the glass merchant's shop; glass frosting, etching or beveling which is to be reported separately in classification 1108; tinting or the application of tinted plastic film to auto glass by an auto detailer which is to be reported separately in classification 3406; glass manufacturing which is to be reported separately in classification 3503; and the installation of windows, window frames and skylights when performed as part of a framing contract on a wood frame building by the framing workers which is to be reported separately in classification 0510.

**Special note:** Care should be exercised when determining if the business is a glass installation contractor or a glass merchant. A glass merchant in classifications 1108 and 0511, does not qualify for classification 5206 "Permanent yard or shop." However, if the business is engaged exclusively as a glass installation contractor, and not as a glass merchant, the contractor's business may qualify for classification 5206 for the storage of materials.)

**Applies to:**

- Contractors and glass merchants engaged in the installation and/or removal of glass in buildings and residences.
- Businesses engaged in glass tinting or the application of tinted plastic film to glass windows and doors in buildings or residences.

This type of work is generally performed by a "glazier" who installs, removes, and/or boards up broken or damaged glass from windows or doors.

**Materials used include, but are not limited to:**

- Variety of glass;
- Plastic and similar materials.

**Glass or tinting projects include, but are not limited to:**

- Exterior glass curtain walls on multistory buildings;
- Mirrors;
- Skylights;
- Storm windows;
- Window/door glass;
- Window sashes.

**Exclusions:**

- Glass merchants are classified in 1108;
- Installation of auto glass is classified in 1108 when performed at or away from the glass merchant's shop;
- Glass frosting, etching, or beveling is classified in 1108;
- Tinting or the application of tinted plastic film to auto glass by an auto detailer is classified in 3406;
- Glass manufacturing is classified in 3503; and
- Installation of windows, window frames, and skylights when performed as part of a framing contract on a wood frame building by the framing workers is classified in 0510.

**Special note:** Care should be exercised when determining if the business is a glass installation contractor or a glass merchant. A glass merchant in classifications 1108 and 0511, does not qualify for classification 5206 "Permanent yard or shop." However, if the business is engaged exclusively as a glass installation contractor, and not as a glass merchant, the contractor's business may qualify for classification 5206 for the storage of materials. For rules on assigning exception classifications, see WAC 296-17-31018.

AMENDATORY SECTION (Amending WSR 21-22-090, filed 11/2/21, effective 1/1/22)

**WAC 296-17A-0519 Classification 0519.****0519-00 Sheet metal work in building construction N.O.C.**

((Applies to contractors engaged in the installation or repair of sheet metal work in building construction, not covered by another classification (N.O.C.). Work contemplated by this classification applies to interior and exterior sheet metal work for residential or commercial buildings; this includes sheet metal work on wood frame, pole buildings, and nonwood frame buildings. This classification includes the installation of metal siding, gutters and downspouts, non-structural sheet metal patio covers/carports, metal industrial shelving, stainless steel counter tops, and interior wall panels (such as the back splash behind stoves or sinks). Contractors who operate a sheet metal fabrication shop or prefabricate the gutters, downspouts and posts in a shop away from the construction site are to be assigned classification 3404 for the shop operations. 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 work as part of heating ventilation and air conditioning systems installation which is to be reported separately in classification 0307; the installation of aluminum or sheet metal as part of roof work which is to be reported separately in classification 0507; the installation of light weight sheet metal tool sheds which is to be reported separately in classification 0516; and the installation of commercial metal carports and service station canopies which is to be reported separately in classification 0518.)~~)

**Applies to:**

• Contractors engaged in the installation or repair of sheet metal work in building construction, not covered by another classification (N.O.C.)

**Projects include, but are not limited to:**

• Interior and exterior sheet metal work for residential or commercial buildings; including sheet metal work on wood frame, pole, and nonwood frame buildings.

**Work activities include, but are not limited to:**

• Installation of metal siding, gutters, and downspouts;  
• Interior wall panels (such as the back splash behind stoves and sinks);  
• Metal industrial shelving;  
• Nonstructural sheet metal patio covers/carports; and  
• Stainless steel counter tops.

**Exclusions:**

• Sheet metal work as part of heating and ventilation and air conditioning systems installation is classified in 0307;  
• Installation of aluminum or sheet metal as part of roof work is classified in 0507;  
• Installation of light weight sheet metal tool sheds is classified in 0516; and  
• Installation of commercial metal carports and service station canopies is classified in 0518.

**Note:** Contractors who operate a sheet metal fabrication shop or prefabricate gutters, downspouts, and posts in a shop away from the construction site are assigned classification 3404 for the shop operations. 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.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

**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 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.)~~

**Applies to businesses engaged in:**

- Electrical wiring of buildings;
- Electrical wiring not covered by another classification

(N.O.C.);

- Permanent flood lighting.

**Work activities include, but are not limited to:**

- General electrical work, including installation, service or repair at residential and commercial settings;
- 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 extension to the inside or outside of the building or its exterior setting;
- 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;
- 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.

**Machinery and equipment used include, but are not limited to:**

- Cable pullers;
- Circuit finders;
- Drill guns;
- Measuring tools;
- Pliers;
- Saws;
- Screw drivers;
- T strippers;
- Trucks.

**Exclusions:**

- Installation of overhead or underground power lines and poles by an electric utility company is classified in 1301;
- Installation of overhead power lines by a nonelectric utility contractor is classified in 0509;
- Installation of underground power lines by a nonelectric utility contractor is classified in 0107.

**0601-07 Electrical machinery and auxiliary apparatus: Installation and repair; temporary floodlights or searchlights: Erection**

**Applies to businesses engaged in:**



Installation and repair of electrical machinery and auxiliary apparatus. Generally, this type of work occurs at industrial or commercial plants, power plants, or sites where large machinery is installed. 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 installed, and incidental wiring of the machinery or auxiliary apparatus.

• Erection or set up of temporary floodlights away from the business premises. 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.

**Machinery and apparatus set up, installed, or repaired include, but are not limited to:**

- Compressors;
- Converters;
- Generators;
- Heavy motors;
- Power switchboard equipment;
- Temporary floodlights or searchlights;
- Transformers.

**Machinery and equipment used includes, but is not limited to:**

- Generators;
- Personal protective equipment;
- Trailers;
- Trucks.

**Work activities include, but are not limited to:**

- Installation or repair of electrical machinery and auxiliary apparatus;
- Set up of temporary floodlights or searchlights - Temporary floodlights or searchlights are mounted on a truck or trailer, and transported to the customer site or location where they operate with use of a generator;
- Extending insulator or encased wiring or cable from the power meter, breaker or control panel to the physical location where the machinery is installed;
- Incidental wiring of the machinery or auxiliary apparatus.

**Exclusions:**

- Businesses engaged in the erection of permanent floodlight fixtures to poles, buildings or structures is classified in 0601-00.

**0601-15 Television cable: Installation service or repair in buildings by contractor**

**Applies to businesses engaged in:**

Installation, service or repair of television cable in buildings.

**Work activities include, but are not limited to:**

- Installation of television cable lines in residential and commercial buildings;
- 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;

• Affixing the cable end for hook-up to televisions and other stereo components.

**Machinery and equipment includes, but is not limited to:**

- Cable pullers;
- Drill guns;
- Measuring tools;
- Pliers;
- Saws;
- Screw drivers;
- T strippers;
- Trucks.

**Exclusions:**

- Installation of underground or overhead television cable lines when performed by a television cable company is classified in 1305;
- Installation of underground television cable lines when performed by a nontelevision cable company contractor is classified in 0107;
- Installation of overhead television cable lines from pole to pole by a nontelevision cable company contractor is classified in 0509.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0602 Classification 0602.**

**0602-03 Elevators or elevator door bucks: Installation, service and/or repair**

~~((Applies to contractors engaged in the installation, service and/or repair of freight or passenger elevators and elevator door bucks in private residences and commercial buildings or structures. Generally, the process begins after the elevator shaft has been erected, to include, but not be limited to, the installation of elevator units, doors, door bucks, cables and hoisting systems, motors, and electrical apparatus and wiring in connection with operation of the elevator.~~

~~This classification excludes the installation or repair of escalators and industrial machinery which is to be reported separately in classification 0603, and the erection of temporary construction elevators as part of a construction project which is to be reported separately in the classification applicable to the phase of construction being supported.))~~

**Applies to:**

Installation, service and/or repair of freight or passenger elevators and elevator door bucks in private residences and commercial buildings or structures. Generally, the process begins after the elevator shaft has been erected.

**Equipment being installed include, but are not limited to:**

- Cables;
- Doors;
- Door bucks;
- Electrical apparatus and wiring in connection with operation of the elevator;

- Elevator units;
- Hoisting systems;
- Motors.

**Exclusions:**

- Installation or repair of escalators and industrial machinery is classified in 0603;
- Erection of temporary construction elevators as part of a construction project is classified in the applicable phase of construction being supported.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0701 Classification 0701.****0701-00 New dam construction: All operations in dam site area**

~~((Applies to contractors engaged in the construction of new dams only, and includes all operations in the dam site area. A dam is a barrier built across a waterway to control the flow or level of water. Work contemplated by this classification includes the construction of the foundation and substructure such as, but not limited to, earth and rock excavation; boring or tunneling; pile driving or shaft sinking; caisson work; erection of cofferdams; placement of reinforcing steel and rebar; setting and stripping of forms, false work (temporary forms and support structures), concrete distributing apparatus; erection of scaffolds; pouring and finishing concrete; and the placement of gates, turbines, control towers and electrical wiring apparatus. This classification also includes the incidental construction of fish ladders as part of the new dam construction project.~~

~~This classification excludes all other construction, service, or repair work done as part of an existing dam which is to be reported separately in the classification applicable to the phase of construction work being performed. For example, the inspection of the foundation by divers is to be reported separately in classification 0202; the patching of cracks in the dam is to be reported separately in classification 0518.)~~

**Applies to:**

Contractors engaged in the construction of new dams only, and includes all operations in the dam site area. A dam is a barrier built across a waterway to control the flow or level of water.

**This classification includes all operations to construct a new dam in the dam site area. Constructing the foundation and structure includes, but is not limited to:**

- Boring or tunneling;
- Caisson work;
- Earth and rock excavation;
- Erection of cofferdams;
- Erection of scaffolds;
- False work (temporary forms and support structures);
- Operation of concrete distribution apparatuses;
- Pile driving or shaft sinking;
- Placement of gates, turbines, control towers, and electrical wiring apparatus;
- Placement of reinforcing steel and rebar;

- Pouring and finishing concrete; and
- Setting and stripping of forms.

This classification also includes the incidental construction of fish ladders as part of the new dam construction project.

**Exclusions:**

- All other construction, service, or repair work done as part of an existing dam is classified in the classification applicable to the phase of construction work being performed.
- For example, the inspection of the foundation of an existing dam by divers is classified in 0202; the patching of cracks in the dam is classified in 0518.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1004 Classification 1004.**

**1004-00 Log storage and log sorting yards**

~~((Applies to establishments engaged in the operation of log storage or sorting yards. The logs may be owned by the yard, for later sale, or stored for others. Operations contemplated by this classification include, but are not limited to, loading/unloading log trucks, grading logs by type or size, stacking logs, recordkeeping, security and routine maintenance of grounds and equipment.~~

~~This classification excludes all trucking outside of the yard which is to be reported separately in classification 1102; log storage or sorting yards operated by a logging company at a side or a remote location, which are considered an inclusion and are to be reported separately in classifications 5001 or 5005 as applicable; and log storage yards operated in conjunction with a pole yard, log drying, or wood products manufacturing business which are to be reported separately in the classification applicable to the business.))~~

**Applies to:**

Businesses that operate log storage or sorting yards. The logs may be owned by the yard or stored for others.

**Work activities include, but are not limited to:**

- Grading logs by type or size;
- Loading/unloading log trucks;
- Recordkeeping;
- Routine maintenance of grounds and equipment;
- Security;
- Stacking logs.

**Exclusions:**

- Worker hours engaged in trucking outside of the yard must be reported separately in 1102;
- Log storage or sorting yards operated by a logging company at a side or a remote location, are considered an inclusion and are classified in 5001 or 5005;
- Log storage yards operated in conjunction with a pole yard, log drying, or wood products manufacturing company are classified in the classification applicable to the business.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

**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 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, sorting, bundling, and stacking 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 fork-lifts.~~

~~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 296-17A-1002.)~~

**Applies to:**

Businesses engaged in the operation and maintenance of a shake and/or shingle mill.

**Products manufactured include, but are not limited to:**

- Shakes - Roofing or siding material having at least one surface with a natural grain textured split surface;
- Shingles - Roofing or siding material having sawn faces and backs and of a standard thickness at the butt end and tapered finish at the other end; and
- Ridge caps - Produced from two pieces nailed together to form a "v" shape placed on the center line of a roof.

**Work activities include, but are not limited to:**

- Receiving raw logs which are cut and split into shakes, shingles, and ridge caps;
- Temporarily storing raw logs in the yard;
- 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, sorting, bundling, and stacking finished shakes, shingles and/or ridge caps.

**Machinery and equipment used include, but are not limited to:**

- Conveyors;
- Cut-off saws;
- Forklifts;
- Head saws;
- Log loaders;
- Log slips;
- Overhead splitters;
- Pallet presses;
- Shake saws;
- Shingle saws;
- Taper saws.

**Exclusions:**

- Businesses engaged exclusively in the manufacturing of ridge caps or shims are classified in 2903;
- All operations conducted in the woods, such as logging or the cutting and splitting of shake or shingle bolts are classified in the applicable logging classification; and
- Automated shake and shingle mills are classified in 1002, provided the entire process to produce shakes and shingles is automated at the mill site, and meets the requirement defined in WAC 296-17A-1002.

AMENDATORY SECTION (Amending WSR 13-10-080, filed 5/1/13, effective 7/1/13)

**WAC 296-17A-1006 Classification 1006.**

~~((1006-00 Land surveying services, N.O.C.~~

~~**Applies to** establishments engaged in providing professional land surveying services not covered by another classification (N.O.C.).~~

~~**Work in this rate classification includes,** but is not limited to:~~

- ~~Measuring the size and physical characteristics of earth surfaces to determine precise location and measurements of points, elevations, lines, areas, contours and boundaries; and~~
- ~~Performing marine, mine, forestry, geological and photogrammetric surveys which utilize sophisticated instruments and techniques, including aerial photography.~~

~~Field data collected by surveyors may be used to produce maps, architectural and civil engineering plans and drawings. Maps and drawings may be produced by drafters who plot out the field data by hand or by using computer-aided drafting programs.~~

~~**What activities are not included in this classification?**~~

- ~~Draftsmen whose duties are limited to office work; if all conditions of the general reporting rules governing standard exception employees have been met, they may be reported separately in classification 4904; and~~
- ~~Surveyors employed by construction companies or other types of businesses who are to be reported separately in the applicable classification for those businesses.)~~

**1006-00 Land surveying services, N.O.C.****Applies to:**

Businesses engaged in providing professional land surveying services not covered by another classification (N.O.C).

**Work activities include, but are not limited to:**

• Measuring the size and physical characteristics of earth surfaces to determine precise location and measurements of points, elevations, lines, areas, contours, and boundaries;

• Performing marine, mine, forestry, geological and photogrammetric surveys which utilize sophisticated instruments and techniques, including aerial photography;

• Field data collected by surveyors may be used to produce maps, architectural and civil engineering plans and drawings. Maps and drawings may be produced by drafters who plot out the field data by hand or by using computer-aided drafting programs.

**Exclusions:**

• Draftspersons whose duties are limited to office work, if all conditions of the general reporting rules governing standard exception employees have been met, may be reported separately in classification 4904;

• Surveyors employed by construction companies or other types of businesses are reported in the applicable classification for those businesses;

• Environmental and ecological surveyor services are classified in 1007.

AMENDATORY SECTION (Amending WSR 17-11-120, filed 5/23/17, effective 7/1/17)

~~**WAC 296-17A-1102 Classification 1102.** ((Classification **1102** applies to establishments engaged in interstate or intrastate trucking, or a combination of interstate and intrastate trucking.~~

~~• **Interstate** trucking is the hauling of goods that either originate out of state or have an out-of-state destination.~~

~~• **Intrastate** trucking is the hauling of goods within the boundaries of Washington state. The goods must have both an origin and destination in Washington state.~~

~~Duties include:~~

- ~~• Driving~~
- ~~• Loading and unloading vehicles~~
- ~~• Mechanical repair.~~

~~Equipment may include, but is not limited to:~~

- ~~• Forklifts~~
- ~~• Hand trucks~~
- ~~• Pallet jacks~~
- ~~• Tractor and trailers.~~

~~**Special notes:**~~

~~• Businesses in this classification may have terminals or storage depots where goods are stored awaiting transfer. Workers who exclusively work at these facilities may be reported in classification **2002**. All hours for workers who spend any time driving or riding in trucks for businesses subject to this classification must be reported in classification **1102**. Hours cannot be split between **1102** and **2002**.~~

**Note:** The term "lumper" is sometimes applied to laborers who unload cargo.

- ~~Driver hours are capped at 520 hours per driver per quarter. See the special trucking industry rules, WAC 296-17-35203(3).~~
- ~~The special exception rules for permanent yard and shop operations apply to trucking firms assigned classification 1102. See subclassification 5206-80 and WAC 296-17-31018.~~
- ~~See RCW 51.08.180 and 21.12.095 concerning owner operators of trucking.~~

~~**Excluded operations:** Classification 1102 excludes:~~

- ~~Firms hauling their own goods. Hauling goods owned by the firm is a general inclusion, which is classified according to the nature of the firm's business.~~

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

For administrative purposes, classification **1102** is divided into the following subclassification(s):

~~**1102-02 Interstate trucking**~~

~~**1102-03 Intrastate trucking**~~

~~**1102-04 Combined interstate/intrastate trucking**)~~

### **1102-02 Interstate trucking**

#### **Applies to:**

Businesses that hire drivers and riders engaged in interstate trucking. **Interstate** truck driving is operating a truck hauling goods either to or from an out-of-state destination.

This classification includes passengers providing labor including lumpers and other similar workers who ride in the truck. "Lumpers" means laborers who load or unload cargo.

#### **Duties include, but are not limited to:**

- Deadhead trips, driving without a load or without a trailer attached;
- Escort or pilot car driving;
- Loading and unloading vehicles;
- Mechanical repair.

#### **Types of goods hauled include, but are not limited to:**

- Bulk freight, merchandise, or commodities;
- Gravel or aggregate;
- Logs;
- Mobile homes or factory-built housing units;
- Soils or compost;
- Vehicles.

#### **Equipment may include, but is not limited to:**

- Forklifts;
- Hand trucks;
- Pallet jacks;
- Tractor and trailers.

#### **Exclusions:**

- Delivery of factory-built housing units by factory-built housing dealers is classified in 3415.
- Delivery and set up of factory-built housing units by contractor is classified in 0517.
- Businesses that provide escort or pilot car services for others as described in subclassification 1404-11 are classified in 1404-11.



• Automobile delivery or repossessing, where a driver, not a motorized transportations service, does the delivery, is classified in 1101-04.

• Businesses that sell and also deliver soils or compost are classified in 1103.

• Hauling logs from a logging side to a mill or storage yard is classified in 5003.

**Notes:**

- Classification 1102 is assigned as a nature of business or if a basic classification specifically excludes trucking. See WAC 296-17-31015 General inclusions.
- Businesses in this classification may have terminals or storage depots where goods are stored awaiting transfer. Workers who exclusively work at these facilities may be reported in classification 2002. An individual's hours cannot be split between 1102 and 2002.
- Driver hours are capped at 520 hours per driver per quarter. See the special trucking industry rules, WAC 296-17-35203(3).
- The special exception rules for permanent yard and shop operations apply to trucking businesses assigned classification 1102. See subclassification 5206-80 and WAC 296-17-31018.
- See RCW 51.08.180 and 51.12.095 concerning owner operators of trucks.
- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**1102-03 Intrastate trucking****Applies to:**

Businesses that hire drivers and riders engaged in intrastate trucking. Intrastate truck driving is operating a vehicle hauling goods within the boundaries of Washington state. This includes when the origin or destination of the load is out-of-state but the driver does not continue out-of-state with the load.

This classification includes passengers providing labor including lumpers and other similar workers who ride in the truck. "Lumpers" means laborers who load or unload cargo.

**Duties include, but are not limited to:**

- Deadhead trips, driving without a load or without a trailer attached;
- Escort or pilot car driving;
- Loading and unloading vehicles;
- Mechanical repair.

**Types of goods hauled include, but are not limited to:**

- Bulk freight, merchandise, or commodities;
- Gravel or aggregate;
- Logs;
- Mobile homes or factory-built housing units;
- Soils or compost;
- Vehicles.

**Equipment may include, but is not limited to:**

- Forklifts;
- Hand trucks;
- Pallet jacks;
- Tractor and trailers.

**Exclusions:**

• Delivery of factory-built housing units by factory-built housing dealers is classified in 3415.

• Delivery and set up of factory-built housing units by contractor is classified in 0517.

• Businesses that provide escort or pilot car services for others as described in subclassification 1404-11 are classified in 1404-11.

• Automobile delivery or repossessing, where a driver, not a motorized transportations service, does the delivery, is classified in 1101-04.

• Businesses that sell and also deliver soils or compost are classified in 1103.

• Hauling logs from a logging side to a mill or storage yard is classified in 5003.

**Notes:**

- Classification 1102 is assigned as a nature of business or if a basic classification specifically excludes trucking. See WAC 296-17-31015 General inclusions.
- Businesses in this classification may have terminals or storage depots where goods are stored awaiting transfer. Workers who exclusively work at these facilities may be reported in classification 2002. An individual's hours cannot be split between 1102 and 2002.
- Driver hours are capped at 520 hours per driver per quarter. See the special trucking industry rules, WAC 296-17-35203(3).
- The special exception rules for permanent yard and shop operations apply to trucking businesses assigned classification 1102. See subclassification 5206-80 and WAC 296-17-31018.
- See RCW 51.08.180 and 51.12.095 concerning owner operators of trucks.
- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**1102-04 Combined interstate/intrastate trucking****Applies to:**

Businesses that employ drivers and riders engaged in both interstate and intrastate trucking.

Interstate truck driving is operating a truck hauling goods either to or from an out-of-state destination.

Intrastate truck driving is operating a vehicle hauling goods within the boundaries of Washington state. This includes when the origin or destination of the load is out-of-state but the driver does not continue out-of-state with the load.

This classification includes passengers providing labor including lumpers and other similar workers who ride in the truck. "Lumpers" means laborers who load or unload cargo.

**Duties include, but are not limited to:**

- Deadhead trips, driving without a load or without a trailer attached;
- Escort or pilot car driving;
- Loading and unloading vehicles;
- Mechanical repair.

**Types of goods hauled include, but are not limited to:**

- Bulk freight, merchandise, or commodities;
- Gravel or aggregate;
- Logs;
- Mobile homes or factory-built housing units;
- Soils or compost;
- Vehicles.

**Equipment may include, but is not limited to:**

- Forklifts;
- Hand trucks;
- Pallet jacks;
- Tractor and trailers.

**Exclusions:**

- Delivery of factory-built housing units by factory-built housing dealers is classified in 3415.
- Delivery and set up of factory-built housing units by contractor is classified in 0517.
- Businesses that provide escort or pilot car services for others as described in subclassification 1404-11 are classified in 1404-11.
- Automobile delivery or repossessing, where a driver, not a motorized transportations service, does the delivery, is classified in 1101-04.
- Businesses that sell and also deliver soils or compost are classified in 1103.
- Hauling logs from a logging side to a mill or storage yard is classified in 5003.

- Notes:**
- Classification 1102 is assigned as a nature of business or if a basic classification specifically excludes trucking. See WAC 296-17-31015 General inclusions.
  - Businesses in this classification may have terminals or storage depots where goods are stored awaiting transfer. Workers who exclusively work at these facilities may be reported in classification 2002. An individual's hours cannot be split between 1102 and 2002.
  - Driver hours are capped at 520 hours per driver per quarter. See the special trucking industry rules, WAC 296-17-35203(3).
  - The special exception rules for permanent yard and shop operations apply to trucking businesses assigned classification 1102. See subclassification 5206-80 and WAC 296-17-31018.
  - See RCW 51.08.180 and 51.12.095 concerning owner operators of trucks.
  - For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

**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 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 nondealer 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.)~~

**Applies to:**

Businesses engaged in selling coal, pressed wood fiber logs (fire logs), wood stove pellets, wood chips, or sawdust.

**Work activities include, but are not limited to:**

- Delivery;
- Store operations;
- Yard operations.

**Exclusions:**

• Worker hours engaged in manufacturing operations are reported separately in the classification applicable to the material and process used.

• Worker hours engaged in mining operations are reported separately in the applicable mining classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**1103-02 Firewood dealers - Yard operations**

**Applies to:**

Businesses engaged in selling firewood, operating a firewood sales lot that the dealer makes deliveries from or where customers pick up firewood.

**Work activities include, but are not limited to:**

• Cutting firewood - Businesses subject to this classification may purchase precut firewood from other nonrelated businesses or may have a cutting crew. The only cutting operations allowed in classification 1103 are those conducted at the sales lot;

- Delivery;
- Yard operations.

**Exclusions:**

• Worker hours engaged in firewood cutting operations conducted in timber or forest lands are reported separately in the applicable logging classification.

• Worker hours engaged in firewood sales lot operations conducted from a logging landing are reported separately in the applicable logging classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**1103-04 Composting****Applies to:**

Businesses engaged in composting.

**Materials composted include, but are not limited to:**

- Dewatered sludge;
- Yard waste.

**Work activities include, but are not limited to:**

- Composting;
- Delivery.

**Composting processes include, but are not limited to:**

Composting yard waste - Grinders may be used to reduce the size of the material for faster composting. The material may be placed in static curing piles or long rows called "windrows" that are turned periodically to aerate until it is adequately decomposed. When needed, the resulting material is screened.

Composting dewatered sludge - Processed and dewatered sludge is mixed with other materials such as shredded yard waste, sawdust, or other wood waste. The mixture must have the right degree of moisture and air to maintain a temperature between 130 and 160 degrees Fahrenheit.

The end product is a "Class A" pathogen product, meaning it can be used in soil for raising vegetables.

**Exclusion:**

- Worm farms are classified in 4804.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**1103-06 Top soil, humus, peat, and beauty bark dealers - Yard operations****Applies to:**

Businesses engaged in selling soils, humus, peat, or beauty bark.

**Work activities include, but are not limited to:**

- Receiving and subsequent loading out into customer vehicles of soils, peat, humus, bark, compost, and related organic matter;
- Mixing custom soils;
- Incidental sales of landscaping rock, sand, gravel, and crushed rock;
- Delivery.

**Exclusions:**

Contract delivery by nondealer employees is classified in 1102.  
Building materials dealers selling stone, brick, or concrete products are classified in 2009.

Worker hours engaged in digging soils/humus/peat/gravel or grinding bark are reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1104 Classification 1104.**

**1104-00 Auto or truck wrecking or dismantling**

~~((Applies to establishments engaged in salvaging, dismantling and parting out motorized vehicles, motorcycles, and aircraft. Parts may be removed and inventoried or removed when there is a special request for them. Afterwards, hulls are stripped and may be crushed. Operations contemplated by this classification includes removal of salable parts with the use of hand tools and discarding frames and bodies for future sale to scrap dealers and metal manufacturers. Any subsequent breaking up of stripped chassis and bodies with torches or shears to be sold as iron or steel scrap is also included within the scope of this classification as is the reconditioning of the yard's own autos and trucks for resale. In addition to the yard work, salvaged parts will be reconditioned or repaired and sold over the counter. New parts may also be sold. A dismantler may locate and obtain parts from another yard for a customer. Dismantlers may haul cars and trucks to the yard by tow truck, flatbed, or multicar carrier or the owner may bring the vehicle to the yard. Tow truck operations related to the hauling of vehicles purchased by the wrecking yard for sale by the yard are included within the scope of this classification.~~

~~This classification excludes establishments engaged in tow truck services to the public which are to be reported separately in classification 1109, and establishments engaged in salvaging, collecting, sorting and reducing scrap metal which are to be reported separately in classification 0604.)~~

**Applies to:**

Businesses engaged in salvaging, dismantling and parting out motorized vehicles, motorcycles, and aircraft. Parts may be removed and inventoried or removed when there is a special request for them. Afterward, hulls are stripped and may be crushed.

**Work activities include, but are not limited to:**

- Hauling cars and trucks to the yard by tow truck, flatbed, or multicar carrier or the owner may bring the vehicle to the yard;
- Removal of salable parts with the use of hand tools and discarding frames and bodies for future sale to scrap dealers and metal manufacturers;
- Breaking up of stripped chassis and bodies with torches or shears to be sold as iron or steel scrap;
- Salvaged parts are reconditioned or repaired and sold over the counter;
- Reconditioning of the yard's own autos and trucks for resale;
- Selling new parts;
- Locate and obtain parts from another yard for a customer;
- Tow truck operations related to the hauling of vehicles purchased by the wrecking yard for sale by the yard are included within the scope of this classification.

**Exclusions:**

- Tow truck services to the public are classified in 1109;
- Salvaging, collecting, sorting, and reducing scrap metal are classified in 0604.

AMENDATORY SECTION (Amending WSR 17-11-120, filed 5/23/17, effective 7/1/17)

**WAC 296-17A-1105 Classification 1105.**

**1105-00 Septic tank pumping**

~~((Applies to establishments engaged in septic tank pumping services. Operations contemplated by this classification include driving, locating the septic tank and digging as necessary to uncover it, connecting the pumping hose to the septic tank, pumping out the sludge, and disposing of the waste products.~~

~~This classification excludes installation and repair of septic tanks or systems which are to be reported separately in classification 0108, and cleaning of sewage treatment tanks which is to be reported separately in classification 0504.~~

**~~1105-01 Street sweeping; parking lot sweeping; dust control; and portable chemical toilet servicing~~**

~~Applies to establishments that perform street sweeping and parking lot sweeping services for others. Trucks used for sweeping are equipped with rotating or nonrotating brushes and vacuum/suction devices. In addition to driving duties, the drivers may adjust/unclog the brushes, and clean the holding tanks contained on the sweeping or pumping vehicle. This classification also includes snow removal by plowing, delivery of portable toilets and the related servicing and disposal of waste products which are recovered by establishments subject to this classification. This classification also includes trucks that spray water on roads and other surfaces for dust control.~~

**~~1105-02 Vacuum truck services~~**

~~Applies to establishments engaged in vacuum truck services for others. Services include, but are not limited to, cleaning of duct work, picking up waste oils, lubricants, antifreeze, bilge water, and similar waste products. Establishments subject to this classification may offer a regular service, one-time or occasional pick-up service. The driver has kits for testing the materials and, if there is a question, a sample is taken to a laboratory for further analysis. If the waste material is acceptable, it is pumped into the tanker truck. The waste material may be consolidated with similar products and "bulked" in storage tanks, then taken to appropriate treatment or disposal facilities, or it may be taken directly to appropriate facilities. If it is to be "bulked" with other products, it will be filtered as it is pumped into the storage tanks and allowed to sit for a few days for any water to settle to the bottom of the tank and be drained off. Bulked materials may be hauled away by the establishment's own trucks or by common carrier. Establishments subject to this classification may pick up containers of used oil filters and bring them into their plant where they are sorted into crushed and uncrushed filters, and gaskets removed. This activity is included within the scope of this classification if it is an incidental service. This classification includes the related disposal of waste products which are recovered by establishments subject to this classification.~~

~~This classification excludes septic tank pumping which is to be reported separately in classification 1105-00.)~~

**Applies to:**

Businesses engaged in septic tank pumping services.

**Work activities include, but are not limited to:**

- Driving;

- Locating the septic tank;
- Digging as necessary to uncover the septic tank;
- Connecting the pumping hose to the septic tank;
- Pumping out the sludge; and
- Disposing of the waste products.

**Exclusions:**

- Worker hours engaged in installation or repair of septic tanks or systems are reported separately in classification 0108;
- Worker hours engaged in cleaning of sewage treatment tanks are reported separately in classification 0504.

**1105-01 Street sweeping; parking lot sweeping; dust control; and portable chemical toilet servicing****Applies to:**

- Businesses engaged in street sweeping and parking lot sweeping services for others.
- Businesses engaged in snow removal by plowing.
- Businesses engaged in delivery of portable toilets and related servicing and disposal of waste products which are recovered by establishments subject to this classification.
- Businesses engaged in operating trucks that spray water on roads and other surfaces for dust control.

**Equipment used includes, but is not limited to:**

- Trucks used for sweeping, equipped with rotating or nonrotating brushes or vacuum/suction devices.

**Work activities include, but are not limited to:**

- Adjusting or unclogging the truck brushes;
- Cleaning the holding tanks on the sweeping or pumping vehicles;
- Driving.

**1105-02 Vacuum truck services****Applies to:**

Businesses engaged in vacuum truck services.

**Services include, but are not limited to:**

- Cleaning duct work using vacuum trucks;
- Picking up waste oils, lubricants, antifreeze, bilge water, and similar waste products using vacuum trucks.

**Work activities include, but are not limited to:**

- Operating vacuum trucks;
- Testing materials using testing kits;
- Pumping acceptable material into tanker trucks;
- Consolidating similar products in storage tanks;
- Taking waste to appropriate treatment or disposal facilities;
- Picking up containers of used oil filters, bringing them into their plant, sorting them into crushed and uncrushed filters, and removing their gaskets. This activity is included within the scope of this classification if it is an incidental service.
- Related disposal of waste products recovered by businesses subject to this classification.

**Exclusion:**

- Septic tank pumping is classified in 1105-00.



AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

**WAC 296-17A-1303 Classification 1303.**

**1303-00 Telecommunication service providers - All other employees**

~~((Applies to establishments engaged in providing telecommunication services which enable subscribers to converse or transmit coded data. Work contemplated by this classification includes, but is not limited to, the regular installation, maintenance and repair of machinery and equipment, the extension and maintenance of lines (including poles, towers and underground lines), clearing right of ways, installing telephones and wiring in buildings, and making service connections when done by employees of an employer having operations subject to this classification. Machinery and equipment includes, but is not limited to, central control and switching center equipment, relays, computers, antennae, cranes, forklifts, vehicles and garages, warehouse equipment, and hand tools.~~

~~This classification excludes clerical office, exchange operators and administrative personnel who are to be reported separately in classification 1304; contractors engaged in underground line construction maintenance or repair who are to be reported separately in classification 0107; contractors engaged in overhead line, pole, and tower construction, maintenance or repair, who are to be reported separately in classification 0509; contractors engaged in wiring within buildings and making pole-to-house hook-ups who are to be reported separately in classification 0608; contractors engaged in the installation or contract maintenance of machinery or equipment who are to be reported separately in classification 0603; and establishments primarily engaged in selling telephone equipment retail which are to be reported separately in classification 6411.~~

**1303-01 Telegraph companies - All other employees**

~~Applies to establishments engaged in providing telecommunication services which enable printed messages (telegrams) to be transmitted from one agent to another for receipt by, or delivery to, a designated party. Telegraph companies also provide a "moneygram" service which allows an agent to receive a sum of money at one location and transmit a message to another agent to pay out the same amount of money to a designated party at another location. Work contemplated by this classification includes the regular installation, maintenance and repair of machinery and equipment, the extension and maintenance of lines (including poles, towers and underground lines), installing transmission and receiving equipment, the clearing of right of ways, and delivery work when done by employees of an employer having operations subject to this classification. Machinery and equipment includes, but is not limited to, cables, control panels, poles, lines, relays, computers, cranes, forklifts, vehicles and garages, warehouse equipment, and hand tools.~~

~~This classification excludes clerical office and administrative personnel who are to be reported separately in classification 1304; contractors engaged in underground line construction maintenance or repair who are to be reported separately in classification 0107; contractors engaged in overhead line, pole, and tower construction, maintenance or repair, who are to be reported separately in classification 0509; contractors engaged in wiring within buildings who are to be reported separately in classification 0608; and contractors engaged in~~

~~the installation or contract maintenance of machinery or equipment who are to be reported separately in classification 0603.)~~

**Applies to:**

All other employees of businesses providing telecommunications services that enable subscribers or customers to converse or transmit coded data, not covered by another classification (N.O.C.).

Classification 1303 is usually assigned with classification 1304 for the business's administrative, office, and sales personnel. Employers must keep records that permit the department to confirm hours worked in each classification. When employers do not or cannot keep these records, they must report all hours in question in the classification with the higher rate.

**Work activities include, but are not limited to:**

- Clearing right of ways;
- Extension and maintenance of lines (including poles, towers, and underground lines);
- Installation, maintenance, and repair of machinery and equipment;
- Installing telephones and wiring in buildings;
- Making service connections when done by employees of an employer having operations subject to this classification.

**Machinery and equipment used includes, but is not limited to:**

- Antennae;
- Central control and switching center equipment;
- Computers;
- Cranes;
- Forklifts;
- Hand tools;
- Relays;
- Vehicles;
- Warehouse equipment.

**Exclusions:**

- Worker hours for clerical office, exchange operators, and administrative personnel of businesses providing telecommunications services are reported separately in classification 1304;
- Contractors engaged in underground line construction, maintenance, or repair are classified in 0107;
- Contractors engaged in overhead line, pole, and tower construction, maintenance, or repair are classified in 0509;
- Contractors engaged in wiring within buildings and making pole-to-house hook-ups are classified in 0608;
- Contractors engaged in the installation or contract maintenance of machinery or equipment are classified in 0603;
- Businesses primarily engaged in selling telephone equipment retail are classified in 6411.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1701 Classification 1701.**

**1701-02 Ore reduction, by wet or dry process without application of heat at mine**

~~((Applies to establishments engaged in the reduction of coarse ores by a wet or dry process at a mine site. Work contemplated by this classification involves a variety of ore milling activities. The process begins by crushing, screening and washing the ores. Next, ores are placed in a rotating cylindrical mill which contains steel balls, flint pebbles, rods or rock for further grinding. Then with the use of amalgamation (introduction of a chemical such as mercury to break down the ores) or flotation (uses water to separate by buoyancy and densities), the ore material is broken down and dried to obtain concentrated ores of metals. The milling of ores to recover some nonmetallic minerals which do not require amalgamation or flotation are also included within this classification.~~

~~This classification excludes underground mining operations which are to be reported separately in classification 1702, and open cut mining operations which are to be reported separately in classification 1703.)~~

**Applies to:**

- Businesses engaged in the reduction of coarse ores by a wet or dry process without the application of heat at a mine site.
- Businesses milling ores to recover nonmetallic minerals, that do not require amalgamation or flotation, at a mine site.

**Work activities and processes include, but are not limited to:**

- Crushing, screening, and washing ores;
- Rotating ores in a cylindrical mill containing steel balls, flint pebbles, rods or rock for further grinding;
- Amalgamation - Introduction of a chemical such as mercury to break down the ores into parts to obtain concentrated ores of metals;
- Flotation - Using water to separate parts by buoyancy and density to obtain concentrated ores of metals;
- Milling ores without amalgamation or floatation to recover non-metallic minerals.

**Exclusions:**

- Underground mining operations are classified in 1702;
- Open cut mining operations are classified in 1703.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1702 Classification 1702.**

**~~1702-01 ((Coal mines and mines N.O.C., underground; coke ovens~~**

~~Applies to establishments engaged in underground mining, not covered by another classification (N.O.C.), involving the extraction of coal, ores, stone, clay or other minerals. Operations contemplated by this classification include excavation and tunneling below ground as well as the incidental activities occurring above ground. Underground mining may involve shaft sinking, slope sinking, rock tunneling, and the building of drifts and shafts with heavy timbers or steel beams. Material is broken loose within the tunnel or shaft with explosives, drilling machines, rock drills, chippers, power hand drills and picks. After the material is broken loose it is removed from underground by way of hoist, conveyor, or some type of haulage car on steel track. On the surface, some of the extracted material is further refined such as coal which is crushed, screened, washed and graded before being hauled~~

away. Additional equipment includes elevators, ventilation and communication systems, water pipes, lighting systems, as well as front end loaders, bulldozers and trucks. This classification also applies to establishments engaged in the manufacture of coke which is a solid carbonaceous residue obtained from bituminous coal after the removal of volatile materials by a distillation process. The method usually consists of a beehive or by-product oven process. Coal is fed into crushers which breaks oversized pieces into smaller pieces which are then conveyed to bunkers serving the ovens. This classification also applies to ore reduction involving heat processes.

This classification excludes ore reduction operations which do not require the use of heat which are to be reported separately in classification 1701, and open cut mining which is to be reported separately in classification 1703.) **Underground mines N.O.C. and manufacturing coke from coal**

**Applies to:**

- Businesses engaged in underground mining, not covered by another classification (N.O.C.), involving the extraction of coal, ores, stone, clay, or other minerals;
- Businesses engaged in the manufacture of coke which is a solid carbonaceous residue obtained from bituminous coal after the removal of volatile materials by a distillation process.

**Processes include, but are not limited to:**

- Underground mining and the incidental activities occurring above ground - Underground mining may involve shaft sinking, slope sinking, rock tunneling, and the building of drifts and shafts with heavy timbers or steel beams. Material is broken loose within the tunnel or shaft with explosives, drilling machines, rock drills, chippers, power hand drills, and picks. The material is then removed from underground by hoist, conveyor, or some type of haulage car on steel track. On the surface, some extracted material is further refined. For example, coal is crushed, screened, washed, and graded before being hauled away.
- Manufacture of coke - Coke is a solid carbonaceous residue obtained from bituminous coal after the removal of volatile materials by a distillation process. Coal is fed into crushers which break down oversized pieces. The coal is baked in airless kilns or beehive coke ovens at high temperatures removing volatile materials leaving behind the coke.
- Ore reduction involving heat processes.

**Equipment used include, but are not limited to:**

- Bulldozers;
- Chippers;
- Communication systems;
- Conveyors;
- Crushers;
- Drilling machines;
- Elevators;
- Explosives;
- Front end loaders;
- Haulage cars on tracks;
- Hoists;
- Lighting systems;
- Picks;
- Pipes to carry water;

- Power hand drills;
- Rock drills;
- Trucks;
- Ventilation systems.

**Exclusions:**

- Ore reduction operations that do not require the use of heat are classified in 1701.
- Open cut mining is classified in 1703.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1703 Classification 1703.****1703-01 Open cut mining - All types; placer or hydraulic mining**

~~((Applies to establishments engaged in open cut mining to extract all types of ore including certain minerals such as, but not limited to, phosphate rock, graphite, talc, chalk, mica, asphalt, asbestos and gypsum. The process of open cut mining is also commonly referred to as surface mining, open pit mining or strip mining whereby such ores and minerals are extracted from a large hole or pit on the surface. Operations contemplated by this classification involve excavating and stripping the surface material with use of drag lines, power shovels or earth moving equipment. The products are loaded onto dump trucks or belt conveyors for movement to railroad sidings and loading into ore cars for shipment to processing plants. The equipment generally involves compressors, pneumatic drilling rigs, conveyors, trucks, drag lines, shovels, scrapers and bulldozers. This classification also applies to establishments engaged in hydraulic mining in which material is excavated by moving a stream of high pressure water over the mining face, and placer mining which obtains minerals from placers by use of running water such as on a stream or the shoreline.~~

~~This classification excludes underground mining which is to be reported separately in classification 1702, and quarrying which is to be reported separately in classification 1704.)~~

**Applies to:**

All types of open cut mining, also commonly referred to as surface mining, open pit mining, or strip mining, whereby ores and minerals are extracted from a large hole or pit on the surface.

**Materials extracted include, but are not limited to:**

- All types of ore;
- Asbestos;
- Asphalt;
- Chalk;
- Graphite;
- Gypsum;
- Mica;
- Phosphate rock;
- Talc.

**Work activities include, but are not limited to:**

- Excavating and stripping the surface material with use of drag lines, power shovels or earth moving equipment.

- Loading products onto dump trucks or belt conveyors for movement to railroad sidings.
- Loading into ore cars for shipment to processing plants.
- Hydraulic mining - Material is excavated by moving a stream of high pressure water over the mining face.
- Placer mining - Obtains minerals from placers by use of running water such as on a stream or the shoreline.

**Equipment used include, but are not limited to:**

- Bulldozers;
- Compressors;
- Conveyors;
- Drag lines;
- Pneumatic drilling rigs;
- Scrapers;
- Shovels;
- Trucks.

