



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: August 02, 2022

TIME: 9:01 AM

WSR 22-16-091

Agency: Department of Labor & Industries (L&I)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 22-06-078 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 296-17 WAC, General Reporting Rules, Audit and Recordkeeping, Rates and Rating System for Washington Workers' Compensation Insurance; Chapter 296-17A WAC, Classifications for Washington Workers' Compensation Insurance; and Chapter 296-15 WAC Workers' Compensation Self-Insurance Rules and Regulations

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 6, 2022	10:00 a.m.	Joining by computer: Join Zoom Meeting at: https://lni-wa.gov.zoom.us/j/85307767078 Meeting ID: 853 0776 7078 Passcode: Sept0622! Joining by phone: Dial by your location +1 253 215 8782 US (Tacoma) Meeting ID: 853 0776 7078 Passcode: 776254954	The Zoom hearing starts at 10:00 am and will continue until all oral comments are received.

Date of intended adoption: October 18, 2022 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Jo Anne Attwood

Address: Department of Labor & Industries
Insurance Services/Employer Services
PO Box 44148
Olympia WA 98504-4148

Email: JoAnne.Attwood@Lni.wa.gov

Fax: 360-902-4988

Other:

By (date) September 7, 2022 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

Other:

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 rulemaking is not to make substantive changes to how employers are classified and amendments will not increase employer rates.

As part of this rulemaking, 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 rulemaking, L&I proposes to remove the dollar amounts from state fund and self-insurance rules pertaining to penalties and documenting the penalty amounts on the L&I website. 2020's Substitute House Bill (SHB) 2409 requires penalties in chapter 51.48 RCW be updated every three years based on the Consumer Price Index. Removing penalty amounts from the rules will eliminate the need to perform rulemaking every three years when those amounts change based on the Consumer Price Index. Penalty amounts will be available on L&I's website and updates will be made every three years.

Proposed amendments include:

WAC Numbers	WAC description	What is changing	Reason for Change
296-15-560 296-17-35201 296-17-35204	Self-insured third-party administrator (TPA) penalties Recordkeeping and retention Penalty assessments for employers who fail to register under Title 51 RCW	Removing penalty dollar amounts and adding reference to RCW 51.48.095 Adjustment for inflation.	Substitute House Bill (SHB) 2409 requires penalties in chapter 51.48 RCW be updated every three years based on the Consumer Price Index. We will remove penalty amounts from the rules to eliminate the need to perform rulemaking every three years when those amounts change based on the Consumer Price Index. Penalty amounts will be available on L&I's website and updates will be made every three years.
296-17A-0307	Heating, ventilation, air conditioning, refrigeration and furnace systems; Installation, service or repair	Update class to reflect that HVAC businesses may perform incidental duct cleaning work. Also reformatting the rule so that subclassifications are expanded with the appropriate information rather than title only.	Clarifying to eliminate staff confusion. See #6 below for reason for change.
296-17A-1108 296-17A-2102 296-17A-3503 296-17A-3708 296-17A-4301 296-17A-4302 296-17A-5106	Glass tempering Warehouses-General merchandise Pottery, earthenware, ceramics, porcelain or china: Manufacturing Hide or leather dealers Glue, lard, or tallow: Manufacturing Custom meat cutting Blacksmithing; vehicle spring or auto bumper: Manufacturing	Reducing the number of subclassifications.	Reducing subclassifications: We are 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"> • Low number of employers/hours reporting in subclassification (low credibility from actuarial view) • Subclassification does not represent separate risks from overall risk classification • Low loss data • No longer need to track these subclassifications separately Reformatting rules: If the current format of these rules is a barrier to clarity, they are also being reformatted to

296-17A-6207	Carnivals – Traveling		make them easier to understand, apply, and follow.
296-17A-6208	Amusement parks; exhibition caves or caverns		
296-17A-6607	Card rooms; bingo parlors or casinos		
296-17A-3309	Golf cart, motorcycle, and motorized sport vehicle dealers	Reformatting the rule so that subclassifications are expanded with the appropriate information rather than title only.	Some of our classifications were formatted so that they were only identified by title rather than having narrative. This has caused some confusion for staff and they have requested we update the classifications so that every subclassification provides all the information, rather than title only.
296-17A-3702	Beverage manufacturing, wine making, distilleries, breweries, malt houses, bottling, and yeast manufacturing		
296-17A-4502	Radio, television, recording, video production, and cable services providers; all other employees		
296-17A-4904	Administrative, clerical, reception, and sales staff working in a business office		
296-17A-4907	Offender work opportunity		
296-17A-5003	Log hauling by contractor		
296-17A-5004	Tree planting services		
296-17A-5006	Forestry machine work – Forest firefighting		
296-17A-6109	Medical and health services N.O.C.		
296-17A-6204	Gyms, fitness centers, martial arts training, baths or saunas		
296-17A-6301	Lot and marina sales personnel for vehicles and pleasure craft; driving instructors, and limousine drivers		
296-17A-6303	Sales personnel with outside duties, messengers, insurance producers or surplus line brokers, social workers and dietitians employed by a home health care service		
296-17A-6504	Thrift stores operated by charitable or other not-for-profit organizations		

296-17A-6509	Assisted living and group homes		
296-17A-6511	Chore services/home care assistants		
296-17A-6707	Football teams and other contact sports, N.O.C., such as wrestling, roller derbies, and the martial arts		
296-17A-6801	Scheduled airlines – Flight crews		
296-17A-6802	Airlines, scheduled – Ground crew operations		
296-17A-6809	Professional and semiprofessional sports teams; noncontact sports		
296-17A-6901	Volunteers		
296-17A-6906	Volunteer law enforcement officers		
296-17A-6306	Furniture stores	Change subclassification number 6306-04 to 6306-06 Remove subclassification number 6306-05 Entertainment and home theater systems, big screen televisions stores Add “Entertainment and home theater systems, big screen televisions stores” back to the title of subclass 6306-02	Correcting past rulemaking errors. This corrects errors in the rulemaking that was effective January 1, 2019. The first bullet in the <i>What is changing</i> column was a typographical error; the next two bullets were the result of miscommunication.

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 rulemaking will potentially benefit all State Fund employers by making it easier to do business with L&I. This rulemaking will also allow department staff to provide more consistent service to our customers.

Statutory authority for adoption: RCW 51.16.035

Statute being implemented: RCW 51.16.035

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) L&I

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jo Anne Attwood	Tumwater	360-902-4777
Implementation:	Keith Bingham	Tumwater	360-902-4826
Enforcement:	Mike Ratko	Tumwater	360-902-4997

Is a school district fiscal impact statement required under RCW 28A.305.135?

- Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

- No: Please explain: 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.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

- This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

- This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.
- This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: August 2, 2022

Name: Joel Sacks

Title: Director

Signature:

