



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: February 28, 2023
TIME: 8:25 AM

WSR 23-06-061

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

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-13-148 ; 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 for Tax Incentives. Chapter 296-140 WAC, Clean Energy Labor Standards Certification.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 11, 2023	2:00 pm	Join electronically: https://lni-wa-gov.zoom.us/j/82270467354?pwd=a0JZcDV6Q3ZzWW9lM25ySnVpWWgydz09 Meeting ID: 822-7046-7354 Passcode: FPLS2023! Join by phone: 1-253-215-8782 Meeting ID: 822-7046-7354 Passcode: 872736513 Find your local number: https://lni-wa-gov.zoom.us/j/keGmYEQ4p	The hearing will begin at 2:00 pm and will continue until all oral comments are received.

Date of intended adoption: May 23, 2023 (Note: This is **NOT** the effective date)

Submit written comments to: Name: Jordan Guerra Address: Department of Labor & Industries Clean Energy Program PO Box 44274 Olympia WA 98504-4274 Email: cleanenergyreview@Lni.wa.gov Fax: Other: By (date) <u>April 14, 2023</u>	Assistance for persons with disabilities: Contact <u>Jordan Guerra</u> Phone: 360-902-5335 Option 4 Fax: TTY: Email: cleanenergyreview@Lni.wa.gov Other: By (date) <u>April 4, 2023</u>
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: Second Substitute House Bill 1988 (2SHB 1988) and Engrossed Substitute Senate Bill 5714 (ESSB 5714) allows for tax deferrals on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage, as well as solar canopies when the project meets certain labor standards and is certified by L&I, supporting Washington's clean energy economy and transitioning to a clean, affordable, and reliable energy future.

The purpose of this rulemaking is to:

- Reorganize and add terms to the definition section;
- Identify which definitions apply to different sections of the chapter;
- Provide clarity on each type of qualifying clean energy project identified under the rules; and
- Expand language regarding good faith efforts to align with federal and Washington State Department of Transportation's good faith efforts standards.

New sections: WAC 296-140-005, 296-140-006, 296-140-007, 296-140-008, and 296-140-009

Amended sections: WAC 296-140-001, 296-140-002, and 296-140-004

Reasons supporting proposal: L&I is required to adopt rules to define and set minimum requirements for all labor standards associated with the certification for tax deferral; set requirements for all good faith efforts; and set other requirements regarding documentation and the certification process.

Statutory authority for adoption: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060.

Statute being implemented: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060.

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:

Type of proponent: Private Public Governmental

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

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:	Jordan Guerra	Tumwater, WA	360-902-6752

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: Christina Summers

Address: Department of Labor & Industries
Clean Energy Program
PO Box 44274
Olympia WA 98504-4274

Phone: 360-902-5772

Fax:

TTY:

Email: Christina.summers@Lni.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 checked="" 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 checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" 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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule: See explanation in Section 2 below.

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

1.	WAC 296-140-001 – Definitions	This section is fully exempt under RCW 34.05.310(4)(c) because the proposed rule language adopts definitions from state statutes.
2.	WAC 296-140-002 – Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962.	The section is partially exempt under RCW 34.05.310(4)(c) because it is adopting language from state statutes without material change.
3.	WAC 296-140-004 – Application, records and documentation, and certification for Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962.	This section is partially exempt under RCW 34.05.310(4)(g) because it deals with process requirements for applying for certification with L&I.
4.	WAC 296-140-005 – Labor standard certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW.	This section is partially exempt under RCW 34.05.310(4)(c) because it is adopting language from state statutes without material change.
5.	WAC 296-140-006 – Application, records and documentation, and certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW.	This section is partially exempt under RCW 34.05.310(4)(c) and (g) because it is adopting language from state statutes without material change, and deals with process requirements for applying for certification with L&I.
6.	WAC 296-140-007 – Labor standard certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW.	This section is partially exempt under RCW 34.05.310(4)(c) because it is adopting language from state statutes without material change.
7.	WAC 296-140-008 – Application, records and documentation, and certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW.	This section is partially exempt under RCW 34.05.310(4)(c) and (g) because it is adopting language from state statutes without material change, and deals with process requirements for applying for certification with L&I.
8.	WAC 296-140-009 – Request for reconsideration of department decision.	This section is partially exempt under RCW 34.05.310(4)(g) because it deals with how to seek reconsideration of L&I decision.

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The labor standards certification requirement in the proposed rule are voluntary standards for those clean energy project developers who choose to comply with them for the purposes of qualifying for a tax refund. As such, the proposed rules set the criteria for the labor standards and good faith efforts as directed by the statute but do not have any associated costs of compliance.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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: February 28, 2023

Signature:

Name: Joel Sacks



Title: Director