**Exclusions:**

- Underground mining is classified in 1702;
- Quarrying is classified in 1704.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1704 Classification 1704.**

**1704-02 Quarries, N.O.C.**

~~((Applies to establishments engaged in quarrying, not covered by another classification (N.O.C.), to extract large solid stone such as, but not limited to, limestone, sandstone, granite, marble, slate, hard shale rock, ballast rock, cement rock, coral rock, etc., from hill-sides or open pits. Operations contemplated by this classification involve exposing stone with use of drag lines, power shovels, scrapers or other earth moving equipment. In some instances, blasting with explosives is performed on large stone masses to break portions loose. The stone is separated into large blocks, sometimes called loafs. There are several methods to cut a loaf - line drilling, wire sawing, diamond wire sawing or chiseling. The loafs are removed from the quarry pit and taken to the surface. This classification includes all other activities occurring on the surface of the quarry site which could involve the further cutting of the loafs or the crushing of stone into smaller pieces.~~

~~This classification excludes open pit mining operations which are to be reported separately in classification 1703, and underground mining which is to be reported separately in classification 1702.))~~

**Applies to:**

Businesses engaged in quarrying to extract large solid rock from hillsides or open pits, not covered by another classification (N.O.C.).

**Rocks extracted include, but are not limited to:**

- Ballast rock;
- Cement rock;
- Coral rock;
- Granite;

- Limestone;
- Marble;
- Sandstone;
- Shale rock;
- Slate.

**Work processes include, but are not limited to:**

- Exposing rock with use of drag lines, power shovels, scrapers, or other earth moving equipment;
- Blasting large rock masses with explosives to break portions loose;
- Separating the rock into large blocks, sometimes called loafs;
- Cutting a loaf using line drilling, wire sawing, diamond wire sawing, or chiseling methods;
- Removing loafs from the quarry pit and taking them to the surface;
- All other activities on the surface of the quarry site, which could involve further cutting of the loafs or crushing of rock into smaller pieces.

**Exclusions:**

- Open pit mining operations are classified in 1703;
- Underground mining is classified in 1702.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-1801 Classification 1801.**

**~~((1801-01 Lead smelting, sintering, or refining; calcium carbide manufacturing~~**

~~Applies to establishments primarily engaged in the smelting, sintering, or refining of lead, including the manufacturing of calcium carbide. The lead ore most commonly mined is galena which is the sulfide of lead. The ore is mixed with other metalliferous minerals, such as sphalerite, copper pyrites and iron pyrites. The smelting process consists of fusing or separating the metallic elements. After ore has been received, the process begins by crushing, washing and screening the ore. There may be various steps of milling, concentration or amalgamation (floatation) to separate the galena from the sphalerite and other minerals. The roasting or sintering process takes place in rotary kilns or other types of furnaces. In this way the material is sintered or converted into lumps (called sinter) which are mixed with coke and placed into a shaft furnace. The material is then desilverized which is achieved by adding metallic zinc and raising the temperature sufficiently to dissolve it. The molten metal is then cast into ingots. The ingots may go through further refining processes or may be considered a finished product. This classification also includes the manufacturing of calcium carbide which is a crystalline material produced by heating pulverized limestone or quicklime with carbon and used to generate acetylene gas, as a dehydrating agent, and in making graphite and hydrogen.~~

~~This classification excludes aluminum smelting operations which are to be reported separately in classification 1802; the smelting, sintering or refining of ores not covered by another classification, (N.O.C.) which is to be reported separately in classification 1801-08;~~

~~the recovering, refining or reprocessing of metals which is to be reported separately in classification 1801-09; ore reduction which is to be reported separately in classification 1701; and open pit or underground mining operations which are to be reported separately in the classification applicable to the mining being performed.~~

**~~1801-03 Steel or iron rolling mills; rolling mills, N.O.C.~~**

~~Applies to establishments engaged in operating iron or steel rolling mills. In a rolling mill ingots and/or slabs of steel are rolled (i.e., they are passed between rollers whereby they undergo an increase in length and a corresponding reduction in depth). The rollers used by the rolling mills vary widely in size and shape, depending on the type of rolled section(s) to be produced. Depending upon the thickness of the metal to start and the desired thickness when finished, a single piece of metal may pass through the same or a different set of rollers several times.~~

~~Rolling mills for pipes may be divided into two categories — welded pipes and seamed pipes. Welded pipes are produced from a steel strip which is bent to a tubular shape and whose edges are then joined by welding. Seamed pipes are produced from cast or rolled billets at rolling temperature. There are different processes for both kinds of manufacturing. Whatever method is used the metals are somehow heated to temperatures up to 1400 degrees Fahrenheit. The equipment may include, but is not limited to, rakes, ladle, forklifts and front loaders.~~

~~This classification excludes aluminum smelting plant operations which are to be reported separately in classification 1802, and establishments engaged in the manufacture of pipe or tube from iron or steel by drawing or bending which are to be reported separately in classification 5101.~~

**~~1801-08 Ore smelting, sintering or refining, N.O.C.~~**

~~Applies to establishments engaged in the smelting, sintering, or refining of ores not covered by another classification (N.O.C.). Smelting and sintering are refining processes which use different properties of heat which may or may not reduce the ore to molten form. Temperatures are usually lower than 1400 degrees Fahrenheit. Ore is received direct from the mine or in a variety of forms such as, but not limited to, pellets, particles, molds and briquettes. The process begins by crushing, washing and screening; there may be various steps of milling, concentration or amalgamation. The roasting or sintering process takes place in rotary kilns or other types of furnaces. In this way the material is sintered or converted into lumps (called sinter) which may be mixed with other materials and placed into a shaft furnace. The molten metal ore is then cast or recast into ingots. The ingots may go through further refining processes or may be considered a finished product.~~

~~This classification excludes aluminum smelting operations which are to be reported separately in classification 1802; the smelting, sintering or refining of lead which is to be reported separately in classification 1801-01; the recovering, refining or reprocessing of metals which is to be reported separately in classification 1801-09; ore reduction which is to be reported separately in classification 1701; and open pit or underground mining operations which are to be reported separately in the classification applicable to the mining being performed.~~

**~~1801-09 Metal recovering, refining or reprocessing~~**



Applies to establishments engaged in the recovering, refining, or reprocessing of metals. These establishments are considered secondary processors or reprocessors to primary metal producers. The primary producer uses ore to manufacture metal, whereas, the secondary processors or reprocessors will recover, refine, or reproduce refined metals from coarse metal. Types of metal include, but are not limited to, gold, aluminum, silver, lead, and zinc. Metal comes in various forms to include cast ingots, dross, and scrap material. The scrap material and dross are recycled to extract reusable metallic elements. Other metals are reprocessed and may include adding alloys and/or other elements, or recasting the metals into different shapes and sizes. An example may include adding magnesium to zinc as part of the recycling process in which zinc oxide is produced and sold to rubber companies for manufacturing tires and other rubber products. Metals are weighed, sorted and/or sifted through a variety of screens and includes crushing as needed. Next, the materials are placed in an oven or furnace and chemicals and/or alloys are added. At this point the metal may be placed in molds and cooled by air or water. Finished products are inspected, graded, weighed, packaged and shipped. To assist in the processing function, ladles, rakes, conveyers, scales, hoist, front end loaders and forklifts may be used. This classification also includes the incidental buying and selling of scrap metal.

This classification excludes aluminum smelting operations which are to be reported separately in classification 1802; the smelting, sintering or refining of lead which is to be reported separately in classification 1801-01; the smelting, sintering or refining ores not covered by another classification N.O.C., which is to be reported separately in classification 1801-08; ore reduction which is to be reported separately in classification 1701; scrap metal dealers which are to be reported separately in classification 0604; and establishments which compact or recycle metal containers such as aluminum or tin cans which are to be reported separately in classification 2102.)

**1801-08 Ore or lead smelting, sintering or refining, N.O.C.; Calcium carbide manufacturing; Steel or iron rolling mills, rolling mills, N.O.C.; Metal recovering, refining, or reprocessing**

**Applies to:**

- Businesses smelting, sintering, or refining lead or ores not covered by another classification (N.O.C.).
- Businesses manufacturing calcium carbide.
- Businesses operating iron or steel rolling mills.
- Businesses recovering, refining, or reprocessing metals. (These are secondary processors or reprocessors to primary metal producers. The primary producer uses ore to manufacture metal. The secondary processors or reprocessors use course metal to recover, refine, or reproduce refined metals.)

**Processes include, but are not limited to:**

- Smelting lead ore: The smelting process uses heat and chemical reactions to fuse or separate metallic elements. The lead ore most commonly mined is galena, which is the sulfide of lead. The process begins by crushing, washing, and screening the ore. In its raw form, the ore is often mixed with other metalliferous minerals, such as sphalerite, copper pyrites, and iron pyrites. There may be various steps of milling, concentration, or amalgamation (floatation) to separate the galena from the sphalerite and other minerals. The roasting or sintering takes place in rotary kilns or other types of furnaces.

The material is sintered, converted into lumps called sinter, and then mixed with coke and placed into a shaft furnace. The material is de-silverized by adding metallic zinc and raising the temperature to dissolve the silver into the zinc, which floats to the top and can then be removed. The molten metal is cast into ingots. The ingots may go through further refining processes or be considered a finished product.

- **Smelting ores:** Smelting and sintering are refining processes that use different properties of heat and chemical reactions to fuse or separate metallic elements. Temperatures are usually lower than 1400 degrees Fahrenheit. Ore comes in a variety of forms such as, but not limited to, pellets, particles, molds, and briquettes. The process begins by crushing, washing, and screening. There are various steps of milling, concentration, or amalgamation. The sintering process takes place in rotary kilns or other types of furnaces. The material is converted into lumps and placed into a shaft furnace. The molten metal ore is cast or recast into ingots. The ingots go through further refining processes.

- **Calcium carbide production:** Calcium carbide is a crystalline material produced by heating pulverized limestone or quicklime with carbon and used to generate acetylene gas, as a dehydrating agent, and used to make graphite and hydrogen.

- **Metal rolling:** In a rolling mill, ingots and slabs of steel are rolled between rollers where they undergo an increase in length and a corresponding reduction in depth. A single piece of metal may pass through the same or a different set of rollers several times to obtain the desired length and width.

- **Rolling mills for pipes are in two categories:** Welded pipes and seamed pipes. Welded pipes are produced from a steel strip, which is bent to a tubular shape and whose edges are joined by welding. Seamed pipes are produced from cast or rolled billets at rolling temperature. There are different processes for both kinds of manufacturing. Whatever method is used the metals are heated to temperatures up to 1400 degrees Fahrenheit.

- **Recovering, refining, and reprocessing:** Secondary metal processors or reprocessors recover, refine, or reproduce refined metals from coarse metal. Types of metal include, but are not limited to, gold, aluminum, silver, lead, and zinc. Metal comes in various forms to include cast ingots, dross, and scrap material. The scrap material and dross are recycled to extract reusable metallic elements. Metals are reprocessed, which can include adding alloys and other elements or recasting the metals into different shapes and sizes. Metals are weighed, sorted, and sifted through a variety of screens and include crushing as needed. Materials are placed in an oven or furnace and chemicals and alloys added. Metal is placed in molds and cooled by air or water. Finished products are inspected, graded, weighed, packaged, and shipped.

- This classification includes the incidental buying and selling of scrap metal.

**Work activities include, but are not limited to:**

- Washing, crushing, mixing, sintering, and smelting lead or ore;
- Rolling steel or iron;
- Manufacturing calcium carbide or acetylene gas;
- Buying or selling metal;
- Refining, recovering, or reprocessing metal;
- Welding and seaming of metal pipes.

**Equipment used, but not limited to:**

- Buckets;
- Conveyors;
- Forklifts;
- Frontloaders;
- Furnaces;
- Hoists;
- Ladles;
- Personal protective equipment;
- Rakes;
- Scales.

**Exclusions:**

- Aluminum smelting operations are classified in 1802;
- Ore reduction is classified in 1701;
- Open pit or underground mining operations are classified in the classification applicable to the mining performed;
- Businesses manufacturing pipe or tube from iron or steel by drawing or bending are classified in 5101;
- Scrap metal dealers are classified in 0604; and
- Business compacting or recycling metal containers, such as aluminum or tin cans, are classified in 2102.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-2203 Classification 2203.****2203-00 Laundries - Commercial or industrial: N.O.C.**

~~((Applies to establishments engaged in laundering operations which are not covered by another classification (N.O.C.). In addition to linen, uniform or diaper services, these establishments may launder other goods such as, but not limited to, protective apparel (flame, heat, or chemical resistant), dust control items (treated mops, rugs, mats, dust cloths), and wiping towels. These items may belong to the commercial or industrial laundry and rented to users, or they may be the customers' own goods. Operations include, but are not limited to, soliciting new customers by route supervisors or drivers, collecting and delivering, marking, weighing and sorting laundry, washing, extracting, tumbling, starching, drying, machine or hand ironing, making repairs or alterations, folding and wrapping. This classification also contemplates employees such as counter personnel, receiving clerks, sorters and markers at collection or distribution stores operated on the premises where laundering is performed.~~

~~This classification excludes laundry and dry cleaning establishments providing services primarily to retail walk-in customers which are to be reported separately in classification 2201; self-service, coin-operated laundry or dry cleaning establishments which are to be reported separately in classification 2204; and carpet, rug and upholstery cleaning establishments which are to be reported separately in classification 2202.~~

~~**Special note:** This classification also covers establishments specializing in stone washing jeans or "contract dyeing" for commercial or industrial businesses and the cleaning of nonfabric items, such as~~

venetian blinds, plastic goods or computer parts when done at the laundry facility.))

**Applies to:**

Businesses engaged in laundering operations which are not covered by another classification (N.O.C.).

**Special note:** This classification also covers establishments specializing in stone washing jeans or "contract dyeing" for commercial or industrial businesses and the cleaning of nonfabric items, such as venetian blinds, plastic goods, or computer parts when done at the laundry facility.

**Types of products laundered include, but are not limited to:**

- Diaper services;
- Dust control items (treated mops, rugs, mats, dust cloths);
- Linens;
- Protective apparel (flame, heat, or chemical resistant);
- Towels;
- Uniforms.

These items may belong to the commercial or industrial laundry and rented to users, or they may be the customers' own goods.

**Work activities include, but are not limited to:**

- Soliciting new customers;
- Collecting and delivering;
- Marking, weighing, and sorting laundry;
- Washing, extracting, tumbling, starching, drying;
- Machine or hand ironing;
- Making repairs or alterations;
- Folding and wrapping.

This classification also includes employees such as counter personnel, receiving clerks, sorters, and markers at collection or distribution stores operated on the premises where laundering is performed.

**Exclusions:**

- Laundry and dry cleaning services primarily to retail walk-in customers are classified in 2201.
- Self-service, coin-operated laundry, or dry cleaning services are classified in 2204.
- Carpet, rug, and upholstery cleaning services are classified in 2202.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

**WAC 296-17A-2903 Classification 2903.**

**2903-00 Manufacturing wood chips, hog fuel, bark, bark flour, fire logs or laths**

**Applies to:**

Businesses that manufacture wood products primarily made from log by-products.

In addition to operations taking place in a permanent yard or shop, this classification includes operating portable chipping or debarking mills close to the wood source.

**Products manufactured include, but are not limited to:**

- Wood chips - Small pieces of wood, generally uniform in size and larger and coarser than sawdust, commonly used to make pulp, particleboard, stuffing for products such as animal bedding, and as smoker/barbecue fuel;
- Hog fuel - Made by grinding waste wood in a hog machine. The bits are larger and coarser than wood chips. Hog fuel can be used to fire boilers or furnaces;
- Bark - The outermost covering of a tree which is chopped into pieces of varying sizes, and is commonly used for landscaping;
- Bark flour - Finely ground bark used as a filler or extender in adhesives;
- Fire logs - Made by forming sawdust into a log about ((~~fif-~~teen)) 15 inches long and used for fuel;
- Lath - A narrow strip of wood commonly used to support shingle, slate or tile roofing, and as a fencing material;
- Excelsior - The curled shreds of wood used as a packing and stuffing material, or as a raw material in making various board products; and
- Particleboard - A panel made from discrete particles of wood which are mixed with resins and formed into a solid board under heat and pressure.

**Materials used include, but are not limited to:**

- Bark;
- Chips;
- Glue;
- Logs;
- Sawdust; and
- Other mill waste.

**Equipment used include, but are not limited to:**

- Chippers;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Debarkers;
- Delivery trucks;
- Dryers;
- Kilns;
- Loaders;
- Mills;
- Molders;
- Presses;
- Saws; and
- Sorting screens.

**Exclusions:**

- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**2903-08 Manufacturing or assembly of wood doors, jambs, windows, sashes, stairs, molding or other miscellaneous millwork**

**Applies to:**

Businesses that manufacture and assemble wood doors, jambs, windows, sashes, stairs, molding and other millwork.

**Products manufactured include:**

- Doors - This includes wood doors of all sizes and shapes, for commercial or residential uses;
- Door/window components and grilles;
- Jambs;
- Mantels;
- Moldings - This includes all types of wood molding: Picture rails, chair rails, baseboards, and other architectural molding;
- Pillars;
- Sashes;
- Shutters;
- Skylights;
- Stairs and component parts for stairs - Risers, tread, balusters, hand rails, and posts;
- Turnings;
- Wainscot; and
- Windows.

**Materials used include, but are not limited to:**

- Cardboard;
- Dimensional lumber;
- Glass;
- Glue;
- Hardware;
- Metal;
- Oils;
- Paints;
- Particle board;
- Plastic laminates;
- Plywood;
- Stains; and
- Veneer.

**Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Boring machines;
- Chippers;
- Chisels;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Delivery trucks;
- Drills;
- Dryers;
- Jointers;
- Kilns;
- Lathes;
- Mills;
- Molders;
- Planers;
- Pneumatic nail guns;
- Presses;
- Routers;
- Sanders and blasters;
- Saws;

- Sprayers, coaters, and spreaders; and
- Staple and screw guns.

**Exclusions:**

- Manufacturing wood furniture or caskets is classified in 2905.
- Manufacturing wood cabinets, countertops, and fixtures is classified in 2907.
- Worker hours manufacturing metal doors, jambs, windows and sashes are reported separately in classification 3402.
- Worker hours repairing or installing products manufactured or assembled in this class away from the business's premises are reported separately in the applicable installation or repair classification.
- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.
- Lumber yards and building materials centers subject to classification 2009 that prehang doors are assigned classification 2903-08 in addition to their basic classification.

**2903-10 Manufacturing, assembly, or repair of wood containers or pallets; wood pallet dealer or recycle operations: Including repairs of pallets****Applies to:**

- Businesses that manufacture, assemble, and repair wood pallets and all other types of wood containers.
- Businesses that repair, recondition, or rebuild wood pallets or containers at the business's facilities or at the customer's location.

**Products manufactured include, but are not limited to:**

- Bins;
- Boxes;
- Crates;
- Shipping containers;
- Shooks (a shook is a set of unassembled wood components for assembling a packing box or barrel); and
- Storage containers.

**Materials used include, but are not limited to:**

- Glue;
- Lumber;
- Nails;
- Paint;
- Plywood;
- Screws; and
- Staples.

**Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Chippers;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Delivery trucks;
- Drills;

- Dryers;
- Jointers;
- Kilns;
- Mills;
- Planers;
- Pneumatic nail guns;
- Routers;
- Sanders and blasters;
- Saws;
- Sprayers, coaters, and spreaders; and
- Staple and screw guns.

**Exclusions:**

- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**2903-12 Manufacturing or assembly of wood products not otherwise classified (N.O.C.)****Applies to:**

Businesses that manufacture or assemble miscellaneous wood products that are not described by or included in another classification. Items manufactured are a variety of sizes and require varying degrees of manufacturing and assembly by machine or hand.

**Products manufactured include:**

- Attic vents;
- Barricades;
- Beams;
- Cable spools;
- Cross arms;
- Docks;
- Ends for paper rolls;
- Floats;
- Gazebos;
- Ladders;
- Lattice panels;
- Log home shells from dimensional-log lumber;
- Playground equipment;
- Remanufactured lumber - Lumber remanufacturing is the process of converting green wood (unseasoned wood), rough-cut cants (large slabs of wood cut from logs), plywood, or lumber into a more specialized or higher grade product;
  - Ridge cap shingles or shims;
  - Saunas;
  - Signs;
  - Slugs;
  - Solariums;
  - Utility poles;
- Veneered products - Veneered products are made by gluing veneer to cores made of plywood, other lower quality wood, or nonwood based material and are generally sold as a lumber substitute;



- Wall panels; and
- Wood furniture stock - Wood furniture stock is sold to other manufacturers as unfinished and unassembled pieces of lumber used to make finished furniture.

**Materials used include, but are not limited to:**

- Acrylic;
- Hardware;
- Lacquers;
- Laths;
- Lumber;
- Nails;
- Oils;
- Paints;
- Particle board;
- Plastic laminates;
- Plywood;
- Screws;
- Stains;
- Staples; and
- Wood veneer.

**Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Boring machines;
- Chippers;
- Chisels;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Delivery trucks;
- Drills;
- Dryers;
- Jointers;
- Kilns;
- Lathes;
- Mills;
- Molders;
- Planers;
- Pneumatic nail guns;
- Presses;
- Routers;
- Sanders and blasters;
- Saws;
- Sprayers, coaters, and spreaders; and
- Staple and screw guns.

**Exclusions:**

- Manufacturing log home shells in a permanent yard using the traditional method of peeling the logs, using chainsaws to notch logs, and assembling the logs together is classified in 1003.
- Worker hours engaged in sawmill operations are reported separately in classification 1002.
- Worker hours building log homes on-site are reported separately in the applicable construction classifications.
- Manufacturing wood household or sporting goods is classified in 2909.
- Manufacturing wood furniture or caskets is classified in 2905.

- Manufacturing wood cabinets, countertops, and fixtures is classified in 2907.
- Manufacturing wood veneer or plywood is classified in 2904.
- Worker hours installing or removing signs outside of buildings are reported separately in classification 0403.
- Worker hours installing or removing signs inside of buildings are reported separately in classification 0513.
- Worker hours painting or lettering signs on the inside of buildings or painting on or applying lettering to sign "backings" that are manufactured by others are reported separately in classification 4109.
- Worker hours manufacturing metal or plastic signs are reported separately in the classification applicable to the manufacturing process.
- Businesses only kiln drying and/or treating lumber with preservatives, fire retardants, or insecticides are classified in 1003.
- Worker hours repairing or installing products manufactured or assembled in this class away from the business's premises are reported separately in the applicable installation or repair classification.
- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.
- Classification 2903 can only be assigned for ridge cap shingles or shims after a site visit. If a classification must be assigned prior to the site visit, the business will be assigned classification 1005-02. Businesses manufacturing shakes or shingles in addition to ridge caps report the manufacture of ridge caps in classification 1002 or 1005, depending on the processes.

