



# PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: August 03, 2021

TIME: 4:27 PM

WSR 21-16-103

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

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 19-24-062 ; 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) Clean Energy Labor Standards Certification. Chapter 296-140 WAC, Clean Energy Labor Standards Certification

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 7, 2021	9:00 a.m.	Virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams): <a href="https://teams.microsoft.com/join/19%3ameeting_NWNmOTExM2UtOWI3Yy00NzY2LWJiZWQtOTU5ZGQ3OGUyMDQ3%40thead.v2/0?context=%7b%22id%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22oid%22%3a%22d2b1cfc2-5d3b-4cf8-8fbd-a94ce8c92ef1%22%7d">Click here to join the meeting</a> or visit: <a href="https://teams.microsoft.com/join/19%3ameeting_NWNmOTExM2UtOWI3Yy00NzY2LWJiZWQtOTU5ZGQ3OGUyMDQ3%40thead.v2/0?context=%7b%22id%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22oid%22%3a%22d2b1cfc2-5d3b-4cf8-8fbd-a94ce8c92ef1%22%7d">https://teams.microsoft.com/join/19%3ameeting_NWNmOTExM2UtOWI3Yy00NzY2LWJiZWQtOTU5ZGQ3OGUyMDQ3%40thead.v2/0?context=%7b%22id%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22oid%22%3a%22d2b1cfc2-5d3b-4cf8-8fbd-a94ce8c92ef1%22%7d</a>  or call (audio only) +1 253-372-2181 Phone Conference ID: 532 423 936# (pound sign must be entered)	The virtual/telephonic hearing starts at 9 a.m. and will continue until all oral comments are received

Date of intended adoption: October 5, 2021 (Note: This is NOT the effective date)

### Submit written comments to:

Name: Beverly Clark

Address: PO Box 44400, Olympia, WA 98504-4400

Email: Beverly.Clark@Lni.wa.gov

Fax: 360-902-5292

Other:

By (date) September 7, 2021

**Assistance for persons with disabilities:**

Contact Beverly Clark  
Phone: 360-902-6272  
Fax: 360-902-5292  
TTY:  
Email: Beverly.Clark@Lni.wa.gov  
Other:  
By (date) August 31, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** L&I is proposing rules to create a new WAC chapter, chapter 296-140 WAC, Clean Energy Labor Standards Certification, in order to implement the legislative changes made within 2019’s Clean Energy Transformation Act (Sections 18 and 19, Chapter 288, Laws of 2019, Engrossed Second Substitute Senate Bill 5116) that will address the following:

- Standards for certification for:
  - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses;
  - Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;
  - Apprenticeship utilization;
  - Preferred entry for workers living in the area where the project is being constructed;
  - Payment of prevailing wages; and
  - Project Labor Agreements and Community Workforce Agreements.
- Requirements and processes for related to application, records and documentation, and certification.

**Reasons supporting proposal:** 2019’s Clean Energy Transformation Act amends RCW 82.08.962 and RCW 82.12.962 related to sales and use tax remittances for machinery and equipment used in generating electricity (Sections 18 and 19, Chapter 288, Laws of 2019, Engrossed Second Substitute Senate Bill (E2SSB) 5116). Under the amendments, the sales and use tax remittances are available for certain clean energy projects when certified by the Department of Labor & Industries (L&I) that the developer of the project complied with specific labor standard requirements and the machinery and equipment is installed on or after January 1, 2020 and completed by December 31, 2029. L&I is required to adopt rules to define and set minimum requirements for all labor standards associated with the certification for tax remittance; set requirements for all good faith efforts; and set other requirements to documentation and the certification process.

This rulemaking is identical to an emergency rule filed on July 16, 2021 as WSR 21-15-078, except a provision was added to clarify that if a clean energy project is done in phases with separate PLAs/CWAs, the department will not issue certification until all PLAs/CWAs have been signed and submitted to L&I.

**Statutory authority for adoption:** RCW 82.08.962 and RCW 82.12.962

**Statute being implemented:** RCW 82.08.962 and RCW 82.12.962

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Name of proponent:** (person or organization) Department of Labor & Industries

Private  
 Public  
 Governmental

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Christina Summers	Tumwater, WA	360-902-5772
Implementation:	Christina Summers	Tumwater, WA	360-902-5772
Enforcement:	Christina Summers	Tumwater, WA	360-902-5772

**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: Beverly Clark  
Address: PO Box 44400, Olympia, WA 98504-4400  
Phone: 360-902-6272  
Fax: 360-902-5292  
TTY:  
Email: Beverly.Clark@Lni.wa.gov  
Other:

No: Please explain:

**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:

<input type="checkbox"/> RCW 34.05.310 (4)(b) (Internal government operations)	<input type="checkbox"/> RCW 34.05.310 (4)(e) (Dictated by statute)
<input type="checkbox"/> RCW 34.05.310 (4)(c) (Incorporation by reference)	<input type="checkbox"/> RCW 34.05.310 (4)(f) (Set or adjust fees)
<input type="checkbox"/> RCW 34.05.310 (4)(d) (Correct or clarify language)	<input type="checkbox"/> 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. The proposed rule set criteria for voluntary labor standards certification for clean energy project. As such, the proposed rules do not impose any costs on businesses.

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 3, 2021

**Name:** Joel Sacks

**Title:** Director

**Signature:**

