



PROPOSED RULE MAKING

CR-102 (June 2024)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: February 18, 2025

TIME: 3:11 PM

WSR 25-05-092

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

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 24-04-091 ; 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 296-156 WAC, Fire-Resistant Materials
Applicator Certification

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 1, 2025	1:30p.m.	Virtual and telephonic hearing To join electronically: https://lni-wa.gov.zoom.us/j/84355891714?pwd=0xRjuUanjzTPYxiNZSNa9Q7q64Q7sO.1 To join by phone (audio only): 253-215-8782 Meeting ID: 843 5589 1714 Passcode: 547980061	A pre-hearing overview will begin at 1:00 p.m. The hearing will start at 1:30 p.m. and will continue until all oral comments are received.
April 8, 2025	1:30p.m.	Enduris Training Center 1610 S Technology Blvd. Suite 100 Spokane, WA 99224	A pre-hearing overview will begin at 1:00 p.m. The hearing will start at 1:30 p.m. and will continue until all oral comments are received.
April 9, 2025	1:30p.m.	Dept. of Labor & Industries 12806 Gateway Drive S Tukwila, WA 98168	A pre-hearing overview will begin at 1:00 p.m. The hearing will start at 1:30 p.m. and will continue until all oral comments are received.

Date of intended adoption: May 20, 2025 (Note: This is **NOT** the effective date)

Submit written comments to:

Name Arthur Wagner, Administrative Regulations Analyst

Address Department of Labor & Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia, WA 98504-4620

Email Arthur.Wagner@Lni.wa.gov

Fax 360-902-5619

Other

Beginning (date and time) February 19, 2025, at 8:00 a.m.

By (date and time) April 16, 2025, by 5:00 p.m.

Assistance for persons with disabilities:

Contact Arthur Wagner, Administrative Regulations Analyst

Phone 360-516-6220

Fax 360-902-5455

TTY

Email Arthur.Wagner@Lni.wa.gov

Other

By (date) March 25, 2025, by 5:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposed rulemaking will implement the requirements of Substitute House Bill 1323 (SHB 1323), codified as chapter 49.105 RCW. SHB 1323 requires a training and certification program be created for individuals who spray-on apply fire-resistant materials to buildings classified as construction types I, II, III, IV, and V, as defined by the International Building Code, and install fire-stop systems in risk category III and IV, as defined by the International Fire Code. Fire protection measures are critical design elements to control the spread of fire and help protect structural steel, contain fire, and limit damage. Fire-resistant materials help protect the lives of employees that work in these buildings by providing more time for them to evacuate in case of a fire. The sufficient training of applicators and proper installation of fire-resistant materials will aid in reducing the number and severity of fires in the workplace. This proposed rulemaking includes requirements for safety training certification for workers, curriculum for in-person classroom and hands on instruction, and approval of training providers.

This proposed rulemaking will address the following:

- Requirements for contractors applying fire-resistant materials to use certified applicators in specified buildings. It also notes activities and building types that are exempt;
- Define key terms related to fire-resistant material application, including training providers, certified applicators, and contractors. It ensures clarity on roles, materials, and processes;
- Penalties for violations of the statute or rule;
- Certification requirements for both initial certification and renewing certification;
- Training course evaluation and approval, including course requirements, instructor qualifications, recordkeeping, and procedures for course changes and audits; and
- Denial, suspension, and revocation of worker certification and training course approvals.

Reasons supporting proposal: The rulemaking is needed in order to meet and enforce the requirements of chapter 49.105 RCW.

Statutory authority for adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.105.040

Statute being implemented: Chapter 49.105 RCW

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

Type of proponent: ☐ Private. ☐ Public. ☒ Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Thomas West	Tumwater, WA	509-237-2372
Implementation	Craig Blackwood	Tumwater, WA	360-902-5828
Enforcement	Craig Blackwood	Tumwater, WA	360-902-5828

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 Arthur Wagner

Address Department of Labor & Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia, WA 98504-4620

Phone 360-516-6220

Fax 360-902-5619

TTY

Email Arthur.Wagner@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:

☐ [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 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 table below that describes sections that are exempt or partially exempt. The proposed language largely adopts the statutory requirements made by SHB 1323, codified as chapter 49.105 RCW without material change.

(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](#)):

Proposed WAC Sections and Title	This proposed rule section is exempt (in whole or in part). Provide RCW to support this exemption.
WAC 296-156-001 Purpose and scope.	RCW 34.05.310(4)(c); the proposed language is fully exempt because it adopts language from RCW 49.105.010(1) and 49.105.020 without material change or sets exemptions from the rule and do not result in a penalty or violation.
WAC 296-156-003 – Definitions.	RCW 34.05.310(4)(c); the proposed language is fully exempt because it adds definitions based on RCW 49.105.010, or creates definitions that are interpretive and do not result in a penalty or violation.

WAC 296-156-010 – Certification verification and penalties.	RCW 34.05.310(4)(c); the proposed language is partially exempt because it adopts without material change language from RCW 49.105.030 and 49.105.040. Other parts of this section are significant legislative rules.
WAC 296-156-020 – Applicator training and certification requirements.	RCW 34.05.310(4)(c); the proposed language is partially exempt because it adopts provisions from RCW 49.105.020 without material change. Other parts of this section are significant legislative rules or procedural rules that list how to apply for certification.
WAC 296-156-030 – Training course approval.	RCW 34.05.310(4)(c); the proposed language are partially exempt because it adopts provisions from RCW 49.105.020 without material change. Other parts of this section are significant legislative rules or procedural rules that list how training programs can apply for approval.

☐ 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. _____
- ☒ 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:
L&I lacks reliable data to differentiate the average cost for small businesses from their larger counterparts because the task being regulated inherently belongs to multiple trades, and it is unknown how many workers will ultimately need to obtain certification. As such, L&I assumes there is a disproportionate impact on small businesses. L&I reviewed the list of methods for reducing the impact on small businesses under RCW 19.85.030, and is taking the following steps to reduce the costs of the rule on small businesses:
1. Reducing fine schedules for noncompliance for small businesses. RCW 49.17.180 addresses the civil penalties for WISHA citations and requires L&I give consideration in the penalty assessment to factors including the size of the employer's business. WAC 296-900-14015 under Table 11 sets forth the specific process for penalty adjustments including employer size, with reductions of 20 percent up to 70 percent.
 2. Developing and implementing a robust outreach and education program to ensure that small businesses are informed about what they need to know to comply with the law.
 3. Working with employer associations and other organizations to identify opportunities for targeted outreach efforts to assist employers.
 4. Reducing, modifying, or eliminating substantive regulatory requirements. L&I worked diligently with stakeholders to ensure the hours of training required to obtain certification as required by chapter 49.105 RCW are the minimum number of hours that maintain safe, effective, and highly trained workforce.
 5. Considering other mitigation techniques, including those suggested by small businesses or small business advocates.
 6. Delay compliance timetables. L&I will be delaying enforcement of the new rules implementing chapter 49.105 RCW, to one year from the effective date of the rule to ensure all employers and workers have the 12-month timeframe required by the statute.

L&I has considered the other methods of reducing costs under RCW 19.85.030 and found them inapplicable.

1. The rule imposes recordkeeping requirements that align with the timelines required in the statute. L&I cannot reduce these requirements.
2. The rule does not require a specific type of inspection and presents no opportunity to reduce the frequency of inspections needed to verify certified workers are being used when workers are applying fire resistant materials.

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 18, 2025	Signature: 
Name: Joel Sacks	
Title: Director	