

**CONCISE EXPLANATORY STATEMENT (CES)
Fulfillment Center Classification**

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

The date of adoption for this rule: November 30, 2020

The effective date for this rule: January 1, 2021

I. Purpose of rulemaking:

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).

These rules are being adopted to ensure classifications and rates accurately reflect expected losses for fulfillment centers. We are creating one new classification for fulfillment centers and amending two classifications to reflect references to the new classification.

Adopted:

- A new classification for 2103 Fulfillment centers (WAC 296-17A-2103);
- A new rate for Classification 2103 in WAC 296-17-89509;
- Updated Classification 2102 Warehouses (WAC 296-17A-2102) exclusion language to refer to the new fulfillment center classification; and
- Updated Classification 6407 Wholesale stores, N.O.C. (WAC 296-17A-6407) exclusion language to refer to the new fulfillment center classification.

2. Differences between the rule as adopted and the proposed rule:

There are no changes between the adopted and the proposed rule.

3. Comments on proposed rule:

The public comment period for this rulemaking began September 22, 2020 and ended October 30, 2020. A public hearing was held on October 27, 2020 and October 29, 2020 via Zoom virtual technology.

<u>Date</u>	<u>Number Attending</u>	<u>Number Testified</u>
October 27, 2020	4	2
October 29, 2020	5	0

Nine people attended the hearing along with several L&I staff. Two people testified in support of the proposal, one from labor and one from business.

Three written comments were received in support of the proposal, one from a worker and two from labor organizations.

The testimony and comments reflected stakeholders' support and appreciation for L&I working to ensure equity and fairness in the warehouse industry by removing fulfillment operations which meet the new classification criteria from the warehouse classification.

Below are a summary of the comments received and the department's response.

Comment: Every year, the Department of Labor and Industries sets the rates for workers' compensation premiums through risk codes and experience factors. The risk codes are based on the nature of the business. Risk Code 2102 is for general warehouses, grocery distributions, and recycle centers. Fulfillment centers are different from a normal warehouse. Warehouses do not sell to the end consumer, while the fulfillment centers sell directly to the end consumer. Fulfillment centers have an online marketplace, offering fulfillment services for third party sellers, and use automation to fulfill orders. The very nature of the business is substantially different than a normal warehouse.

Last year the Risk Code 2102 saw an 18% increase. This year, moving fulfillment centers into Risk Code 2103, fulfillment centers will increase another 15% while Risk Code 2102 will decrease 20%. It can be inferred that fulfillment centers are the cause for the original 18% increase on Risk Code 2102. Non-automated Warehouse businesses should not be offsetting the rates for automated fulfillment centers.

Although for 2021, only one business entity will be in the Risk Code 2103, they should not be the only entity in that risk code for long. As our economy and technology advances, so will businesses. We will eventually see other companies based in Washington State, who use the state fund, join fulfillment centers in this new risk code as other places advance as that entity has. They are an industry type leader, but there will be others as it is the way of the future. We support the new risk code change, and we encourage the Department of Labor and Industries to approve the new risk code.

Comment: I think proposed change makes a lot of sense. Responsible warehouses shouldn't subsidize a fulfillment center's L&I costs.

Comment: Fulfillment centers are effectively being subsidized by other employers to avoid the actual costs of its conduct. Those costs certainly flow directly to the other employers financially, but they fall most directly onto fulfillment centers' own workers whose bodies bear the burdens of the obsession

with speed and productivity. We commend the Department of Labor and Industries for its thorough investigation and thoughtful work on this much-needed rulemaking. We urge the department to proceed with the rule as written and without delay.

Department Response: L&I's standard practice is to ensure classifications and rates accurately reflect expected losses.

L&I's underwriting and actuarial teams continually review our risk classification system to ensure appropriate rating for the types of exposures. Fulfillment centers were identified by our actuaries as an outlier within the warehouse classification in 2019. We were also contacted by members of the warehouse industry with concerns that fulfillment centers were driving up their rates. Further department review of the warehouse classification concluded that fulfillment centers were more hazardous and were submitting claims more often, justifying establishing a separate risk classification. We appreciate the stakeholder input received and the ability to be responsive to L&I customers.