**2903-21 Manufacturing wooden roof trusses****Applies to:**

Businesses that manufacture wooden roof trusses, ceiling joists, or floor joists from wood or wood products.

**Products manufactured include:**

- Ceiling joists;
- Floor joists; and
- Roof trusses.

**Materials used include, but are not limited to:**

- Dimensional lumber (usually 2" x 4", 2" x 6", and 2" x 8");
- Hardware;
- Plywood; and
- Various fasteners.

**Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Assembly tables;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Delivery trucks;
- Mills;
- Planers;

- Pneumatic nail guns;
- Roller presses;
- Saws; and
- Staple and screw guns.

**Exclusions:**

- Worker hours repairing or installing products manufactured or assembled in this class away from the business's premises are reported separately in the applicable installation or repair classification.
- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**2903-28 Manufacturing, repairing, or refinishing wooden boats****Applies to:**

Businesses that manufacture, repair, or refinish wooden boats.

**Products manufactured include:**

- Wooden boats.

**Materials used include, but are not limited to:**

- Dimensional lumber;
- Glue;
- Hardware;
- Lacquers;
- Oils;
- Paints;
- Plywood; and
- Stains.

**Equipment used include, but are not limited to:**

- Drills;
- Jointers;
- Lathes;
- Planers;
- Sanders; and
- Saws.

**Exclusions:**

- Worker hours manufacturing (~~(or repairing)~~) fiberglass boats are reported separately in classification 3511.
- Worker hours manufacturing or repairing metal boats are reported separately in the applicable metal manufacturing classification.
- Businesses that do not manufacture boats but do mechanical, engine, electrical, vinyl or glass work on boats, install boat accessories, or detail all types of boats are classified in 3414.
- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

**WAC 296-17A-3101 Classification 3101.**

**3101-05 Ready mix concrete dealers**

~~((Applies to establishments engaged in the mixing and delivery of ready mix concrete for all types of residential and commercial projects such as, but not limited to, foundations, walls, slabs, roadways, driveways, walkways, dams, bridges and swimming pools. Usually, these establishments operate a plant location with a supply of sand, gravel, pebbles, broken stones or slag, and various ingredients to produce bonding adhesives such as cement. The concrete is premixed at the plant location and loaded into a delivery truck, or the raw unmixed ingredients such as cement, sand, gravel, pebbles, broken stones and water are loaded into a concrete truck and mixed in a revolving or rotating drum in transit to the project site. The concrete is discharged from the drum with use of a metal chute or is transferred into the bed of a concrete pump truck for pumping. This classification includes ready mix dealers who operate concrete ready mix trucks and/or concrete pump trucks as part of the delivery service. This classification also includes the related sale of tools, equipment, and building materials such as bricks or concrete blocks. This classification also includes pit and crusher operations provided all sand and gravel produced is used by the dealer to manufacture concrete mix.~~

~~This classification excludes establishments engaged in the commercial production and/or digging of sand, gravel or stone not in connection with a ready mix dealer which is to be reported separately in classification 0112, and concrete pump truck services not in connection with a ready mix dealer which is to be reported separately in classification 3506.))~~

**Applies to:**

Businesses engaged in the mixing and delivery of ready mix concrete for all types of residential and commercial projects.

**Projects include, but are not limited to:**

- Bridges;
- Dams;
- Driveways;
- Foundations;
- Roadways;
- Slabs;
- Swimming pools;
- Walkways;
- Walls.

**Work activities include, but are not limited to:**

- Operating a plant location with a supply of sand, gravel, pebbles, broken stones or slag, and various ingredients to produce bonding adhesives such as cement;
- Pit and crusher operations when all sand and gravel produced is used by the dealer to manufacture concrete mix;
- Premixing concrete at the plant location;

- Loading of premixed concrete into a delivery truck;
- Operating concrete ready mix trucks and/or concrete pump trucks as part of the delivery service;
- Loading of raw unmixed ingredients such as cement, sand, gravel, pebbles, broken stones and water into a concrete truck and mixed in a revolving or rotating drum in transit to the project site;
- Discharging concrete from the drum with the use of a metal chute;
- Transferring concrete into the bed of a concrete pump truck for pumping;
- Related sales of tools, equipment, and building materials such as bricks or concrete blocks.

**Exclusions:**

- Businesses engaged in the commercial production and/or digging of sand, gravel or stone not in connection with a ready mix dealer are classified in 0112;
- Concrete pump truck services not in connection with a ready mix dealer are classified in 3506.

AMENDATORY SECTION (Amending WSR 13-11-128, filed 5/21/13, effective 7/1/13)

**WAC 296-17A-3405 Classification 3405.****3405-02 Precision machined parts and products, N.O.C.: Manufacturing**

~~((Applies to establishments engaged in the manufacture of parts and products not otherwise classified (N.O.C.) of various sizes and metal compositions which are primarily produced with computer numeric controlled (CNC) machinery and equipment and are frequently used by aerospace, aircraft, automotive, medical, and scientific industries.~~

~~This classification excludes establishments engaged in the manufacture of hand tools, hardware, or similar parts or products, N.O.C. which are not produced with CNC machinery and equipment. This classification excludes all foundry operations involving the preparation of castings, the pouring of metal, and shake out operations which are to be reported separately in classification 5103.)~~

**Applies to:**

Businesses manufacturing parts and products not otherwise classified (N.O.C.) of various sizes and metal compositions, which are primarily produced with computer numeric controlled (CNC) machinery and equipment.

**Typical industries parts are produced for include, but are not limited to:**

- Aerospace;
- Aircraft;
- Automotive;
- Medical;
- Scientific.

**Exclusions:**

- Businesses manufacturing hand tools, hardware, or similar parts or products, N.O.C. which are not primarily produced with CNC machinery and equipment;

• Foundry operations involving the preparation of casting, the pouring of metals, and shake out operations are classified in 5103.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

**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 classification 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, 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 premanufactured components purchased from others. The engraving may be done by "etching" or by computer. In the etching method, patterns or lettering 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 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 (flash-light 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 classification 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 6411 and 3602-10 may be assigned. 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, tungsten 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 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.

### **3602-24 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.))

#### **Applies to:**

Businesses manufacturing, assembling, or repair of components related to the telegraph, electrical, radio, or telephone industry.

This is a shop or plant only classification.

Repair work is limited to work performed at the shop or plant.

#### **Component parts may be for items such as, but are not limited to:**

- Antennae;
- Arrestors;
- Casings;
- Circuit breakers;

- Coils;
- Condensers;
- Dials;
- Electrical control relays;
- Hearing aids;
- Internal components;
- Other parts to accomplish radio, electrical, telegraph, or telephone communication;
- Phones;
- Plugs;
- Radio or television sets;
- Resistors;
- Rheostats;
- Speaker units;
- Switches;
- Transformers.

**Materials include, but are not limited to:**

- Component parts, usually manufactured by others;
- Metal;
- Plastic;
- Wood for the outside casings and component parts.

**Tools include, but are not limited to:**

- Air and hand tools;
- Clamps;
- Drill presses;
- Saws;
- Soldering guns.

**Occupations include, but are not limited to:**

- Engineers;
- Research and laboratory personnel.

**Exclusions:**

- Worker hours engaged in outside installation or repair are reported separately in the applicable classification.
- Worker hours engaged in the production of metal or other raw materials are reported separately in the applicable classification.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-02 Instrument - Scientific, medical, or professional: Manufacturing; magnetic tape: Manufacturing; sound recording equipment: Manufacturing**

**Applies to:**

- Businesses manufacturing instruments used in medical, scientific, or professional applications.
  - Businesses manufacturing magnetic tapes.
  - Businesses manufacturing sound recording equipment.
- This is a shop or plant only classification.  
Repair work is limited to work performed at the shop or plant.

**Products produced include, but are not limited to:**

- Dental or surgical instruments;
- Electrical testing instruments;
- Filters or modulators for processing sounds;
- Generators for producing sounds;
- Instruments measuring sounds;

- Magnetic or tape recorders for storing sounds;
- Microscopes or other scientific testing or research instruments;
- Speakers for reproducing sounds;
- Surveyors' instruments.

**Materials include, but are not limited to:**

- Clamps;
- Component parts, usually manufactured by others;
- Glass;
- Glue or epoxy;
- Metal;
- Plastic or wood for casings.

**Work activities include, but are not limited to:**

- Automated assembly;
- Hand assembling;
- Heat treating;
- Inspecting;
- Machining;
- Packaging;
- Stamping;
- Testing.

**Tools include, but are not limited to:**

- Air or hand tools;
- Drill presses;
- Grinders;
- Shears;
- Soldering guns;
- Welding equipment.

**Exclusions:**

- Worker hours engaged in outside installation or repair are reported separately in the applicable classification.
- Worker hours engaged in the production of metal or other raw materials are reported separately in the applicable classification.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-04 Thermometer and steam gauge: Manufacturing**

**Applies to:**

Businesses manufacturing thermometers and/or steam gauges.  
This is a shop or plant only classification.  
Repair work is limited to work performed at the shop or plant.

**Products produced include, but are not limited to:**

- Thermometers;
- Steam gauges.

**Materials include, but are not limited to:**

- Glass bulbs;
- Globes;
- Mercury;
- Tubes.

**Tools include, but are not limited to:**

- Air or hand tools;
- Drill presses;
- Grinders;

- Shears;
- Soldering guns;
- Welding equipment.

**Exclusions:**

- Manufacturing of metal fixtures equipped with electrical or gas lighting is classified in 3402.
- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-05 Dental shops, laboratories, or kiosks****Applies to:**

Businesses, or dental laboratories, manufacturing dentures, artificial teeth, braces, and retainers.

This is a shop or plant only classification. Shops may include mall kiosks.

Repair work when specified is limited to work performed at the shop.

**Materials include, but are not limited to:**

- Castings;
- Light wire forming;
- Plastic or vinyl molding.

**Work activities include, but are not limited to:**

- Fit patients for dentures;
- Making custom dental molds, such as those used in tooth whitening treatments;
- Making dentures, artificial teeth, braces, and retainers.

**Exclusions:**

- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-06 Jewelry: Manufacturing or engraving; trophy assembly or engraving; musical instrument - Metal: Repair****Applies to:**

- Businesses manufacturing or engraving jewelry.
- Businesses assembling or engraving trophies on a production basis from premanufactured components.
- Businesses repairing metal musical instruments.

This is a shop or plant only classification.

Repair work is limited to work performed at the shop or plant.

**Products produced include, but are not limited to:**

- Bracelets;
- Brooches;
- Cigarette lighters;
- Earrings;
- Necklaces;
- Pins;

- Repaired metal musical instruments;
- Rings;
- Trophies;
- Watchbands.

**Materials include, but are not limited to:**

- Precious metal;
- Precious stones;
- Solder.

**Work activities include, but are not limited to:**

- Assembling;
- Brazing;
- Buffing;
- Drilling;
- Engraving by hand, computer, or etching acids;
- Fitting and testing;
- Mixing and melting alloys and metals and pouring the mixture into small casts;
- Polishing;
- Soldering.

**Tools include, but are not limited to:**

- Computers;
- Drill presses;
- Hand tools;
- Lathes;
- Saws, various types;
- Soldering or brazing guns.

**Special note:** Classification 3602 is for manufacturers engaged in the mass production of jewelry items, unlike jewelry stores reported in classification 6308 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.

**Exclusions:**

- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification.
- Manufacturing watches is classified in 3602-07.
- Repairing of wood musical instruments is classified in 2906.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-07 Electronic parts: Assembly; electrical/electronic ignition assembly, cord set, or radio set: Assembly; stereo components: Manufacturing or assembly; watch: Manufacturing**

**Applies to:**

- Businesses assembling of electronic parts, which are usually sold to other manufacturers.
- Businesses manufacturing or assembly of computers and the manufacture of dry cell (flashlight type) batteries.
- Businesses assembling of electrical/electronic ignition assemblies, cord sets, and radio set components.



- Businesses manufacturing or assembly of stereo components, record changers, disc or video players, receivers, and amplifiers.
- Businesses manufacturing of watches and internal clock components.

This is a shop or plant only classification.

Repair work is limited to work performed at the shop or plant.

**Products produced include, but are not limited to:**

- Amplifiers - Amplifier elements are transistors supplied with the necessary operating voltages;
- Disc/video players;
- Electrical cord set - Electrical cord sets are the portion of wiring that plug into electrical power sources;
- Electrical parts;
- Ignition assembly - 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;
- Internal clock components;
- Radio set - A radio set has an input circuit for tuning in to the frequencies of the various transmitters, the demodulation circuit for separating the audio-frequency from the high-frequency carrier, a low-frequency amplifier stage, and the loudspeaker;
- Receivers;
- Record changers;
- Stereo components;
- Watches - Analog/LED.

**Materials include, but are not limited to:**

- Baffle plates;
- Chambers;
- Circuit boards;
- Computer chips;
- Drivers;
- Gears;
- Glass;
- Grills;
- Plastic;
- Radio components;
- Resistors;
- Sheet metal;
- Springs;
- Trim/rings;
- Wiring.

**Work activities include, but are not limited to:**

- Chipping;
- Clipping;
- Riveting or screwing into place;
- Soldering;
- Welding.

**Tools include, but are not limited to:**

- Automated/robotic assembly lines;
- Drills;
- Electric screw drivers;
- Hot glue guns;
- Riveters;
- Screw drivers;
- Soldering guns;

- Water jets.

**Exclusions:**

- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification.
- Manufacturing of jewelry is classified in 3602-06.
- Manufacturing of wooden housings or casings for clocks such as grandfather and mantle types is classified in 2905.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-10 Camera, video camcorder, motion picture projectors: Manufacturing, assembly, or repair****Applies to:**

Businesses manufacturing, assembling, or repairing cameras, video camcorders, and motion picture projectors.

This is a shop or plant only classification.

Repair work is limited to work performed at the shop or plant.

**Materials include, but are not limited to:**

- Glass;
- Internal components manufactured by others;
- Metals;
- Plastics.

**Tools includes, but are not limited to:**

- Drill presses;
- Punch presses;
- Soldering guns.

**Exclusions:**

- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Special note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3602-11 Fishing tackle: Manufacturing or assembly; stamped metal goods: Manufacturing****Applies to:**

- Businesses manufacturing or assembling fishing tackle.
- Businesses manufacturing small, stamped, metal goods.

This is a shop or plant only classification.

Repair work is limited to work performed at the shop or plant.

**Products produced include, but are not limited to:**

- Artificial bait and similar items;
- Bottle caps;
- Buckles;
- Buttons;
- Clasps;
- Curtain fasteners;
- Fasteners;

- Flies;
- Lures;
- Metal tags;
- Plugs;
- Sinkers;
- Snaps;
- Spinners;
- Spoons;
- Zippers.

**Materials include, but are not limited to:**

- Beads;
- Feathers;
- Finished fishing tackle;
- Hooks;
- Painting spoons;
- Plug bodies;
- Spoons;
- Swivels;
- Wire.

**Work activities include, but are not limited to:**

- Automated stamping;
- Cleaning;
- Cutting;
- Forming;
- Hand assembling;
- Lacquering;
- Packaging and shipping;
- Plating;
- Receiving of supplies;
- Researching and developing of new products;
- Testing of products;
- Trimming.

**Exclusions:**

• Manufacturing 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, molds, specialty clothing or protective gear are to be reported separately in the classification applicable to the material and process used to produce the product.

• Workers hours engaged in the production of raw materials are reported separately in the applicable classification.

• Activities away from the shop or plant must be reported separately in the applicable classification.

**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:**

Businesses manufacturing electrical or gas-filled bulbs or tubes.

**Products produced include, but are not limited to:**

- Cathode-ray tubes;
- Flood lamps;

- Fluorescent tubes;
- Incandescent lamps;
- Neon tubes, attached to metal backings or artistic style;
- Photoflash lamps;
- X-ray tubes.

**Materials include, but are not limited to:**

- Argon gas;
- Glass bulbs;
- Glass globes;
- Glass tubes;
- Metal bases;
- Nitrogen gas;
- Shellac;
- Tungsten wire.

**Work activities include, but are not limited to:**

- Bending;
- Blowing air;
- Flushing bulbs/globes with nitrogen;
- Fusing;
- Heating;
- Milling;
- Sealing;
- Searing.

**Tools include, but are not limited to:**

- Flange machines;
- Stem machines.

**Exclusions:**

- Manufacturing of metal fixtures equipped with electrical or gas lighting is classified in 3402.
- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-23 Electronics products - Resistors, capacitors, chips and relays, transistors: Manufacturing**

**Applies to:**

Businesses manufacturing resistors, capacitors, chips, relays, and transistors.

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.

This is a shop or plant only classification.

Repair work is limited to work performed at the shop or plant.

**Materials include, but are not limited to:**

- Plastics;
- Silicon;
- Wires.

**Work activities include, but are not limited to:**

- Inspecting;
- Packaging;
- Shipping;

- Soldering.

**Tools include, but are not limited to:**

- Automated equipment;
- Hand held tools;
- Pliers;
- Soldering guns;
- Wrenches.

**Exclusions:**

- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification.
- Activities away from the shop or plant must be reported separately in the applicable classification.

**3602-27 Electronic circuit board, N.O.C.: Assembly**

**Applies to:**

Businesses assembling electronic circuit boards not covered by another classification (N.O.C.).

This is a shop or plant only classification.

Repair work is limited to work performed at the shop or plant.

**Work activities include, but are not limited to:**

- Coating;
- Cutting boards;
- Dipping;
- Drilling holes;
- Inspecting;
- Installing;
- Packaging;
- Punching holes;
- Shipping;
- Testing.

**Tools include, but are not limited to:**

- Assembly lines;
- Automated drills;
- Automated punches;
- Power saws.

**Exclusions:**

- Worker hours engaged in outside repair are reported separately in the applicable classification.
- Worker hours engaged in the production of raw materials are reported separately in the applicable classification to the production process used.
- Activities away from the shop or plant must be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

**WAC 296-17A-4305 Classification 4305.**

~~((4305-06 Garbage works or landfill: Reduction or incineration~~

Applies to establishments engaged in the disposal of refuse by processing or destruction, or in the operation of incinerators, landfills or other sites for disposal of such materials. Sanitary landfilling involves spreading typical household waste, in thin layers, compacting them to the smallest practical volume, and covering them with soil each working day in a manner that minimizes environmental impact. Sanitary landfills must have permits issued by a state regulatory program. Also included in this classification are solid waste landfills which are designed to accept construction debris such as plasterboard, cement, dirt, wood, and brush. Compactors may be used to compact the trash before it is discarded in the landfill. Incinerator operations reduce the volume of refuse with the remaining material and ashes being discarded in a landfill. Front end loaders are frequently used to feed the refuse into the incinerator. This classification includes:

- Cashiers collecting fees from customers;
- Incidental recycling or sorting operations conducted in connection with a landfill or garbage works operation by employees of an employer subject to this classification; and
- Establishments that only sort refuse. (Refuse sorting centers are distinguished from "buy back centers" in that "buy back centers" collect recyclable materials which they sell to others while refuse sorting centers collect and dispose of materials.)

This classification excludes:

- Establishments engaged in solid waste, refuse or ashes collecting, including curbside recycle services which are to be reported separately in classification 4305-18;
- Cities or towns engaged in solid waste, refuse or ashes collecting, including curbside recycle services which are to be reported separately in classification 0803;
- Counties and taxing districts engaged in operating garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 1501;
- Establishments engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials, which are to be reported separately in classification 4305-20;
- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21; and
- Buy back (recycle) center operations that include the collecting, buying from customers, sorting and the baling and sales of materials which are to be reported separately in classification 2102.

#### **4305-18 Solid waste, refuse or ashes collecting**

Applies to establishments engaged in collecting and removing waste from private homes, commercial establishments, industrial facilities, and other sites. Refuse may be picked up on a daily, weekly, or other regular basis. Drivers are usually assigned designated routes to collect curbside garbage or transport metal dumpsters for commercial businesses. This classification also includes the curbside collection of recyclable material when performed by employees of an employer subject to this classification. Garbage collection companies have contracts to dump refuse at landfills or local transfer stations where refuse is compacted and later transferred to a landfill. Independent owners may also contract to run the services for a county or

city. This classification also includes establishments engaged in mobile paper shredding services. A truck, similar to a small moving van, is outfitted with a paper shredder. Empty bins or cans are left at establishments such as banks and law offices which need to have documents shredded, the filled containers are picked up either on a regular basis or on call, and the paper shredded on-site. The shredded paper is delivered to recyclers or other businesses who use shredded paper.

This classification excludes:

- Establishments engaged in garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 4305-06;

- Counties or taxing districts engaged in garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 1501;

- Cities or towns engaged in solid waste, refuse or ashes collecting, including curbside recycling services which are to be reported separately in classification 0803;

- Establishments engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials, which are to be reported separately in classification 4305-20;

- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21; and

- Recycle ("buy-back") center operations that include the collecting, buying from customers, sorting, and the baling of materials which are to be reported separately in classification 2102.

#### **4305-20 Hazardous waste and toxic material processing or handling, N.O.C.**

Applies to establishments engaged in the *processing or handling* of hazardous/toxic materials not covered by another classification (N.O.C.), including the *processing* of medical or septic tank waste, drug lab or hazardous spill *cleanup* (excluding oil spill cleanup on land), and *reprocessing or handling* of low-level radioactive materials. This classification is distinguished from classification 3701-27, in that 4305-20 applies to the *processing or cleanup* of hazardous/toxic materials while 3701-27 includes the *identifying and repackaging for disposal* of such materials as drugs, pesticides, chemicals, and toners. Hazardous waste can be defined as any material that contains hazardous elements in amounts high enough to pose a significant threat to human health and the environment and therefore should be isolated. Hazardous characteristics include the ability to bioconcentrate, ignite, corrode, react with water or other materials, or show toxicity such as toxic metals including lead, cadmium and mercury; organic solvents such as benzene and trichloroethylene; and toxic materials such as asbestos.

This classification excludes:

- Establishments engaged in garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 4305-06;

- Establishments engaged in solid waste and refuse or ashes collecting, including curbside recycle services and mobile paper shredding operations, which are to be reported separately in classification 4305-18;

- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21;
- Soil remediation, including oil spill cleanup on land, which is to be reported separately in classification 0101;
- Asbestos abatement, all operations, which is to be reported separately in classification 0512;
- Processing of waste oils, solvents, antifreeze, paints, and other hazardous materials, which is to be reported separately in classification 3407; and
- Hazardous/toxic material repackaging for disposal, including drugs, pesticides, chemicals, and toners, which is to be reported separately in classification 3701.

**Special note:** See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).

#### **4305-21 Tire dumps or collection centers**

Applies to establishments engaged in operating tire dumps or collection centers. The primary source of used vehicle tires are tire retailers who remove the tires from their customers' vehicles when replacement tires are sold. Occasionally community or charitable groups will hold a fund raising event where the public can drop off their used tires for a fee. Operations include, but are not limited to, picking up and hauling the used tires to a location where the tires can be stored or manually sorted into those with enough tread to be used on the highways; those casings suitable for retreading (either of which have a resale value); and those with no resale value which are hauled to an appropriate disposal site. This classification includes drivers as well as workers involved in the sorting operations.

#### **4305-22 Debris removal: Construction sites or nonconstruction debris N.O.C.**

Applies to establishments engaged in the collecting and removing of construction site debris left by construction crews. The debris may consist of scrap lumber, metal, wire, drywall, carpet and any other materials used in the construction of residential or commercial projects. This classification also includes the collecting and removal of nonconstruction debris. This includes, but is not limited to:

- Basement debris;
- Household junk;
- Garden waste;
- Furniture; and
- Appliances.

The debris is loaded into dump trucks, utility trucks, dump trailers, or roll off dumpsters then transferred to a landfill or local transfer station.

This classification excludes:

- Establishments engaged in residential or commercial construction that remove and haul their own debris which is to be reported in the construction classification applicable to the work being performed;
- Establishments engaged in garbage works, landfill reduction or incineration operations which are to be reported separately in classification 4305-06;
- Establishments engaged in solid waste and refuse or ashes collecting, including curbside recycle services and mobile paper shredding operations which are to be reported separately in classification 4305-18;



- Establishments engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials which are to be reported separately in classification 4305-20;
- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21; and
- Establishments engaged in preoccupancy cleanup of newly constructed residential or commercial structures which includes washing windows, vacuuming carpets, dusting woodwork, doors, cabinets, washing floors and fixtures which are to be reported separately in classification 6602-03.)

**4305-18 Garbage works, landfills, solid waste, refuse or ashes collecting, including reduction or incineration, mobile paper shredding, and tire sorting or tire collection centers**

**Applies to:**

- Businesses engaged in collecting and removing waste from private homes, commercial businesses, industrial facilities, or other sites for disposal at a garbage works or a landfill where the waste is processed, incinerated, or buried;
- Businesses that only sort refuse;
- Businesses engaged in mobile paper shredding services;
- Businesses engaged in tire collection or tire sorting for resale to others.

**Types of business include, but are not limited to:**

- Ashes collecting;
- Garbage or refuse collection;
- Landfills;
- Garbage works;
- Garbage incineration or garbage disposal;
- Mobile paper shredding - Mobile paper shredding services send a truck outfitted with a paper shredder to the business location for shredding. Customers fill containers for secure disposal. Shredding occurs on-site. Delivery of the shredded paper to recyclers or other businesses by employees of the employer is included in this classification;
- Refuse sorting centers - Refuse sorting centers are distinguished from "buy back centers" classified in 2102 in that "buy back centers" collect recyclable materials, which they sell to others while refuse sorting centers collect and dispose of materials;
- Tire disposal;
- Tire sorting/tire storage - Tire collection or tire sorting businesses pick up, haul, and deliver used tires to a sorting location or disposal site. Employees may sort and grade tires for resale to others. Unusable tires are delivered to landfills or disposal sites;
- Waste compaction.

**Work activities include, but are not limited to:**

- Refuse pick up on a daily, weekly, or other regular basis. Drivers collect curbside garbage or transport metal dumpsters for commercial businesses;
- Curbside collection of recyclable material when performed by employees of an employer subject to this classification;
- Processing waste at a landfill, which may be compacted, spread in thin layers, and covered with soil daily;
- Cashiers collecting fees from customers;

- Incidental recycling or sorting operations conducted in connection with a landfill or garbage works operation by employees of an employer subject to this classification;
- Incinerating refuse to reduce its volume before the remaining material is discarded in a landfill;
- Accepting construction debris, such as plasterboard, cement, dirt, wood, and brush at landfills;
- Delivering sorted tires or shredded paper to other businesses that either recycle or dispose of them.

**Machinery and equipment include, but are not limited to:**

- Compactors;
- Conveyors;
- Crushers;
- Excavators;
- Forklifts;
- Front end loaders;
- Incinerators;
- Pallets;
- Paper shredders;
- Tractors;
- Trucks.

**Exclusions:**

- Counties or taxing districts engaged in garbage works, landfill, reduction or incineration operations are classified in 1501;
- Cities or towns engaged in solid waste refuse or ashes collecting, including curbside recycling services, are classified in 0803;
- Businesses engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials, are classified in 4305-20;
- Recycle (buy-back) center operations that include the collecting, buying from customers, sorting, and the baling of materials, are classified in 2102.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**4305-20 Hazardous waste and toxic material processing or handling, N.O.C.**

**Applies to:**

Businesses engaged in the processing or handling of hazardous/toxic materials not covered by another classification (N.O.C.), including the processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials.

**Additional information:**

This classification is distinguished from classification 3701-27, in that classification 4305-20 applies to the processing or cleanup of hazardous/toxic materials while classification 3701-27 includes the identifying and repackaging for disposal of such materials as drugs, pesticides, chemicals, and toners.

Hazardous waste can be defined as any material that contains hazardous elements in amounts high enough to pose a significant threat to human health and the environment and therefore should be isolated.

Hazardous characteristics include the ability to bioconcentrate, ignite, corrode, react with water or other materials, or show

toxicity such as toxic metals including lead, cadmium and mercury; organic solvents such as benzene and trichloroethylene; and toxic materials such as asbestos.

**Machinery and equipment include, but are not limited to:**

- Breathing apparatus;
- Eye protection and face masks;
- Forklifts;
- Gloves;
- Hard hats;
- Hazardous material suits;
- High temperature and high pressure equipment for cleansing;
- Puncture proof containers;
- Storage barrels for containment and transport;
- Traffic barriers and cones;
- Trucks.

**Exclusions:**

- Businesses engaged in garbage works, landfill, reduction or incineration operations, solid waste or landfill operations, mobile shredding, or tire collection and tire storage are classified in 4305-18;
- Soil remediation, including oil spill cleanup on land, is classified in 0101;
- Asbestos abatement, all operations, is classified in 0512;
- Processing of waste oils, solvents, antifreeze, paints, and other hazardous materials, is classified in 3407;
- Hazardous/toxic material repackaging for disposal, including drugs, pesticides, chemicals, and toners, is classified in 3701.

**Special note:** See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**4305-22 Debris removal: Construction sites or nonconstruction debris N.O.C.**

**Applies to:**

- Businesses engaged in collecting and removing construction site debris left by construction crews. The debris may consist of scrap lumber, metal, wire, drywall, carpet and any other materials used in the construction of residential or commercial projects.
- Businesses which collect and remove nonconstruction debris including, but not limited to, basement debris, household junk, garden waste, furniture, and appliances.

**Machinery and equipment include, but are not limited to:**

- Dump trailers;
- Dump trucks;
- Roll off dumpsters;
- Utility trailers.

**Exclusions:**

- Businesses engaged in residential or commercial construction that remove and haul their own debris, are classified in the construction classification applicable to the work performed;
- Businesses engaged in garbage works, landfill reduction or incineration operations; solid waste, refuse, or ashes collecting, including curbside collection services; mobile paper shredding; tire collection; or tire storage services are classified in 4305-18;

• Businesses engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials are classified in 4305-20;

• Businesses engaged in preoccupancy cleanup of newly constructed residential or commercial structures, which includes washing windows, vacuuming carpets, dusting woodwork, doors, cabinets, and washing floors and fixtures, are classified in 6602-03.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-5108 Classification 5108.**

**5108-55 Cable or wire rope: ((Drawing and)) Manufacturing**

~~((Applies to establishments engaged in wire drawing including wire rope or cable manufacturing from iron or steel. Establishments may be engaged in the further manufacturing of products made from wire such as, but not limited to, baling wire, barbed wire, spikes, galvanized wire and nails. The process involves the forming of metal on a swage block into a shape that will eventually be drawn through a series of dies to reduce it in size. Some wire may be heat-treated to allow for continual drawing. Secondary and final drawing machines with progressively smaller dies are used to reduce the wire to the desired fineness. Incidental galvanizing is considered normal to iron or steel wire when performed as a subsequent treatment of drawn wire. The finished wire is automatically wound onto reels for shipment or may be further processed into wire rope or cables. Stranding and braiding is done on automatic machines and the wire or cable stored on shipping reels.))~~

**5108-56 Cable or wire rope: Manufacturing with no drawing**

~~Applies to establishments engaged exclusively in stranding iron or steel wire rope or cable. Reeled iron or steel coils of drawn wire and core material are received from others. The wires are mechanically wound together to form a multiwire strand which are then wound helically around a metal or fiber core to form wire rope. The finished rope or cable is pulled through a compression die, measured by power driven drums and stored on shipping reels.~~

**5108-57 Cable or wire insulation or covering: Manufacturing**

~~Applies to establishments engaged in manufacturing insulated or covered electrical cable. These establishments receive the drawn wire and the insulation material from outside sources. Commonly used insulation materials are enamel or lacquer, rubber, plastic, paper, cambric and cotton thread. Enamel or nylon insulation is applied by running the wire through heated tanks of either mix. The wire is then dried in ovens and the cycle is repeated several times. This classification applies also to the placing of various protective coverings on insulated wire. These protective coverings are generally cotton braid, metallic armor or lead sheathing. This classification includes incidental wire stranding when performed by employees of employers subject to this classification.))~~

**Applies to:**

- Businesses engaged in wire drawing including wire rope or cable manufacturing from iron or steel;
- Businesses engaged in stranding iron or steel wire rope or cable; and
- Businesses engaged in manufacturing insulated or covered electrical cable.

**Products manufactured include, but are not limited to:**

- Baling wire;
- Barbed wire;
- Cable;
- Covered electrical cable;
- Galvanized wire;
- Insulated wire;
- Nails;
- Spikes;
- Wire rope.

**Materials used include, but are not limited to:**

- Carbon steel;
- Fiber or polypropylene core;
- Insulation material such as cambric, cotton thread, enamel, lacquer, nylon, paper, plastic, and rubber;
- Iron;
- Protective coverings such as cotton braid, lead sheathing, metallic armor, or zinc;
- Shipping reels;
- Stainless steel.

**Work processes include, but are not limited to:**

- Wire drawing - The process involves the forming of metal on a swage block into a shape that will eventually be drawn through a series of dies to reduce it in size. Some wire may be heat-treated to allow for continual drawing. Secondary and final drawing machines with progressively smaller dies are used to reduce the wire to the desired fineness. Incidental galvanizing is considered normal to iron or steel wire when performed as a subsequent treatment of drawn wire.
- Stranding or braiding - Wire ropes are mechanically wound together to form multiwire strands which are then wound helically around a metal or fiber core to form wire rope. The finished rope or cable is pulled through a compression die, measured by power driven drums and stored on shipping reels.
- Insulating - Commonly used insulation materials are enamel or lacquer, rubber, plastic, paper, cambric, and cotton thread. Enamel or nylon insulation is applied by running the wire through heated tanks of either mix. The wire is then dried in ovens and the cycle is repeated several times.
- Covering - These protective coverings are generally cotton braid, metallic armor, or lead sheathing.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-5209 Classification 5209.**

**5209-00 Boiler or tank construction**

~~((Applies to establishments engaged in the construction of boilers or steel tanks. Boilers are tanks used to either store hot water or make steam. Tanks may be used to hold products such as, but not limited to, sand and gravel, water, solid waste or fuels. The product is constructed from steel plate and may use I-beams for structural support. The materials may be purchased in bulk, if the business has the brake presses and rollers to cut and shape the metals to the appropriate dimensions, or as fabricated components. These establishments may also use cutting torches and other welding equipment in the manufacture of their products. They usually have a large shop area in one or more buildings that is equipped with overhead cranes. There is usually a yard to store raw materials, work-in-process, and finished goods. 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.~~

~~This classification excludes installation of boilers or tanks which is to be reported separately in the classification applicable to the work being performed.~~

#### **~~5209-01 Metal goods, N.O.C. from 9 gauge or heavier metals~~**

~~Applies to establishments engaged in the manufacture of goods using ferrous and nonferrous metal of 9 gauge or heavier. 9 gauge metals are approximately 1/8" thick. Items manufactured include, but are not limited to, crab pots, gaff hooks, firewood boxes, rims for basketball hoops, and rebar. Raw material is cut to desired size with saws, shears, brake presses, punches, and flame cutters. Parts may be joined by welding, riveting, screwing, or bolting. The parts may be handled by overhead cranes, hoists, and forklifts. The products may be finished in a variety of ways including, but not limited to, sanding, grinding, cleaning with solvents and applying paint or lacquer. Finish work is included in this classification when performed by employees of employers subject to this classification. 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.~~

~~This classification excludes establishments primarily engaged in structural iron or steel manufacturing which are to be reported separately in classification 5208; establishments primarily engaged in welding and machine shop activities which are to be reported separately in classification 3402; and establishments primarily engaged in manufacturing products from metal lighter than 9 gauge which are to be reported separately in classification 3404.~~

#### **~~5209-02 Wood or pellet burning stove: Manufacturing (to be assigned only by classification services staff)~~**

~~Applies to establishments engaged in the manufacture of wood or pellet burning stoves. Sheet steel or plate metal is sheared, formed, punched, baked and decreased. Parts are assembled by spot welding, then enameled or painted. Grey iron parts are foundry cast, chipped, and ground. Heating elements, insulation, wiring and control assemblies, glass panels and grey iron parts are assembled into stove shells on the production assembly line. The stoves are then packed for shipment. Materials include, but are not limited to, sheet steel, grey iron or ferrous castings, insulation materials, glass, aluminum and brass tubing control assemblies, chrome trim and hardware, and paints and enamels. Equipment includes, but is not limited to, power presses, shears, brake presses, welding equipment, spray painting equipment,~~

baking oven, pneumatic and electric grinders and chippers, and pneumatic tools. 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.)

**Applies to:**

Businesses engaged in the construction of boilers or steel tanks. Boilers are tanks used to either store hot water or make steam.

**Products stored in tanks include, but are not limited to:**

- Fuels;
- Sand and gravel;
- Solid waste;
- Water.

**Materials used include, but are not limited to:**

- I-beams (for structural support);
- Steel plate.

**Equipment used include, but are not limited to:**

- Brake presses;
- Cranes;
- Cutting torches;
- Rollers;
- Welding equipment.

**Note:** 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.

**Exclusions:**

- Installation of boilers or tanks is classified in the classification applicable to the work being performed;
- Structural iron or steel manufacturing is classified in 5208;
- Welding and machine shop businesses are classified in 3402;
- Manufacturing products from metal lighter than 9 gauge is classified in 3404.

**5209-01 Metal goods, N.O.C. from 9 gauge or heavier metals**

**Applies to:**

Businesses engaged in the manufacture of goods using ferrous and nonferrous metal of 9 gauge or heavier. 9 gauge metals are approximately 1/8" thick.

**Products manufactured include, but are not limited to:**

- Crab pots;
- Firewood boxes;
- Gaff hooks;
- Rebar;
- Rims for basketball hoops.

**Work activities include, but are not limited to:**

- Cutting material to desired size;
- Handling parts using equipment;
- Joining parts by bolting, riveting, screwing, or welding;
- Finish work, like sanding, grinding, cleaning with solvents, or applying paint or lacquer, when performed by employees of employers subject to this classification.

**Equipment used include, but are not limited to:**

- Brake presses;
- Cranes;
- Flame cutters;

- Forklifts;
- Hoists;
- Punches;
- Saws;
- Shears.

**Note:** 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.

**Exclusions:**

- Structural iron or steel manufacturing is classified in 5208;
- Welding and machine shop businesses are classified in 3402;
- Manufacturing products from metal lighter than 9 gauge is classified in 3404.

**5209-02 Wood or pellet burning stove: Manufacturing (to be assigned only by classification services staff)**

**Applies to:**

Businesses engaged in the manufacture of wood or pellet burning stoves.

**Work activities include, but are not limited to:**

- Assembling heating elements, insulation, and wiring controls;
- Assembling glass panels and grey iron parts into stove shells;
- Baking and decreasing metal;
- Forming metal;
- Packing for shipment;
- Punching metal;
- Shearing metals;
- Welding.

**Materials used include, but are not limited to:**

- Aluminum and brass tubing control assemblies;
- Chrome trim and hardware;
- Ferrous casting;
- Glass;
- Grey iron;
- Insulation materials;
- Paints and enamels;
- Sheet steel.

**Equipment used include, but are not limited to:**

- Baking oven;
- Brake presses;
- Pneumatic and electric grinders and chippers;
- Pneumatic tools;
- Power presses;
- Shears;
- Spray painting equipment;
- Welding equipment.

**Note:** 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.

**Exclusions:**

- Structural iron or steel manufacturing is classified in 5208;
- Welding and machine shop businesses are classified in 3402;
- Manufacturing products from metal lighter than 9 gauge is classified in 3404.



AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

**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;
- 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:

- 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;
- 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:

- 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**

***(only to be assigned by the temporary help/leasing underwriter)***

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;
- 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:

- 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 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:

- 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 or call centers for others. Customers include, but are not limited to:

- 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 to customers by telephone answering service companies or call centers include, but are not limited to:

- Dispatching;
- Monitoring alarm systems;
- Placing reminder calls;
- Rental of office space;
- Scheduling appointments for customers;
- Taking orders for customers;
- Troubleshooting technical problems;
- 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;
- Bus lines;
- Car rental agencies;
- Cruise;
- Hotels;
- Motels;
- Related travel providers;
- Resorts;
- Train;
- Travel insurance companies.

Services vary and could include:

• Arrangement of special needs for people with disabilities 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, secretarial, ~~((or))~~ tutoring, or interpreter services**

Applies to establishments engaged in providing word processing ~~((or))~~, secretarial, tutoring, or interpreter services to others.

Services include, but are not limited to:

- Correcting assignments;
- Desktop publishing;
- Dictation and transcription services;
- Instruction;

- Making copies of documents;
- Student assessments;
- Typing/compiling reports, proposals, resumes, or correspondence;
- Testing;
- Sending faxes.

This classification includes clerical office and outside personnel who travel from one office or instructional environment to another.

**Excluded operations:** Classification **5301-21** excludes:

- Tutoring programs operated by schools, libraries, and any other organization or enterprise classified **6103** and/or **6104**.

**Note:** WAC 296-17-31017 multiple classifications must be applied when more than one basic classification is assigned.

**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 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6107 Classification 6107.**

**6107-01 Veterinary hospitals or clinics**

~~((Applies to establishments of state licensed practitioners engaged in the practice of veterinary medicine, dentistry, or surgery. Veterinarians provide routine checkups, vaccinations, administer drugs and medicines, euthanasia and autopsies; some specialize in areas such as animal dermatology or animal behaviors. Usually veterinary services are performed on an outpatient basis, although animals may be kept on the premises for one or more days for observation or treatment. Veterinarians who specialize in the treatment of larger animals such as cows or horses frequently provide their services off premises rather than in their own facilities. This classification includes clerical office and sales personnel.~~

~~This classification excludes animal boarding kennels, animal shelters and/or pet grooming parlors which are to be reported separately in classification 7308.)~~

**Applies to:**

Businesses of state licensed practitioners engaged in the practice of veterinary medicine, dentistry, or surgery. This classification includes clerical office and sales personnel.

**Work activities include, but are not limited to:**

- Administering drugs and medicines;
- Animal behaviors;
- Clerical;
- Dermatology;
- Euthanasia;
- Necropsies;
- Routine checkups;

- Sales;
- Vaccinations.

Usually veterinary services are performed on an outpatient basis, although animals may be kept on the premises for one or more days for observation or treatment. Veterinarians who specialize in the treatment of larger animals such as cows or horses frequently provide their services off premises rather than in their own facilities.

**Exclusion:**

• Animal boarding kennels, animal shelters, and/or pet grooming parlors are classified in 7308.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6121 Classification 6121.**

**6121-00 Acute care hospitals - Without a fully implemented safe patient handling program (~~(to be assigned only by the hospital underwriter))~~)**

Applies to establishments that meet the definition of an acute care hospital contained in WAC 296-17-35203(7) but that are not using the required patient lifting and moving equipment as part of a fully implemented safe patient handling program as defined in WAC 296-17-35203 (7)(c). This classification contemplates all necessary and usual employments found in hospitals including, but not limited to, admissions, clerical, and sales staff, medical professionals, pharmacy staff, dietitians and food preparation staff, and laundry, housekeeping, custodial and grounds keeping staff.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

**WAC 296-17A-6206 Classification 6206.**

**6206-06 Golf courses, N.O.C.**

~~((Applies to establishments engaged in operating public or private golf courses. Pro shops, miniature golf courses, and driving ranges operated in connection with the golf course are included in this classification. Typical operations of a pro shop include, but are not limited to, selling golf clubs, golf balls, specialty clothing, and related golfing items, renting carts, arranging tee times, and collecting green fees. Also included in this classification are snack bars operated at the golf course when limited to the same hours as the golf course is open. Typical employees include golf pros, greens keepers, caddies, and snack bar employees.~~

~~This classification excludes establishments operating miniature golf courses and driving ranges which are to be reported separately in classification 6208 and "bona fide" restaurant operations which may be reported separately in classification 3905. For purposes of this classification a "bona fide" restaurant at a golf course is operated independent of the course and is open to the public even when the golf course is closed.~~

~~**Special note:** A pro shop operated by an independent concessionaire may qualify for classification 6406, provided the pro shop does not operate the course, collect green fees, or perform other functions of managing a golf course.))~~

**Applies to:**

Businesses operating public or private golf courses, including pro shops, miniature golf courses, and driving ranges operated in connection with the golf course.

This classification includes snack bars operated at the golf course when the snack bar is not a "bona fide" restaurant operation as described in the exclusions below.

**Pro shop work activities include, but are not limited to:**

- Arranging tee times;
- Collecting green fees;
- Renting carts;
- Selling golf clubs, golf balls, specialty clothing, and related golfing items.

**Typical employees include, but are not limited to:**

- Caddies;
- Golf pros;
- Greens keepers;
- Snack bar employees.

**Exclusions:**

- Miniature golf courses and driving ranges not in connection with a standard golf course are classified in 6208.
- "Bona fide" restaurant operations may be reported separately in classification 3905. For purposes of this classification a "bona fide" restaurant at a golf course is operated independent of the course and is open to the public even when the golf course is closed.
- Pro shops operated by independent concessionaires may be reported separately in classification 6406, provided the pro shop does not operate the course, collect green fees, or perform other functions of managing a golf course.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6410 Classification 6410.**

**6410-02 Janitorial supply dealers**

~~((Applies to establishments engaged in wholesale and/or retail distribution of janitorial supplies. Janitorial supply dealers generally sell to cleaning service companies, hospitals, schools and government agencies. A small portion of their business may involve retail sales to walk-in customers. Typical products sold include, but are not limited to, aerosols, brushes, carpet cleaning products, cleaners, strippers, deodorizers, floor sealers, polishes, paper products, toilet tissue, paper towels, hand cleaners, dispensers, waxes, mops, buckets, and floor or carpet cleaning equipment. Orders may be taken by employees who work inside the store room, by outside sales personnel, or by route drivers, all of whom are included in this classification.~~

~~This classification excludes janitorial cleaning services which are to be reported separately in classification 6602.)~~

**Applies to:**

Businesses engaged in wholesale and/or retail distribution of janitorial supplies.

Employees who work inside the storeroom, outside sales personnel, and route drivers are all included in this classification.

**Customers include, but are not limited to:**

- Cleaning service companies;
- Government agencies;
- Hospitals;
- Schools.

**Products sold include, but are not limited to:**

- Aerosols;
- Brushes;
- Buckets;
- Carpet cleaning products;
- Cleaners;
- Deodorizers;
- Dispensers;
- Floor or carpet cleaning equipment;
- Floor sealers;
- Hand cleaners;
- Mops;
- Paper products;
- Polishes and waxes;
- Strippers;
- Toilet tissue.

**Exclusion:**

- Janitorial cleaning services are classified in 6602.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

**WAC 296-17A-6411 Classification 6411.** Retail store operations limited to providing any combination of the following merchandise, supplies, or services:

- All types of phones;
- Beads;
- Books, newspapers, magazines, and comic books;
- Cameras;
- Cards (greeting, post, and sports);
- Cosmetics and fragrances;
- Laptops, electronic notebooks and pads, and other small electronic devices;
- Musical instruments (string, wood, brass, wind, and percussion);
- Photography and darkroom supplies;
- Records, music discs, tapes, videos, video games, and software disks;
- Small or portable entertainment players (or parts of player), radios, for homes, offices, or automobiles;
- Smoking accessories and tobacco products;



- Vaporizers and e-liquids;
- Other smaller items, such as playing cards, cups, calendars, puzzles, games, costume jewelry, cosmetics, pencils, pens, notebooks, etc.

**Note:** Stores in classification **6411** may also carry inventory listed in the scopes language of lower rated store risk classifications, along with the goods listed below, as long as the majority of the merchandise is described by the above list.

**Classification 6411 includes:**

- Cashiering;
- Cleaning and maintenance of store, storage areas, and associated business offices when performed by store employees;
- Inventory work by store employees;
- Sales of already-prepared snacks, and beverages (for off-site consumption), and/or promotional clothing;
- Parts and batteries for products included in classification **6411**;
- Receiving and returning merchandise at store's loading area;
- Renting items normally sold in classification **6411**;
- Sales work inside store;
- Store security and surveillance;
- Stocking.

**Classification 6411 excludes:**

- Stores selling merchandise described by a higher rated store classification;
- Delivery drivers who are reported separately in classification **1101**;
- Door to door sales, which are reported separately in subclassification **6309-22**;
- Stores using pallet jacks, fork lifts, conveyors, or other mechanized means of moving merchandise into and within store premises, which are classified in **6406** when merchandise is described by classification **6411** and/or classification **6406**;
- Stand-alone distribution centers or warehouses which are to be reported separately in classification **6407**;
- Repair or installation work, which must be reported separately;
- Sales of pets; see classifications **6406** and **7308**;
- Working at coffee stands, lunch counters, or any on-site food preparation or manufacturing of candy, where employees' hours are to be reported separately in classification **3905**;
- Employees doing custom framing; see classifications **6406** and **6309**;
- Product demonstration services which are to be reported in subclassification **6406-40**;
- Businesses providing inventory services which are to be reported in subclassification **6406-00**;
- Wholesales, reported in classification **6407**;
- High volume warehouse and distribution facilities which are reported separately in classification **6407**.

For administrative purposes, classification **6411** is divided into the following retail store subclassification(s):

**6411-00 Stores meeting the criteria for classification 6411, but not specifically described in any other subclassification. N.O.C.**

**6411-14 Wind, string, brass, and percussion musical instruments**

Includes hand held keyboards and music instruction.

Excludes:

- Stores selling pianos and organs, see classifications **6406**, **6309**, and **6306**;
- Repair of instruments, which is reported separately in classification **2906** or **3602**; (if more than one is applicable, assign only the highest rated classification for all repair).

**6411-19 Coins, stamps, rare metals, and collectible cards**

**6411-20 Books, videos, electronic games, music, newspapers, magazines, and comic books**

Excludes establishments with coin or token arcades, to be reported in subclassification **6406-00**.

**6411-24 Tobacco, vaporizers and liquids, and smoking accessories**

Excludes:

- Retail stores primarily selling ((marijuana)) cannabis infused grocery items or ((marijuana)) cannabis, see classification **6403**;
- Retail bakeries selling a variety of baked goods infused with ((marijuana)) cannabis; see subclassification **3901-00**.

**6411-25 Phones, cameras, electronic tablets, laptops, and notebooks, GPS displays, small stereo components and other small portable electronic devices, N.O.C.**

Includes stores and kiosks selling and/or arranging DSL, cable, or dish services for phones, computers, televisions and other devices.

Excludes:

- Stores selling office or school supplies, reported in subclassification **6406-11**;
- Stores selling furniture or furniture kits; see classification **6406**, **6309**, or **6306**;
- Stores providing photo development and printing, see classification **6406** or **6506**;
- Workers performing repair work, which is to be reported separately in classification **3602**.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6502 Classification 6502.**

**6502-00 Banks; credit unions; savings and loan associations**

~~((Applies to establishments engaged in providing banking and related financial services. Services include, but are not limited to, establishing and servicing checking and savings accounts, telephone, computer and in-person fund transfers, lending, vending certificates of deposit and savings bonds, providing financial consulting services and estate planning, and providing supplemental services such as automatic teller machines (ATMs) and credit cards, currency exchange, cashier and travelers checks, notary public services, and safe deposit box rentals. This classification includes clerical office and sales personnel.~~

~~This classification excludes establishments engaged in providing armored car or on-premises security which are to be reported separately in the applicable services classification.~~

~~**6502-05 Mortgage companies; financial or investment companies, N.O.C.**~~

~~Applies to establishments engaged in providing financial or investment services not covered by another classification (N.O.C.). This classification also applies to establishments engaged in extending credit in the form of mortgage loans by originating mortgage or real estate construction loans, selling mortgage loans to permanent investors, and servicing the loans, and to establishments that offer check cashing services. This classification includes clerical office and sales personnel and staff inspectors who authorize release of funds on construction loans.~~

~~This classification excludes mortgage brokers who are to be reported separately in classification 5301. Mortgage brokers provide the service of finding lenders for people who need loans.~~

#### **6502-06 Stock brokers**

~~Applies to establishments engaged in brokering stocks and other related securities. Establishments subject to this classification act as agents in the buying, selling, or exchanging of securities such as, but not limited to, stocks, mutual funds, annuities, bonds and commodity contracts for their clients. Their "full-service" usually extends to financial planning advice, arranging for IRA and KEOGH accounts, money market accounts, tax free bonds, and related financial investments. This classification also includes "investment bankers" who are primarily engaged in originating, underwriting, and distributing securities, buying and selling commodity contracts for their own account or for the account of others, and buying, selling, or trading in stocks, stocks options, bonds, or commodity contracts. This classification includes clerical office and sales personnel.~~

#### **6502-07 Escrow companies**

~~Applies to establishments engaged in providing escrow and/or title search services to the general public. They may be known either as "escrow companies" or "title companies." An escrow company is a third party who holds in custody a written agreement such as a deed or bond (escrow) which does not become effective until certain conditions are fulfilled by the grantee. Title companies conduct title searches to ensure there are no liens against property; if there are no liens, they issue a title insurance policy; if there are liens they make them known to potential buyers. Establishments subject to this classification typically provide both escrow and title search services which include the issuance of title insurance, collection and disbursement of funds for which they are custodians, providing closing of documents for the purchase of real estate, and preparing and filing the documents at the appropriate municipal offices. This classification includes clerical office and sales personnel.))~~

#### **Applies to:**

Businesses providing banking and related financial services. This classification includes clerical office and sales personnel.

#### **Services include, but are not limited to:**

- Establishing and servicing checking and savings accounts;
- Providing financial consulting services and estate planning;
- Lending;
- Transferring funds by computer, telephone, or in-person; and
- Vending certificates of deposit and savings bonds.

#### **Supplemental services provided include:**

- Automatic teller machines (ATMs) and credit cards;
- Cashier and travelers checks;

- Currency exchange;
- Notary public; and
- Safe deposit box rentals.

**Exclusion:**

Businesses providing armored car or on-premises security services are classified in the applicable services classification.

**6502-05 Mortgage companies; financial or investment companies, N.O.C.****Applies to:**

- Businesses engaged in providing financial or investment services not covered by another classification (N.O.C.).
- Businesses engaged in extending credit in the form of mortgage loans by originating mortgage or real estate construction loans, selling mortgage loans to permanent investors, and servicing the loans.
- Businesses that offer check cashing services.

This classification includes clerical office and sales personnel and staff inspectors who authorize release of funds on construction loans.

**Exclusion:**

Businesses engaged as mortgage brokers who provide the service of finding lenders for people who need loans, but who do not make purchases on behalf of their clients, are classified in 5301.

**6502-06 Stock brokers****Applies to:**

Businesses engaged in brokering stocks and other related securities. This classification includes clerical office and sales personnel.

**Services include, but are not limited to:**

- Acting as agents for their clients buying, selling, or exchanging securities such as, but not limited to, stocks, mutual funds, annuities, bonds, and commodity contracts;
- Financial planning advice;
- Arranging for IRA and KEOGH accounts, money market accounts, tax free bonds, and related financial investments;
- Acting as investment bankers - Originating, underwriting, and distributing securities; buying and selling commodity contracts for their own account or for the account of others, and buying, selling, or trading in stocks, stocks options, bonds, or commodity contracts.

**6502-07 Escrow companies****Applies to:**

Escrow companies and title companies providing escrow and/or title search services to the general public. This classification includes clerical office and sales personnel.

**Escrow companies** - A third party who holds in custody a written agreement such as a deed or bond (escrow) which does not become effective until certain conditions are fulfilled by the grantee.

**Title companies** - Conduct title searches to ensure there are no liens against property; if there are no liens, they issue a title insurance policy; if there are liens, they make them known to potential buyers.

**Services include, but are not limited to:**

- Collecting and disbursing funds for which they are custodians;
- Issuing title insurance;

- Providing closing of documents for real estate purchases; and
- Preparing and filing documents at the appropriate municipal offices.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6503 Classification 6503.**

**6503-00 Labor unions or employee representative associations**

~~((Applies to establishments engaged as labor unions or employee representative associations. This classification applies to the employees of the union or association itself as opposed to the members that they represent, who are employees of other businesses. These establishments act as bargaining agents for others; they maintain membership records, collect dues, and negotiate contracts. This classification includes labor union officials, business agents, organizers and other employees with combined inside and outside duties.~~

~~This classification excludes clerical office employees who may be reported separately in 4904 if the conditions of the standard exception general reporting rule are met.))~~

**Applies to:**

Businesses engaged as labor unions or employee representative associations and applies to the employees of the business as opposed to the members they represent.

**Worker occupations may include, but are not limited to:**

- Business agents;
- Organizers;
- Union officials; and
- Other employees with combined inside and outside duties.

**Work activities include, but are not limited to:**

- Acting as bargaining agents for others;
- Collecting dues;
- Maintaining membership records; and
- Negotiating contracts.

**Exclusion:**

Clerical office employees are classified in 4904 if the conditions of the standard exception general reporting rule are met.

AMENDATORY SECTION (Amending WSR 22-21-117, filed 10/18/22, effective 1/1/23)

**WAC 296-17A-6504 Classification 6504.**

**6504-00 Thrift stores operated by charitable or other nonprofit organizations**

**Applies to:**

Nonprofit businesses operating stores primarily selling used merchandise that has been donated.

**Items for sale include, but are not limited to:**

- Clothing;

- Furniture;
- Household appliances;
- Housewares;
- Tools; and
- Toys.

**Work activities include, but are not limited to:**

- Cashiering;
- Collection of items from locations away from the store;
- Conditioning used merchandise (conditioning is limited to cleaning, reupholstery work, and minor repairs; it does not include major mechanical repairs or refinishing furniture); and
- Stocking and cleaning the store.

**Exclusions:**

- Nonstore employees of a charitable organization, are classified according to the overall nature and operations of the organization.
- Businesses repairing and selling used appliances are classified in 0607.
- Stores selling antiques are classified in 6309.

**6504-01 For-profit thrift stores**

**Applies to:**

For-profit businesses operating stores primarily selling used merchandise that has been donated.

**Items for sale include, but are not limited to:**

- Clothing;
- Furniture;
- Household appliances;
- Housewares;
- Tools; and
- Toys.

**Work activities include, but are not limited to:**

- Cashiering;
- Collection of items from locations away from the store;
- Conditioning used merchandise (conditioning is limited to cleaning, reupholstery work, and minor repairs; it does not include major mechanical repairs or refinishing furniture); and
- Stocking and cleaning the store.

**Exclusions:**

- Nonstore employees of a charitable organization, are classified according to the overall nature and operations of the organization.
- Businesses repairing and selling used appliances are classified in 0607.
- Stores selling antiques are classified in 6309.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-6510 Classification 6510.**

**6510-00 Domestic ((servants)) workers/home care assistants employed in or about the private residence of a home owner**

~~((Applies to individuals employed by a home owner to provide domestic services/home care assistants in or about the home owner's pri-~~

vate residence. This classification includes services such as, but not limited to, cooking, housekeeping, caring for children, caring for the elderly and people with disabilities including personal care such as bathing, body care, dressing and help with ambulating, as well as companionship, running errands, shopping, gardening, caretaker at homeowner's residence, and transporting members of the household by vehicle to appointments, after school activities, or similar activities. This classification also includes the care of animals not used for a business at the homeowner's residence.

This classification is subject to the provisions of RCW 51.12.020 — Employments excluded — which states in part: "The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer...." This classification is also subject to the provisions of RCW 51.12.110 which allows the employer to elect optional coverage for domestic servants and caretakers.

This classification excludes entities whose nature of business is to provide chore services which are to be reported separately in classification 6511; domestic (residential) cleaning or janitorial services which are to be reported separately in classification 6602; lawn and yard maintenance services which are to be reported separately in classification 0308; skilled or semiskilled nursing care which is to be reported separately in classification 6110; and new construction which would be reported in the classification appropriate for that phase of construction.))

**Applies to:**

Individuals employed by a home owner to provide domestic services/home care assistants in or about the home owner's private residence.

**Services include, but are not limited to:**

- Cooking;
- Gardening;
- Housekeeping;
- Care of animals not used for a business at the homeowner's residence;
- Caring for children;
- Caring for the elderly;
- Caring for people with disabilities including personal care such as bathing, body care, dressing and help with ambulating, as well as companionship;
- Shopping;
- Running errands;
- Caretaker at homeowner's residence; and
- Transporting members of the household by vehicle to appointments, after school activities, or similar activities.

**Domestic workers and caretakers under this classification are exempt from mandatory coverage as specified in RCW 51.12.020:**

- Any person employed as a domestic worker in a private home by an employer who has less than two employees regularly employed 40 or more hours a week in such employment.

• Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer.

Employers of domestic workers and caretakers exempt from mandatory coverage may elect coverage.

**Exclusions:**

• Businesses whose nature of business is providing chore services are classified in 6511;

• Domestic (residential) cleaning or janitorial businesses are classified in 6602;

• Lawn and yard maintenance businesses are classified in 0308;

• Skilled or semiskilled nursing care is classified in 6110; and

• Worker hours engaged in new construction are reported separately in the classification applicable to the phase of construction.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

**WAC 296-17A-6512 Classification 6512.**

**6512-00 Home care services/consumer directed employer program**

~~((Applies to persons who are employed by people who are ill, people with disabilities, 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 limited to:~~

~~• Household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; and 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 consumer directed employer on behalf of the persons who provide the home care services.))~~

**Applies to:**

Persons employed by individuals who are ill, individuals with disabilities, or vulnerable individuals to provide home care services that enable those individuals to remain in their own homes.

**Household services include, but are not limited to:**

• Housekeeping;

• Meal planning and preparation;

• Shopping;

• Transportation; and

• Delegated tasks of nursing under RCW 18.79.260 (3)(e).

**Personal care services include, but are not limited to:**

• Assistance with dressing;

• Feeding; and

• Personal hygiene to facilitate self-care.

**Special note:** Premiums for the persons who provide home care services are paid by the consumer directed employer.



AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

**WAC 296-17A-6601 Classification 6601.**

**6601-00 Detective agencies**

~~((Applies to establishments engaged in providing investigative and related services for others. Services include, but are not limited to, investigating corporate embezzlement and fraud, employee theft, insurance fraud, missing person cases, matrimonial or child custody disputes, conducting background checks, tracking and apprehending fugitives, monitoring burglar or fire alarm systems, or provide polygraph testing or fingerprinting services. Investigative methods include checking public records, conducting interviews, surveillance, and undercover operations. As a general rule, the detective agency provides clients with a final report, which includes documentation, photographs, or videotapes.~~

~~This classification excludes establishments engaged in providing customer shoplifting surveillance within retail stores which are to be reported separately in classification 6601-01 and surveillance employees hired as direct employees of a nondetective or security agency who are to be reported separately in the classification applicable to the establishment.~~

**6601-01 Merchant police or patrol**

~~Applies to establishments engaged in providing security services to shopping centers, malls, business parks, banks and other businesses. Services include, but are not limited to, monitoring parking lots and garages, maintaining public security in malls, hospitals, and banks, providing surveillance for theft or shoplifting, and monitoring alarm systems.~~

~~This classification excludes detective agencies which are to be reported separately in classification 6601-00 and security guard services which are to be reported separately in classification 6601-02.~~

**6601-02 Security guard agencies**

~~Applies to establishments engaged in providing general security guard services for clients such as airports, commercial, industrial, residential and governmental facilities. Services include, but are not limited to, protecting persons or buildings, responding to fire or burglar alarms, protecting and/or transporting executives, providing security at strikes, and conducting electronic sweeps. The clients' security systems may be connected to a central security system of the security guard agency, where employees of the security guard agency monitor the client's systems and notify the appropriate authorities if necessary. As a general rule, security guards, do not have police powers.~~

~~This classification excludes security guards at logging sites who are to be reported separately in classification 6601-03 and security guards at construction sites who are to be reported separately in classification 6601-04 provided the conditions in the special exception section of the general rules have been met.~~

**6601-03 Security guards at logging sites**

~~Applies to employees of logging contractors or landowners who are employed as security guards to maintain security at logging sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any~~

other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at logging sites.

**~~6601-04 Security guards at construction sites~~**

~~Applies to employees of construction contractors or landowners who are employed as security guards to maintain security at construction sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at construction sites.~~

**~~6601-05 Armored car services~~**

~~Applies to establishments engaged in armored car services which transport cash or valuables for businesses such as, but not limited to, banks, supermarkets, and jewelry stores to other destinations. Also included are armored car services which collect or deposit money into or from automatic teller machines.~~

**~~6601-06 Crowd control services~~**

~~Applies to establishments engaged in providing crowd control services. Crowd control services is a growing field and may include, but not be limited to, crowd management at sporting events, race tracks, live concerts, rallies, conventions, rodeos, and fairs. This classification includes parking lot staff, and rule enforcement employees such as uniformed or plain clothes security guards who maintain order as well as providing personal protection.~~

~~This classification excludes theater ushers, inside ticket takers, set up crews and stagehands who are to be reported separately in classification 4504.~~

**~~6601-07 Process/legal messenger services~~**

~~Applies to establishments engaged in providing process services and legal messenger services for others. Process servers deliver legal documents such as summonses, complaints, subpoenas and writs to individuals. A legal messenger delivers legal papers between legal representatives and the courts. Services may also include checking public records, surveillance work, and conducting interviews to locate recipients of legal documents. They will provide clients with a final report of service or nonservice on the recipient.~~

~~This classification excludes errand and parcel delivery services that are to be reported separately in classification 1101.)~~

**Applies to:**

Businesses providing investigative and related services for others.

**Services include, but are not limited to:**

- Conducting background checks;
- Investigating corporate embezzlement and fraud, employee theft, insurance fraud, missing person cases, matrimonial or child custody disputes;
- Monitoring burglar or fire alarm systems;
- Providing polygraph testing or fingerprinting services; or
- Tracking and apprehending fugitives.

**Work activities include investigative methods, such as:**

- Checking public records;
- Conducting interviews;
- Surveillance;
- Undercover operations; and
- Providing client with a final report, which includes documentation, photographs, or videotapes.

**Exclusions:**

- Businesses providing customer shoplifting surveillance within retail stores reported separately in classification 6601-01;
- Surveillance employees hired as direct employees of a nondetective or security agency are reported separately in the classification applicable to the establishment.

**6601-01 Merchant police or patrol****Applies to:**

Businesses providing security services to shopping centers, malls, business parks, banks, and other businesses.

**Services include, but are not limited to:**

- Maintaining public security in malls, hospitals, and banks;
- Monitoring parking lots and garages;
- Monitoring alarm systems; and
- Providing surveillance for theft or shoplifting.

**Exclusions:**

- Detective agencies are to be reported separately in classification 6601-00;
- Security guard services which are to be reported separately in classification 6601-02.

**6601-02 Security guard agencies****Applies to:**

Businesses providing general security guard services for clients such as airports, commercial, industrial, residential, and governmental facilities.

**Services include, but are not limited to:**

- Conducting electronic sweeps;
- Protecting persons or buildings;
- Protecting and/or transporting executives;
- Providing security at strikes; and
- Responding to fire or burglar alarms.

The clients' security systems may be connected to a central security system of the security guard agency, where employees of the security guard agency monitor the client's systems and notify the appropriate authorities if necessary. As a general rule, security guards, do not have police powers.

**Exclusions:**

- Security guards at logging sites are classified separately in 6601-03;
- Security guards at construction sites are classified separately in 6601-04, provided the conditions in the special exception section of the general rules have been met.

**6601-03 Security guards at logging sites****Applies to:**

• Employees of logging contractors or landowners who are employed as security guards to maintain security at logging sites preventing, deterring, and detecting crime and/or fires.

• Businesses that contract to provide security guards at logging sites preventing, deterring, and detecting crime and/or fires.

Security guard duties are limited only to hours that the employer is not conducting any other operations at the site. The employee may have no other duties during their shift as a security guard.

#### **6601-04 Security guards at construction sites**

##### **Applies to:**

• Employees of construction contractors or landowners who are employed as security guards to maintain security at construction sites preventing, deterring, and detecting crime and/or fires.

• Businesses that contract to provide security guards at construction sites preventing, deterring, and detecting crime and/or fires.

Security guard duties are limited only to hours that the employer is not conducting any other operations at the site. The employee may have no other duties during their shift as a security guard.

#### **6601-05 Armored car services**

##### **Applies to:**

Businesses engaged in armored car services transporting cash or valuables for businesses such as, but not limited to, banks, supermarkets, and jewelry stores to other destinations; or collect or deposit money into or from automatic teller machines.

#### **6601-06 Crowd control services**

##### **Applies to:**

Businesses engaged in providing crowd control services.

##### **Types of events services may be provided for include, but are not limited to:**

- Conventions;
- Fairs;
- Live concerts;
- Race tracks;
- Rallies;
- Rodeos; and
- Sporting events.

##### **Workers may include:**

• Rule enforcement workers such as uniformed or plain clothes security guards who maintain order as well as providing personal protection; and

- Parking lot staff.

##### **Exclusion:**

Theater ushers, inside ticket takers, set up crews and stagehands are classified separately in 4504.

#### **6601-07 Process/legal messenger services**

##### **Applies to:**

• Businesses engaged in providing process services by delivering legal documents such as summonses, complaints, subpoenas, and writs to individuals.

• Businesses engaged in legal messenger services for others by delivering legal papers between legal representatives and the courts.

**Services include, but are not limited to:**

• Checking public records;  
• Conducting interviews to locate recipients of legal documents;  
• Surveillance work; and  
• Providing clients with a final report of service or nonservice on the recipient.

**Exclusion:**

Errand and parcel delivery services are classified separately in 1101.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6704 Classification 6704.**

**6704-00 Parking lot operations**

~~((Applies to establishments engaged in operating parking lots for the temporary parking of customer vehicles in uncovered spaces. Work contemplated by this classification includes, but is not limited to, checking customers in and out, collecting fees, parking customers vehicles at check-in and returning them to customer upon check-out, patrolling and monitoring the area for security purposes, and providing shuttle service in connection with parking lot operations. Parking lot operations subject to this classification do not provide service to the automobiles.~~

~~This classification excludes parking/storage garages which are to be reported separately in classification 3406.)~~

**Applies to:**

Businesses operating parking lots for the temporary parking of customer vehicles in uncovered spaces.

**Work activities include, but are not limited to:**

• Checking customers in and out;  
• Collecting fees;  
• Parking customer's vehicles at check-in and returning them to customer at check-out;  
• Patrolling and monitoring the area for security purposes; and  
• Providing shuttle service in connection with parking lot operations.

Parking lot operations in this classification do not provide service to the vehicles.

**Exclusion:**

• Parking/storage garages are classified in 3406.

AMENDATORY SECTION (Amending WSR 15-02-060, filed 1/6/15, effective 7/1/15)

**WAC 296-17A-6706 Classification 6706.**

~~((Operations and facilities for sports teams~~

~~**Note:** As used in this classification, the term "player" and "athlete" have the same meaning.~~

~~Applies to workers employed by all types of athletic teams. This classification includes employees who care for a team's athletes, their equipment, the playing field/stadium/arena, or operate facilities during games.~~

~~This classification includes the coaching staff and managers of amateur teams. However, when the only employees of an amateur sports team are coaching staff and standard exception employees, the team reports its coaching staff in classification 6103.~~

~~**This classification also includes, but is not limited to:**~~

- ~~• Trainers;~~
- ~~• Mascots;~~
- ~~• Announcers;~~
- ~~• Scorekeepers;~~
- ~~• Concessionaires;~~
- ~~• Laundry workers;~~
- ~~• Janitors;~~
- ~~• Stadium lighting and sound technicians;~~
- ~~• Ushers, security;~~
- ~~• Parking attendants;~~
- ~~• Staff who maintain clubhouse/locker room and grounds;~~

~~Coaches and managers of professional and semiprofessional teams in the off-season only. Off-season follows the final competitive event. It begins after all athletes have left any premises used by their employer for player meetings, training, or practices, and continues until the time any of the players are assembled together again, by their employer, in preparation for the upcoming season.~~

~~The following exposures are excluded:~~

- ~~• Professional and semiprofessional athletes (see classifications 6707 and 6809);~~
- ~~• Coaches and managers for professional and semiprofessional teams — Except in the off-season;~~
- ~~• Referees, umpires and other sports officials (see classifications 6707 and 6809);~~
- ~~• Ticket sales from office or booth with no other duties, which are reported in classification 4904;~~
- ~~• Businesses that own, or contract to maintain, a facility or stadium, but do not operate the facility for teams or sporting events classification 4910.~~

~~For administrative purposes, classification 6706 is divided into the following subclassification:))~~

#### **6706-01 Athletic teams: Operations and facilities((-))**

~~**Note:** As used in this classification, the term "player" and "athlete" have the same meaning.~~

#### ~~**Applies to:**~~

~~Workers employed by all types of athletic teams who care for a team's athletes, their equipment, the playing field/stadium/arena, or operate facilities during games.~~

#### ~~**Worker occupations include, but are not limited to:**~~

- ~~• Coaching staff and managers of amateur teams. However, when the only employees of an amateur sports team are coaching staff and standard exception employees, the team reports its coaching staff in classification 6103.~~

• Coaches and managers of professional and semiprofessional teams in the off-season only. Off-season follows the final competitive event. It begins after all athletes have left any premises used by their employer for player meetings, training, or practices, and continues until the time any of the players are assembled together again, by their employer, in preparation for the upcoming season.

- Announcers;
- Concessionaires;
- Janitors;
- Laundry workers;
- Mascots;
- Parking attendants;
- Scorekeepers;
- Security;
- Stadium lighting and sound technicians;
- Staff who maintain clubhouse/locker room and grounds;
- Trainers;
- Ushers.

**Exclusions:**

- Professional and semiprofessional athletes are classified in either 6707 or 6809;
- Coaches and managers for professional and semiprofessional teams during the season are classified in either 6707 or 6809;
- Referees, umpires, and other sports officials are classified in either 6707 or 6809;
- Ticket sales from office or booth with no other duties are classified in 4904;
- Businesses that own, or contract to maintain, a facility or stadium, but do not operate the facility for teams or sporting events are classified in 4910.

AMENDATORY SECTION (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

**WAC 296-17A-6907 Classification 6907.**

**6907-01 Household furnishings moving and storage**

~~((Applies to establishments engaged in interstate and/or intrastate moving and/or storage of household furnishings. Work contemplated by this classification includes packing and unpacking, loading and unloading of household goods, transportation from one residence to another, and temporary storage of household goods in a warehouse. This classification includes the moving van drivers, packing personnel, laborers who assist in the loading and unloading operations, warehouse employees and truck mechanics.~~

~~This classification excludes:~~

- ~~• Intrastate and/or interstate delivery of nonhousehold furnishings which are to be reported separately in either classification 1101 or 1102, as applicable;~~
- ~~• Nonhousehold furnishing warehouses, which are to be reported separately in the appropriate warehouse classification; and~~
- ~~• Firms providing moving and assembly of office furniture and modular work stations, which are reported in classification 2002-13.~~

~~**Special note:** Establishments subject to this classification are to report actual hours worked for each driver. However, the hours are~~

to be capped at 520 hours per driver per quarter. Detailed information can be found in the general audit rule covering the trucking industry and in RCW 51.12.095.)

**Applies to:**

Businesses engaged in moving or storage of household goods and furnishings.

**Work activities include, but are not limited to:**

- Packing and unpacking household goods/furnishings;
- Loading and unloading household goods/furnishings;
- Transporting household goods/furnishings from one residence to another, may be intrastate or interstate;
- Temporary storage of household goods/furnishings in warehouse.

**Occupations include, but are not limited to:**

- Laborers;
- Moving van drivers;
- Packing personnel;
- Truck mechanics;
- Warehouse personnel.

**Exclusions:**

- Intrastate and/or interstate delivery of nonhousehold furnishings are classified in either classification 1101 or 1102, as applicable;
- Warehouses not used for the temporary storage of household furnishings, are classified in the appropriate warehouse classification; and
- Businesses providing moving and assembly of office furniture and modular work stations, are classified in classification 2002-13.

**Special note:** Businesses subject to this classification are to report actual hours worked for each driver. However, the hours are to be capped at 520 hours per driver per quarter. Detailed information can be found in the general audit rule covering the trucking industry and in RCW 51.12.095.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6908 Classification 6908.**

**6908-02 Lightweight paper products, N.O.C.: Manufacturing**

~~((Applies to establishments engaged in the manufacture of lightweight paper products not otherwise classified (N.O.C.), such as, but not limited to, carbon paper, crepe paper, blue print paper, computer paper, calculation tape, note pad, file folder, envelope, stationery, and typewriter ribbon. Materials include, but are not limited to, file folder or stationery-weight paper, glue, string, clasps, coating liquids and ink. Machinery includes, but is not limited to, sheeters, slitters, die cutters or other cutting equipment, printing presses, folding, punching and drilling machines, glue applicators, trimmers, winders/rewinders, embossers, packaging machinery, balers, shredders and forklifts.~~

~~This classification excludes establishments engaged in the manufacture of paper, which are to be reported separately in classification 2401.~~



**Special note:** This classification includes establishments engaged as "paper rewinders or paper converters." These businesses purchase large rolls of premanufactured paper from outside sources, then cut, rewind, or "remanufacture" them into smaller or narrower rolls. They sometimes refer to themselves as "paper wholesalers," but they are performing more "manufacturing" work than what is allowed in classification 6407 for wholesale stores. The machinery used for this type of cutting and rewinding is the same as that used by manufacturers of the types of goods mentioned above, who also cut, wind and rewind paper from large rolls onto smaller rolls.

**6908-03 Paper bag, movers packing pads, and wallpaper: Manufacturing**

Applies to establishments engaged in the manufacture of paper products such as, but not limited to, paper bags of all sizes, movers packing pads, wrapping paper and wallpaper. Raw materials include, but are not limited to, paper, glue, string, ink, foam or bubble plastic, plastic wrap and tape. Machinery includes, but is not limited to, bag making machines, slitters, die cutters or other cutting machinery, perforating or embossing machines, glue applicators, printing presses, winders/rewinders, packaging machines, shredders, balers, forklifts and sewing machines which are used to sew tape across the tops of bags that package bulk goods.

This classification excludes establishments engaged in the manufacture of paper, pulp or wood fiber, corrugated boxes or other heavy-grade paper products, or corrugating, laminating, oiling or coating paper, which are to be reported separately in classification 2401; establishments engaged in the manufacture of plastic bags which are to be reported separately in classification 3510 and establishments engaged in the manufacture of abrasive cloth or paper (emery cloth/sandpaper) and textile bags or sacks, which are to be reported separately in classifications 3708 or 3802 as applicable.

**6908-05 Paper box -- Noncorrugated: Manufacturing**

Applies to establishments engaged in the manufacture of boxes, or partitions for boxes, from lightweight, noncorrugated cardboard. Boxes contemplated by classification package goods such as, but not limited to, clothing or other soft goods, prepared foods, wine, cigars, stationery and games. Materials include, but are not limited to, cardboard (chipboard), glue, staples, tape, resins, ink and plastic film. Machinery includes, but is not limited to, box-making machines, sheeters, slitters, slotters, winders and rewinders, printing presses, cutting machines, laminators, bundlers, unitizers, balers, shredders and forklifts.

This classification excludes establishments engaged in the manufacture of paper, pulp or wood fiber, corrugated boxes or other heavy-grade paper products, or corrugating, laminating, oiling or coating paper, which are to be reported separately in classification 2401.

**6908-06 Single or double-ply paper products: Manufacturing**

Applies to establishments engaged in the manufacture of single or double-ply paper products such as, but not limited to, surgical gowns, towels, napkins, table or shelf covers, florist papers, tissue and shredded or crimped packing material. Some of the items made in this classification are primarily hand-made. Raw materials include, but are not limited to, single or double-ply paper, tape, glue, plastic or cellophane lining. Machinery includes, but is not limited to, winders and rewinders, folding machines, cutting tables, paper-crimping machinery, gluing machines and forklifts.

~~This classification excludes establishments engaged in the manufacture of paper, which are to be reported separately in classification 2401.)~~

**Applies to:**

- Businesses manufacturing lightweight paper products not otherwise classified (N.O.C.).
- Businesses engaged as paper rewinders or paper converters. Businesses that purchase large rolls of premanufactured paper from outside sources, then cut, rewind, or "remanufacture" them into smaller or narrower rolls. They sometimes refer to themselves as "paper wholesalers," but they are performing more "manufacturing" work than what is allowed in classification 6407 for wholesale stores. The machinery used for this type of cutting and rewinding is the same as that used by manufacturers of lightweight paper products, who also cut, wind, and rewind paper from large rolls onto smaller rolls.

**Products manufactured include, but are not limited to:**

- Blueprint paper;
- Calculation tape;
- Carbon paper;
- Computer paper;
- Crepe paper;
- Envelopes;
- File folders;
- Note pads;
- Stationery;
- Typewriter ribbon.

**Materials used include, but are not limited to:**

- File folder or stationery-weight paper;
- Clasps;
- Coating liquids and ink;
- Glue;
- String.

**Machinery used include, but are not limited to:**

- Balers;
- Die cutters and other cutting equipment;
- Embossers;
- Folding, punching, and drilling machines;
- Forklifts;
- Glue applicators;
- Packing machinery;
- Printing presses;
- Shredders;
- Sheeters;
- Slitters;
- Trimmers;
- Winders/rewinders.

**Exclusion:**

- Paper manufacturing is classified in 2401.

**6908-03 Paper bag, movers packing pads, and wallpaper: Manufacturing**

**Applies to:**

Businesses manufacturing paper bags of all sizes, movers packing pads, wrapping paper, and wallpaper.

**Materials used include, but are not limited to:**

- Bubble wrap;
- Foam;
- Glue;
- Ink;
- Paper;
- Plastic wrap;
- String;
- Tape.

**Machinery used include, but are not limited to:**

- Bag making machines;
- Balers;
- Die cutters or other cutting machinery;
- Embossing machines;
- Forklifts;
- Glue applicators;
- Packing machines;
- Perforating or embossing machines;
- Printing presses;
- Sewing machines;
- Shredders;
- Slitters;
- Winders/rewinders.

**Exclusions:**

- Manufacture of paper, pulp or wood fiber, corrugated boxes, or other heavy-grade paper products is classified in 2401;
- Corrugating, laminating, oiling, or coating of paper is classified in 2401;
- Manufacture of plastic bags is classified in 3510;
- Manufacture of abrasive cloth or paper (emery cloth/sandpaper) and textile bags or sacks, are classified in 3708 or 3802 as applicable.

**6908-05 Paper box - Noncorrugated: Manufacturing**

**Applies to:**

Businesses manufacturing boxes, or partitions for boxes, from lightweight, noncorrugated cardboard.

**Boxes or box partitions manufactured to package products that include, but are not limited to:**

- Cigars;
- Clothing or other soft goods;
- Games;
- Prepared foods;
- Stationery;
- Wine.

**Materials used include, but are not limited to:**

- Cardboard (chipboard);
- Glue;
- Ink;
- Plastic film;
- Resin;
- Staples;
- Tape.

**Machinery used include, but are not limited to:**

- Balers;

- Box-making machines;
- Bundlers;
- Cutting machines;
- Forklifts;
- Laminators;
- Printing presses;
- Sheeters;
- Shredders;
- Slitters;
- Slotters;
- Unitizers;
- Winders and rewinders.

**Exclusions:**

- Manufacture of paper, pulp or wood fiber, corrugated boxes, or other heavy-grade paper products is classified in 2401;
- Corrugating, laminating, oiling, or coating paper is classified in 2401.

**6908-06 Single or double-ply paper products: Manufacturing****Applies to:**

Businesses manufacturing single or double-ply paper products.

**Products manufactured include, but are not limited to:**

- Florist papers;
- Handmade items;
- Napkins;
- Shredded or crimped packaging material;
- Surgical gowns;
- Table or shelf covers;
- Tissue;
- Towels.

**Materials used include, but are not limited to:**

- Glue;
- Plastic or cellophane lining;
- Single or double-ply paper;
- Tape.

**Machinery used include, but are not limited to:**

- Cutting tables;
- Folding machines;
- Forklifts;
- Gluing machines;
- Paper crimping machinery;
- Winders and rewinders.

**Exclusion:**

- Paper manufacturing is classified in 2401.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7100 Classification 7100.****7100-00 Exempt limited liability company members, N.O.C.**

Applies to members of a limited liability company exempt from mandatory coverage under RCW 51.12.020(13) who have elected optional

coverage, and perform *only* administrative, clerical and outside sale duties. Any LLC member electing optional coverage who performs duties directly related to the operational activities of the company must be reported in the basic classification applicable to the work being performed.

**Special note:** Under no circumstances is classification 4904 to be assigned to any exempt member of a limited liability company. Any member of a limited liability company who has elected optional coverage and is engaged exclusively in outside sales is to be reported separately in classification 6303 if they meet all the standard exception requirements for classification 6303 detailed in WAC 296-17-31018.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-7101 Classification 7101.**

**7101-00 Corporate officers, N.O.C.**

Applies to executive officers of a corporation who are not covered by another classification (N.O.C.) and for whom optional coverage has been elected. This is a standard exception classification as described in WAC 296-17-31018 Exception classifications. To qualify for this section, a corporate officer must:

- Be exempt from mandatory coverage pursuant to RCW 51.12.020(8);
- Not be exposed to the operative hazard of the business; and
- Not directly supervise workers who are exposed to the operative hazard of the business.

Officers who are exposed to the operative hazard, or who directly supervise workers who are exposed to the operative hazard, must be reported in the basic classification applicable to the work performed.

**Special note:** Exempt officers can never be reported in classification 4904. Exempt officers (~~can be~~) who have elected optional coverage and are engaged exclusively in outside sales are reported in classification 6303 if they meet all the standard exception requirements for classification 6303 detailed in WAC 296-17-31018.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7308 Classification 7308.**

**7308-02 Animal shelters or services, dog pounds and humane societies**

~~((Applies to establishments engaged in operating animal shelters/ services, dog pounds, or humane societies which care for lost or unwanted animals or animals that have been placed for adoption. The title "animal services" has replaced the title "animal shelter" or "dog pound" in most establishments. While the activities are the same under all of these titles, the main difference is the funding. Animal services are tax-base funded; humane societies are privately funded. Activities include, but are not limited to, feeding, cleaning, or grooming animals, veterinary care, euthanasia, catching or controlling animals, and investigating incidents such as animal bites and animal abuse. This classification also applies to dog obedience classes that are not in connection with kennels or pet breeding establishments.~~

~~This classification excludes pet grooming parlors which are to be reported separately in classification 7308-03; pet stores which are to be reported separately in classification 7308-04; and pet breeding/boarding kennels which are to be reported separately in classification 7308-05.~~

~~**Special note:** Effective July 1, 1996, 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.~~

### ~~7308-03 Pet grooming parlors~~

~~Applies to establishments engaged in providing pet grooming services either at the groomer's or the customer's location. Services may be provided in a shop or at the customer's location with the use of a vehicle equipped with the necessary supplies. Although most of the animals groomed are dogs, parlors may also groom cats. Activities include, but are not limited to, bathing, dipping to control fleas, cutting, brushing, combing and drying hair, clipping nails, and the incidental sale of pet products such as collars, shampoos and pet clothing. Depending on the length of their stay, animals may also be fed, watered, and placed in kennels until their owners pick them up.~~

~~This classification excludes animal shelters, dog pounds, and humane societies which are to be reported separately in classification 7308-02; pet stores, N.O.C. which are to be reported separately in classification 7308-04; and pet breeding/boarding kennels which are to be reported separately in classification 7308-05.~~

~~**Special note:** Effective July 1, 1996, 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.~~

### ~~7308-04 Pet stores, N.O.C.~~

~~Applies to establishments engaged as pet stores not covered by another classification (N.O.C.). Stores in this classification sell cats and dogs. In addition to cats and dogs, they may also sell other animals such as birds, snakes, fish, reptiles or turtles, and related items such as, but not limited to, pet food, cages, travel carriers, pet toys, collars, shampoos, flea, tick and worm treatments, vaccination equipment, aquariums, and supplies aquariums. This classification also includes any incidental pet grooming performed by employees of employers subject to this classification.~~

~~This classification excludes stores which sell pets such as tropical fish, birds or reptiles, but do not sell cats and dogs, which are to be reported separately in classification 6406; pet grooming parlors which are to be reported separately in classification 7308-03; animal shelters, dog pounds and humane societies which are to be reported separately in classification 7308-02; pet breeding/boarding kennels which are to be reported separately in classification 7308-05 and stores which sell pet food only, but do not sell pets, which are to be reported separately in classification 6403.~~

~~**Special note:** Effective July 1, 1996, 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.~~

### ~~7308-05 Pet breeding and boarding kennels~~

~~Applies to establishments primarily engaged in boarding pets while their owners are away from home, or in boarding pets for others~~

in connection with a breeding service. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, sheltering, tending, breeding, grooming and feeding animals, erecting or mending fences, erecting or maintaining kennels, cleaning kennels, and veterinary services and the incidental sale of animals, animal grooming or care supplies when performed by employees of an employer subject to this classification.

This classification excludes pet grooming parlors which are to be reported separately in classification 7308-03 and contractors hired by a farm operator to build or repair fences or structures who are to be reported separately in the applicable construction classification.

**Special notes:** The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as feeding animals, grooming, and cleaning kennels. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm or business with which they are contracting.

Effective July 1, 1996, 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.)

**Applies to:**

- Businesses operating privately or publicly funded animal shelters/services, dog pounds, or humane societies, which care for lost or unwanted animals or animals that have been placed for adoption.
- Businesses conducting dog obedience classes that are not in connection with kennels or pet breeding establishments.

**Work activities include, but are not limited to:**

- Catching or controlling animals;
- Cleaning;
- Feeding;
- Grooming;
- Euthanasia;
- Investigating incidents such as animal bites and animal abuse;
- Veterinary care.

**Exclusions:**

- Pet breeding/boarding kennels are classified in 7308-05;
- Pet grooming parlors are classified in 7308-03;
- Pet stores are classified in 7308-04.

**7308-03 Pet grooming parlors**

**Applies to:**

Businesses providing pet grooming services, either at the groomer's shop or at the customer's location with the use of a vehicle equipped with the necessary supplies.

**Work activities include, but are not limited to:**

- Bathing;
- Brushing;
- Clipping nails;
- Combing;
- Dipping to control fleas;
- Drying;
- Incidental sale of pet products such as collars, shampoos, and pet clothing;

• Depending on the length of their stay, animals may also be fed, watered, and placed in kennels until their owners pick them up.

**Exclusions:**

- Animal shelters, dog pounds, and humane societies are classified in 7308-02;
- Pet breeding/boarding kennels are classified in 7308-05;
- Pet stores, N.O.C. are classified in 7308-04.

**7308-04 Pet stores, N.O.C.**

**Applies to:**

Pet stores not covered by another classification (N.O.C.).

**Stores in this classification sell:**

- Aquariums and related supplies;
- Birds;
- Cages;
- Cats;
- Collars;
- Dogs;
- Fish;
- Flea, tick, and worm treatments;
- Pet food;
- Pet toys;
- Reptiles;
- Shampoos;
- Snakes;
- Travel carriers;
- Turtles;
- Vaccination equipment;
- Incidental pet grooming performed by employees of employers subject to this classification.

**Exclusions:**

- Animal shelters, dog pounds, and humane societies are classified in 7308-02;
- Pet breeding/boarding kennels are classified in 7308-05;
- Pet grooming parlors are classified in 7308-03;
- Stores which sell pet food only, but do not sell pets, are classified in 6403;
- Stores which sell pets such as tropical fish, birds or reptiles, but do not sell cats and dogs, are classified in 6406.

**7308-05 Pet breeding and boarding kennels**

**Applies to:**

Businesses primarily boarding pets while their owners are away from home, or boarding pets for others in connection with a breeding service.

**Work activities include, but are not limited to:**

- Breeding;
- Cleaning kennels;
- Erecting or mending fences;
- Erecting or maintaining kennels;
- Feeding;
- Grooming;
- Sheltering;
- Tending;



- Veterinary services when performed by an employer subject to this classification;
- Incidental sale of animals, animal grooming, or care supplies when performed by employees of an employer subject to this classification.

**Exclusions:**

- Pet grooming parlors are classified in 7308-03;
- Contractors hired by a farm operator to build or repair fences or structures are classified in the applicable construction classification.

**Special notes:** The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as feeding animals, grooming, and cleaning kennels. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm or business with which they are contracting.

## WSR 23-17-150

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed August 22, 2023, 12:36 p.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 23-08-014.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for the athletic trainer profession, WAC 246-916-060. The department of health (department) is proposing an amendment in rule to establish health equity CE requirements to implement ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On September 26, 2023, at 11:00 a.m. The department will provide a virtual-only hearing. Please register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_F1CXDc\\_4TvWypsA4y-QmXg](https://us02web.zoom.us/webinar/register/WN_F1CXDc_4TvWypsA4y-QmXg). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 3, 2023.

Submit Written Comments to: Allyson McIver, Program Manager, P.O. Box 47877, Olympia, WA 98504-7877, email <https://fortress.wa.gov/doh/policyreview>, by September 26, 2023.

Assistance for Persons with Disabilities: Contact Allyson McIver, program manager, phone 360-236-2878, fax 360-236-2901, TTY 711, email [allyson.mciver@doh.wa.gov](mailto:allyson.mciver@doh.wa.gov), by September 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the athletic trainer profession must meet or exceed the minimum standards [of] the model rules in WAC 246-12-800 through 246-12-830.

The department is proposing an amendment to WAC 246-916-060 to implement ESSB 5229. The proposal will adopt and meet the health equity model rules, WAC 246-12-800 through 246-12-830, for the athletic trainer profession to comply with RCW 43.70.613. The proposed rules add one hour of health equity education to be completed as part of the current CE requirements every two years. This meets the two hours of health equity education to be completed every four years required in the model rules. No additional topics are being added to the model rules requirements.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings include implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

The department believes in the importance of health equity training and that meeting the requirement of one hour every two years (equaling two hours every four years) allows individuals to develop a strong foundation in health equity with a more immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care ef-

fectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity.

Statutory Authority for Adoption: RCW 18.250.020, 18.130.040, 43.70.040, and 43.70.613.

Statute Being Implemented: RCW 43.70.613.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Allyson McIver, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2878.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Allyson McIver, Program Manager, P.O. Box 47877, Olympia, WA 98504-7877, phone 360-236-2878, fax 360-236-2901, email allyson.mciver@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 22, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

### OTS-4750.3

AMENDATORY SECTION (Amending WSR 16-11-053, filed 5/13/16, effective 6/13/16)

**WAC 246-916-060 Continuing education.** The goal of continuing education is to promote continued competence, development of current knowledge and skills, and enhancement of professional skills and judgment. Continuing education activities must focus on increasing knowledge, skills, and abilities related to the practice of athletic training.

(1) A licensed athletic trainer shall complete a minimum of ~~((fifty))~~ 50 hours of continuing education every two years. At least ~~((ten))~~ 10 of those hours must include evidence-based practice as outlined in subsection ~~((+3))~~ (4) of this section. The remaining hours may be in categories listed in subsection ~~((+4))~~ (5) of this section.

(2) A licensed athletic trainer must complete one hour of health equity continuing education every two years. The goal of health equity continuing education is to equip health care workers with the skills to recognize and address health inequities in their daily work.

The minimum standards include instruction on skills to address the structural factors, such as bias, racism, and poverty, that manifest as health inequities. These skills include individual level and

system-level intervention, and self-reflection to assess how the licensee's social position can influence their relationship with patients and their communities. These skills enable a health care professional to care effectively for patients from diverse cultures, groups, and communities, varying in race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity.

(a) This training must be completed by the end of the first full continuing education reporting period after January 1, 2024, or during the first full continuing education reporting period after initial licensure, whichever is later.

(b) Training must include content as listed in WAC 246-12-830 and RCW 43.70.613.

(c) The hours spent completing the training in health equity under this section will count toward meeting applicable continuing education requirements for athletic trainer license renewal.

(3) A licensed athletic trainer may alternatively meet the requirement of ~~((fifty))~~ 50 hours of continuing education if they hold a current certification from the board of certification for the athletic trainer (BOC). The required documentation is proof of certification during the two-year period.

~~((3))~~ (4) At least ~~((ten))~~ 10 hours of evidence-based practice must be obtained during the two-year reporting period through any of the following activities:

(a) Complete BOC approved workshops, seminars, conferences, webinars, or home study courses. The required documentation for this activity is a certificate of completion.

(b) Graduate from a Commission on Accreditation of Athletic Training Education (CAATE) accredited post-professional athletic training graduate program. A maximum of ~~((ten))~~ 10 hours may be applied in the two-year period. The required documentation for this activity is an official transcript indicating graduation within the two-year period.

(c) Graduate from a PhD, EdD, DSc program if dissertation has a narrow focus of athletic training. A maximum of ~~((ten))~~ 10 hours may be applied in the two-year period. The required documentation for this activity is an official transcript indicating graduation within the reporting period and a copy of the dissertation.

(d) Present a BOC approved evidence-based practice program. A maximum of ~~((ten))~~ 10 hours per evidence-based practice topic may be applied in the two-year period. The required documentation for this activity is a letter of acknowledgment that includes the date, title, and intended audience from the conference coordinator.

(e) Complete a CAATE accredited athletic trainer residency or fellowship. A maximum of ~~((twenty))~~ 20 hours per year may be applied in the two-year period. The required documentation for this activity is a letter from the residency or fellowship director.

(f) Any other evidence-based practice activity as approved by the secretary.

~~((4))~~ (5) Remaining hours may be obtained through any of the following activities:

(a) BOC approved workshops, seminars, conferences, webinars, or home study courses. The required documentation for this activity is a certificate of completion.

(b) Professional activities.

(i) Speaker at a conference or seminar for health care providers. A maximum of ~~((ten))~~ 10 hours may be applied per topic in the two-year

period. The required documentation for this activity is a letter of acknowledgment that includes the date, title, and intended audience from the conference coordinator.

(ii) Panelist at a conference or seminar for health care providers. A maximum of five hours may be applied per topic in the two-year period. The required documentation for this activity is a letter of acknowledgment that includes the date, title, and intended audience from the conference coordinator.

(iii) Primary author of an article in a nonrefereed journal. A maximum of five hours may be applied per article in the two-year period. The required documentation for this activity is a copy of the article.

(iv) Author of an article in a refereed journal. A maximum of (~~fifteen~~) 15 hours may be applied per article in the two-year period for primary authors. A maximum of (~~ten~~) 10 hours may be applied per article in the two-year period for secondary authors. The required documentation for this activity is a copy of the article.

(v) Author of an abstract in a refereed journal. A maximum of (~~ten~~) 10 hours may be applied per abstract in the two-year period for primary authors. A maximum of five hours may be applied per abstract in the two-year period for secondary authors. The required documentation for this activity is a copy of the abstract.

(vi) Author of a published textbook. A maximum of (~~forty~~) 40 hours may be applied per book in the two-year reporting period for primary authors. A maximum of (~~twenty~~) 20 hours may be applied per book in the two-year reporting period for secondary authors. The required documentation for this activity is a copy of the title page with the publication date.

(vii) Contributing author of a published textbook. A maximum of (~~ten~~) 10 hours may be applied per book in the two-year period. The required documentation for this activity is a copy of the title page with the publication date and list of contributors.

(viii) Author of a peer-reviewed or refereed poster presentation. A maximum of (~~ten~~) 10 hours may be applied per presentation in the two-year period for primary authors. A maximum of five hours may be applied per presentation in the two-year period for secondary authors. The required documentation for this activity is a letter of acknowledgment that includes the date and title of the presentation from the conference coordinator.

(ix) Primary author of published multimedia material, including CD, audio, or video. A maximum of (~~ten~~) 10 hours may be applied per publication in the two-year period. The required documentation for this activity is a copy of the publication.

(x) Participating member of clinical research study team. A maximum of (~~ten~~) 10 hours may be applied in the two-year period. The required documentation for this activity is a letter from the principal investigator or a copy of the institutional review board approval with investigators listed.

(xi) Primary author of a home study course. A maximum of (~~ten~~) 10 hours may be applied per course in the two-year reporting period. The required documentation for this activity is a letter of approval.

(xii) Reviewer of a refereed publication. A maximum of five hours may be applied per review, with a limit of (~~twenty~~) 20 hours applied per two-year period. The required documentation for this activity is a disposition letter.

(xiii) Exam item writer for BOC exam or other health care professional exams. A maximum of five hours may be applied per year of ac-

tive item writing. The required documentation for this activity is a letter of acknowledgment from the exam company.

(c) Post certification college or university course work. A maximum of (~~ten~~) 10 continuing education hours per credit hour may be applied during the two-year period. The required documentation for this activity is an official transcript from an accredited college or university.

(d) Activities by non-BOC approved providers.

(i) Workshops, seminars, conferences, webinars that are directly related to athletic training. The required documentation for this activity is verification of attendance.

(ii) Videos, DVDs, audiotapes, multimedia, webinars, home study courses. Each activity must have an examination. The required documentation for this activity is documentation verifying completion.

(~~(5)~~) (6) A licensed athletic trainer shall comply with the requirements of (~~chapter 246-12 WAC, Part 7~~) WAC 246-12-170 through 246-12-240.

## WSR 23-17-152

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed August 22, 2023, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-030.

Title of Rule and Other Identifying Information: WAC 468-30-110  
Nonhighway use of airspace on state highways.

Hearing Location(s): On September 29, 2023, at 1:00 p.m., at Nisqually Conference Room, 310 Maple Park Avenue S.E., 1st Floor Room 1D02, Olympia, WA 98501.

Date of Intended Adoption: October 15, 2023.

Submit Written Comments to: Kevin Workman, 7345 Linderson Way S.W., Tumwater, WA 98501, email workmaj@wsdot.wa.gov, phone 360-705-7324, by September 19, 2023.

Assistance for Persons with Disabilities: Contact Danielle Oliver, phone 360-918-4196, email WAC@wsdot.wa.gov, by September 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will give the Washington department of transportation (WSDOT) the ability to exclude the federal share of economic rent when regional transit authorities lease highway right-of-way for the construction and operation of high capacity transportation, subject to the approval of the Federal Highway Administration. The anticipated effect will be improved financial feasibility for the system expansion programs.

Reasons Supporting Proposal: WSDOT supports Sound Transit's efforts to build and operate high capacity transportation, as this creates a resilient and multimodal transportation system for Washington state residents.

Statutory Authority for Adoption: RCW 47.01.101(5) and 47.12.120 are statutes that allow WSDOT to adjust WAC 468-30-110.

Statute Being Implemented: WAC 468-30-110.

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: WSDOT Right of Way Manual is also being adjusted so that there is consistency with the modifications to this WAC.

Name of Proponent: WSDOT, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Cordelia Crockett, 401 South Jackson Street, Seattle, WA 98104, 206-306-4937; Enforcement: Kevin Workman, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7324.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
Sam Wilson, Director  
Business Support Services

OTS-4885.1

AMENDATORY SECTION (Amending WSR 81-19-052, filed 9/11/81)**WAC 468-30-110 Nonhighway use of airspace on state highways.**

(1) Definitions:

(a) "Airspace" is that space located above, at or below the highway's established gradeline lying within the approved right of way limits.

(b) "Department" is the Washington state department of transportation.

(2) Any use of such space shall be subject to approval of the Federal Highway Administration.

(3) Any use of such space shall be subject to compliance with all applicable city, town or county zoning requirements.

(4) Any application to the department for the lease of such space shall describe in detail the use to be made of such space and the physical facilities to be installed and maintained on state right of way.

(5) The lessee shall be solely responsible and shall hold the state harmless for liability for any and all damage to persons or to public or private property that may result from or be caused by the use of such space or from the erection or maintenance of any structure or facility upon the highway right of way. The lessee shall be liable to the department for any moneys expended by it for the protection or repair of any state facility required as a result of any such use.

(6) The lessee shall be required to carry liability and property damage insurance in amounts required by the department.

(7) No use of such space shall be allowed which subjects the highway facility or the public to undue risk or impairs the use of the facility for highway purposes.

(8) Use of such space shall be covered by a properly executed airspace lease.

(9) Consideration for occupancy:

(a) Where the airspace can be developed and used as an entity the consideration shall be economic rent.

(b) Where the proposed use of the airspace is in conjunction with an abutting tract, rent shall be based on its contribution value to the abutting property but not less than economic rent.

(c) When the use of the property constitutes a highway purpose the rent may be offset in part or in whole with other valuable considerations as determined by the department.

(d) Where the airspace shall be used by a regional transit authority under chapter 81.112 RCW, the consideration shall be economic rent, or if so agreed to by the department, the economic rent shall be adjusted to reflect only that portion of the value equal to the percentage of the state share of motor vehicle funds originally expended to acquire the property.

(10) The granting of any use of such space shall be subject to the discretion of the department and upon such terms and conditions in addition to those stated herein as it shall deem proper.

(11) No assignment of any lease by the lessee shall be of any force and effect unless prior written approval of such assignment has been given by the department.



## WSR 23-17-162

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed August 23, 2023, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-115.

Title of Rule and Other Identifying Information: WAC 308-61-215  
Abandoned recreational vehicle—Rates and caps.

Hearing Location(s): On September 28, 2023, at 10:30 a.m. Join Zoom meeting <https://dol-wa.zoom.us/j/85756167411?pwd=L1U3Z05SYjJNSUlub2U1TUlzUkZnZz09>, Meeting ID 857 5616 7411, Passcode 778899; One-tap mobile +12532158782,,85756167411#,,,,\*778899# US (Tacoma), +12532050468,,85756167411#,,,,\*778899# US; dial by your location +1 253 215 8782 US (Tacoma), +1 253 205 0468 US, +1 719 359 4580 US, +1 346 248 7799 US (Houston), +1 408 638 0968 US (San Jose), +1 669 444 9171 US, +1 669 900 6833 US (San Jose), +1 646 931 3860 US, +1 689 278 1000 US, +1 301 715 8592 US (Washington DC), +1 305 224 1968 US• +1 309 205 3325 US, +1 312 626 6799 US (Chicago), +1 360 209 5623 US, +1 386 347 5053 US, +1 507 473 4847 US, +1 564 217 2000 US, +1 646 876 9923 US (New York), Meeting ID 857 5616 7411, Passcode 778899. Find your local number <https://dol-wa.zoom.us/j/85756167411?pwd=L1U3Z05SYjJNSUlub2U1TUlzUkZnZz09>. If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: September 29, 2023.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by September 27, 2023.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by September 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is modifying the existing abandoned RV standardized reimbursement schedule and increasing the current reimbursement rates and caps.

Reasons Supporting Proposal: The department is required to convene a stakeholder work group every two years per RCW 46.53.010; these changes were requests identified in the most recent workgroup.

Statutory Authority for Adoption: RCW 46.53.010 Registered tow truck operators, vehicle wreckers, scrap processors, and scrap metal business may apply for cost reimbursement for towing, transporting, storing, dismantling, and disposing abandoned recreational vehicles—Department to develop rules—Stakeholder work group, and 46.55.190 Rules.

Statute Being Implemented: RCW 46.53.010 Registered tow truck operators, vehicle wreckers, scrap processors, and scrap metal businesses may apply for cost reimbursement for towing, transporting, storing, dismantling, and disposing abandoned recreational vehicles—Department to develop rules—Stakeholder work group.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: John Hlavaty, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0324.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments increase the reimbursable amounts to businesses, including small businesses, for participation in the abandoned RV program. We do not anticipate any businesses will experience increased costs as a result of the changes.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These amendments increase the reimbursable amounts to businesses, including small businesses, for participation in the abandoned RV program. We do not anticipate any businesses will experience increased costs as a result of the changes.

August 23, 2023

Ellis Starrett

Rules and Policy Manager

**OTS-4883.1**

AMENDATORY SECTION (Amending WSR 19-11-007, filed 5/2/19, effective 6/1/19)

**WAC 308-61-215 Abandoned recreational vehicle—Rates and caps.**

**At what rates will reimbursements be ((for)) made?**

(1) The costs will be reimbursed at a standardized scheduled rate:

<b>((Item</b>	<b>Standard Rate</b>	<b>Cap</b>
<b>Towing and Transport (Increment Per Hour--Maximum Three Hours Total for Identified Class)</b>		
Class A Tow Vehicle (including - D and E)	\$105.00/hr.	<b>\$315.00</b>
Class B Tow Vehicle	\$120.00/hr.	<b>\$360.00</b>
Class C Tow Vehicle (including - B2 and S1)	\$175.00/hr.	<b>\$525.00</b>
<b>Storage (Increment Per Day--Maximum 10 Days Total)</b>		
Standard Storage	\$35.00/day	<b>\$350.00</b>
<b>Dismantling and Disposal (Increment Per Foot--Maximum per Identified Vehicle Category)</b>		
Motor Homes (Up to 35')	\$70.00/ft.	<b>\$2,450.00</b>
Travel Trailers (Up to 25')	\$70.00/ft.	<b>\$1,750.00</b>
Campers (Up to 15')	\$70.00/ft.	<b>\$1,050.00</b>

~~(2) Standard rates apply to:~~

~~(a) Hourly increment of towing and transport by tow vehicle class (i.e., a class 'B' tow vehicle used for two hours is two hundred forty dollars; a class 'C' tow vehicle used for four hours is capped at five hundred twenty dollars).~~

~~(b) Days of storage incurred (i.e., a vehicle stored for eight days is two hundred eighty dollars; a vehicle stored for twenty-five days is capped at three hundred fifty dollars).~~

~~(c) Classification of abandoned recreational vehicle dismantled and disposed up to the cap for that item (i.e., dismantling and disposal of a twenty-seven foot motor home is one thousand eight hundred ninety dollars; dismantling and disposal of a thirty foot travel trailer is capped at one thousand seven hundred fifty dollars).~~

~~(d))~~

<b>Item</b>	<b>Standard Rate</b>	<b>Cap</b>
<b><u>Towing and Transport (Increment per Hour - Maximum Four Hours Total for Identified RV Length)</u></b>		
<u>Towing up to 29'</u>	<u>\$150.00/hr.</u>	<b><u>\$600.00</u></b>
<u>Towing 30' and Over</u>	<u>\$220.00/hr.</u>	<b><u>\$888.00</u></b>
<u>Ferry Fees</u>	<u>As Incurred</u>	<b><u>\$350.00</u></b>
<b><u>Storage (Increment per Day per RV Length - Maximum 20 Days Total) (*May Excludes Junk Vehicles)</u></b>		
<u>Standard Storage up to 29'</u>	<u>\$40.00/day</u>	<b><u>\$800.00</u></b>
<u>Storage 30' and Over</u>	<u>\$60.00/day</u>	<b><u>\$1,200.00</u></b>
<b><u>Dismantling and Disposal (Increment per RV Length)</u></b>		
<u>30' to 46'</u>	<u>\$80.00/ft.</u>	<b><u>\$3,680.00</u></b>
<u>20' to 29'</u>	<u>\$75.00/ft.</u>	<b><u>\$2,175.00</u></b>
<u>Up to 19'</u>	<u>\$70.00/ft.</u>	<b><u>\$1,330.00</u></b>

(2) Abandoned recreational vehicle length must be indicated by an annotation on the signed tow authorization, junk vehicle affidavit, affidavit of sale, or a certificate of fact.

(3) Total length of the recreational vehicle shall be determined by measuring the vehicle type as follows:

~~((i))~~ (a) Motor homes: Measured in feet of total length from the front bumper to the rear bumper, excluding attached storage boxes or trailer or tow hitches.

~~((ii))~~ (b) Travel trailers: Measured in feet of total length from the front of the box to the rear bumper, excluding the front trailer tongue, attached storage boxes or any additional trailer or tow hitches from rear bumper. Fifth-wheel trailers may include the front-cap.

~~((iii))~~ (c) Campers: Measured in feet of total length from the front of the cab-over box to the rear of the box, excluding any attached storage boxes or other accessories.

(4) Adjustments made to rates and caps may not be applied to previously submitted claims which already received a disbursement from the department.