NEW SECTION

WAC 296-17A-2103 Classification 2103.

2103-00 Fulfillment centers

Applies to businesses engaged in operating facilities called fulfillment centers. Fulfillment centers in this rule are defined as businesses that:

- Have an online marketplace to sell their own merchandise and third-party sellers' merchandise;
- Sell their own name brand merchandise retail online;
- Offer warehousing and order fulfillment services for third-party sellers;
- Use automated vehicles and robotics within the facility;
- Emphasize quick timelines and monitor employees for speed; and
- Offer same-day or two-day delivery options.

These businesses store, sell, and ship a wide variety of goods. Types of goods for sale may include, but are not limited to:

- Appliances;
- Arts/crafts/sewing;
- Automotive;
- Baby products;
- Beauty products;
- Cell phones and accessories;
- Clothing, shoes and jewelry;
- Collectibles and fine art;
- Computers;
- Electronics;
- Grocery/gourmet foods;
- Home and kitchen;
- Health and personal care;
- Industrial and scientific;
- Office products;
- Pet supplies;
- Patio, lawn and garden;
- Sports and outdoors;
- Tools and home improvement;
- Toys and games.

Operations may include, but are not limited to:

- Customer service centers;
- Logistic operations, coordinating customer orders with the closest fulfillment center and planning transportation needs;
- Warehouses - Pick, pack, and ship customer orders. Some warehouses may be specifically for large items like furniture;
- Sortation centers - Customer orders are sorted by final destination and consolidated on to trucks for faster delivery;
- Specialty centers - Designed for specific item categories or for seasonal use;
- Receiving centers - Take in large orders of types of inventory expected to sell quickly and allocating to other locations;
- Third-party vendor services - Services include order, payment, and returns processing. Fulfillment centers also offer warehousing and order fulfillment to third-party sellers;
- Specialized, automated or mechanized tools or equipment or systems - Used to speed sorting or delivery or processing including, but not limited to, robotic vehicles, or mechanized equipment.

Work activities may include, but are not limited to:

- Using automated or mechanized tools, equipment, systems or vehicles and/or robotics;
- Unpacking and inspecting incoming goods;
- Placing goods in storage and recording their location;
- Quality assurance;
- Picking goods from computer recorded locations to make up an individual shipment;
- Sorting and packing orders;
- Shipping.

Equipment and machinery may include, but are not limited to:

- Bins;
- Forklifts;
- Computer devices;
- Conveyors;
- Handheld scanners;
- Mailing machines;
- Packing machines;
- Robots (small and large);
- Trucks or vans.

Special Notes:

• This classification differs from subclassification 2102-00 Warehouses in that businesses in subclassification 2102-00 store merchandise that they do not own, usually store merchandise for long periods of time, and do not fulfill orders placed by individual retail customers.

• This classification differs from classification 6407 Wholesale stores in that businesses in classification 2103 meet the definition of "fulfillment centers" at the beginning of this rule and businesses in classification 6407 do not meet all of the criteria to be classified as fulfillment centers.

Exclusions:

• Delivery drivers (other than those involved in transferring inventory between facilities owned by the business) are reported separately in classification 1101;

• Warehouse operations that store products for others, do not own any of the products being stored, and are not in the business of selling the goods they store are classified in 2102;

• Businesses selling a specific category of goods are classified in the store classification applicable to the products sold;

• Wholesale distributors that do not operate automated and robotic fulfillment centers that sell both retail and wholesale of products for themselves as well as third-party vendors are classified in 6407.

WAC 296-17A-2102 Classification 2102.

2102-00 Warehouses - General merchandise

Applies to establishments operating as warehouses for general merchandise. This merchandise belongs to a customer and is usually stored for long periods of time. Products typically involved are bulk, nonperishable materials which might include, but not be limited to:

- Coffee;
- Dry cement;
- Potatoes;
- Rice.

Work contemplated by this classification includes, but is not limited to:

- Maintaining the facility;
- Moving merchandise within the facility;
- Recordkeeping;
- Routine maintenance;
- Security.

Equipment and machinery used includes:

- Cleaning and recordkeeping supplies;
- Forklifts;
- Pallet jacks;
- Shop vehicles.

This classification excludes:

- Delivery drivers who are to be reported separately in classification 1102;
- Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;
- Wholesale dealers who operate a warehouse for storage of their own product which is to be reported separately in the classification applicable to the product being sold;
- Warehousing of household furnishings by a moving and storage company which is to be reported separately in classification 6907;
- Cold storage plants which are to be reported separately in classification 4401;
- Ministorage warehousing which is to be reported separately in classification 4910;
- Field bonded warehouses which are to be reported separately in classification 2008;
- Warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

Special note: Even though this type of operation may handle some "grocery" products, it differs from 2102-11 in that the products being handled in 2102-00 are in bulk packaging (not cases of consumer-size packages), do not belong to the business that is warehousing them, and are not intended for sale to a wholesaler/retailer.

2102-04 Recycle, collection and receiving stations; rags, bottles, paper and metal container dealers, N.O.C.

Applies to establishments engaged in the collection of used paper, aluminum, tin, glass, and plastic for the purpose of selling the material to another business that will recycle/remanufacture it into new products. These facilities normally acquire material by placing

collection bins at various remote locations, operating a drop-off center (this phase of the business is known in the trade as a "buy back center"). This classification includes dealers of rags, bottles, paper and metal containers not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to:

- Sorting material;
- Operating various pieces of equipment used to crush, reduce, wash, and bale material;
- Weighing containers;
- Paying customers for receipt of items that have a redemption value by the pound or piece ("buying back");
- Operating shop or yard vehicles.

Machinery and equipment includes, but is not limited to:

- Balers;
- Can crushers;
- Collection bins;
- Forklifts;
- Shredders;
- Rolloff trucks to handle the collection bins;
- Shop or yard vehicles;
- Weigh scales.

This classification excludes:

- All trucking outside of the yard which is to be reported separately in classification 1102;

• Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

- Establishments engaged in collecting, sorting and reducing scrap metal such as junk dealers, scrap metal dealers or processors, which also receive glass, paper, plastic, etc., which are to be reported separately in classification 0604; and

- Establishments engaged in collecting used computer equipment for recycling which may be reported in classification 4107.

Special note: Classification 2102-04 should not be assigned to an employer who also operates a business subject to classification 4305-18 (Garbage, refuse or ashes collecting) without careful review and an on-site survey. Most garbage collecting businesses have some type of "recycle" program as part of their normal operations in an effort to sort and reduce the amount of waste that goes to landfills and this is considered an inclusion.

2102-11 Grocery, fruit or produce distributors - Wholesale or combined wholesale and retail

Applies to establishments engaged in the wholesale, or wholesale/retail, distribution of a variety of grocery items, fruit and produce. A business in this classification buys products from the manufacturer and sells to retail grocery stores, restaurants, and similar businesses. Grocery items may include, but not be limited to:

- Beverages;
- Dairy products;
- Frozen foods;
- Household cleaning supplies;
- Packaged foods;
- Paper products;
- Personal care items.

Work contemplated by this classification includes, but is not limited to:

- Breakdown of merchandise into smaller lots;
- Incidental repackaging;
- Maintaining the facility;
- Moving merchandise within the facility;
- Recordkeeping;
- Security;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to:

- Forklifts;
- Pallet jacks;
- Strapping and shrink wrapping equipment;
- Vehicles.

This classification excludes:

- Delivery drivers who are to be reported separately in classification 1101;

- Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

- Any general merchandise warehouse operations in which the operator of the warehouse does not own the merchandise being handled and it is in bulk quantities, which is to be reported separately in classification 2102-00;

- Cold storage plants handling food products which are to be reported separately in classification 4401;

- Operations specializing in vegetable/fruit packing for wholesale distribution which are to be reported separately in classification 2104;

- Operations specializing in wholesale distribution of beer, wine, ale or soft drinks which are to be reported separately in classification 2105;

- Field bonded warehouses which are to be reported separately in classification 2008; and

- The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

2102-28 Wool or cotton merchants

Applies to establishments operating as wool or cotton merchants. Merchants subject to this classification buy raw wool or cotton from others, do incidental sorting, grading and repackaging, and sell the product to another business for use as a raw material to make products such as yarn, thread or fabric. Work contemplated by this classification includes, but is not limited to:

- Hand sorting the product by grade (quality);
- Maintaining the facility;
- Moving merchandise within the facility;
- Repackaging;
- Recordkeeping;
- Security;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to:

- Forklifts;
- Pallet jacks;
- Repackaging equipment;
- Vehicles.

This classification excludes:

- Drivers who are to be reported separately in classification 1102;

- Wholesale dealers of a finished wool or cotton product which are to be reported separately in the classification applicable to the product; and

- The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

WAC 296-17A-6407 Classification 6407.

6407-00 Wholesale stores, N.O.C. - Including combined wholesale and retail store operations

Applies to establishments engaged in the wholesale, or combined wholesale and retail sales of merchandise that is not covered by another classification (N.O.C.). Establishments subject to classification 6407 usually own the merchandise they sell, but may also be marketing goods on consignment, in which case classification 6407 still applies because the exposure and processes are the same. This classification is primarily the wholesale counterpart (supplier) for establishments assigned to retail store classification 6305, 6406, and 6411.

Classification 6407 also applies to retail stores with high volume warehouse and distribution facilities without the normal exposures associated with a retail store.

Work contemplated by classification 6407 includes, but is not limited to, maintaining warehouse inventories, sorting and grading goods, and breaking down bulk quantities to repackage into smaller lots. Equipment typically used includes, but is not limited to:

- Balers to bind merchandise into bundles;
- Strapping equipment to secure palletized goods;
- Forklifts; and
- Hand tools.

This classification excludes:

- Delivery which is to be reported separately in classification 1101;

- Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

- Large high volume sales operations where retail customers select and carry out the goods they purchase, which are reported in the classification applicable to the merchandise sold.

Special notes: When assigning classification 6407, care must be exercised to look beyond the words "wholesale" or "retail." The manufacturer of a product will also "wholesale" their merchandise (or a combination of their own merchandise and finished products bought from other manufacturers) to a customer. These sales are an integral part of the manufacturing/marketing process and is an inclusion in the manufacturing classification. Establishments that buy goods, such as clothing or cloth goods, in wholesale quantities, then screen print or embroider them for resale are performing manufacturing operations and are to be reported separately in the appropriate manufacturing classification.

Warehouse operations in classification 2102, with the exception of grocery dealers, do not own the product they are warehousing and are not in the business of selling the goods they store. Businesses in classification 6407 may operate a warehouse, but only as an integral part of the wholesaling/distribution process, which is included in classification 6407.

NEW SECTION

WAC 296-17-89509 Classification 2103.

**Fulfillment centers rate
Effective January 1, 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
2103	1.3620	0.0209	0.6532	0.1372



**RULE-MAKING ORDER
PERMANENT RULE ONLY**

**CR-103P (December 2017)
(Implements RCW 34.05.360)**

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: November 30, 2020

TIME: 7:12 AM

WSR 20-24-093

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) January 1, 2021 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: RCW 51.16.035 requires L&I to classify all occupations or industries by degree of hazard. The department researched and evaluated the operations of fulfillment centers currently classified in Classification 2102 Warehouses - General Merchandise. After actuarial review of historical losses of fulfillment centers and more traditional warehouses, classification changes were justified to ensure these operations are being classified by their degree of hazard to ensure fair rates in the industry.

This rulemaking is adopted to ensure classifications and rates accurately reflect expected losses for fulfillment centers. L&I created one new classification and rate for fulfillment centers and amended two classifications to reflect references to the new classification.

Citation of rules affected by this order:

New: WAC 296-17-89509, WAC 296-17A-2103

Repealed: n/a

Amended: WAC 296-17A-2102, WAC 296-17A-6407

Suspended: n/a

Statutory authority for adoption: RCW 51.04.020 and RCW 51.16.035

Other authority: n/a

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-19-128 on September 22, 2020 (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	<u>2</u>	Amended	<u>2</u>	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	<u>2</u>	Amended	2	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: November 30, 2020

Name: Joel Sacks

Title: Director

Signature:

