



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: October 28, 2022

TIME: 8:36 AM

WSR 22-22-059

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

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

- Yes No If Yes, explain:

Purpose: In 2022, the Washington state legislature passed Second Substitute House Bill 1988 (2SHB 1988), Chapter 185, Laws of 2022, and Engrossed Substitute Senate Bill 5714 (ESSB 5714), Chapter 161, Laws of 2022. 2SHB 1988 and 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 emergency rules address:

- Standards for certification for:
 - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses, which will include a requirement that the recipient of the deferral consult with the Office of Minority and Women's Business Enterprises (OMWBE) and the Department of Veterans Affairs (DVA) to develop a plan to meet the standards or good faith efforts.
 - 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 for and processes related to application, records and documentation, and certification;
- Reorganizing and adding to the definition section, to provide clarity on each type of qualifying clean energy project identified under the rules as well as which definitions apply to different sections of chapter 296-140 WAC, Clean energy labor standards certification.
- Clarifies the labor standard for procurement from and contracts with women, minority, or veteran owned businesses is based on the percent of contract dollars awarded. The clarification is also made to the requirement under WAC 296-140-002 for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962.

Citation of rules affected by this order:

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

Repealed:

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

Suspended:

Statutory authority for adoption: RCW 82.89.070 and 82.90.060

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Labor and Industries is required to adopt emergency and permanent rules to implement both of these bills. These emergency rules will provide criteria necessary to certify labor standard requirements in order to qualify for tax deferral on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage, as well as solar canopies while permanent rules are being developed. L&I filed a CR-101 (WSR 22-13-148) on June 21, 2022, and was required to have rules in place by July 1, 2022. An initial emergency rule (WSR 22-14-094) was filed on July 1, 2022. This rulemaking renews the emergency rules while the permanent rulemaking process continues.

**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	<u>4</u>	Amended	<u>3</u>	Repealed	___

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

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	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	<u>4</u>	Amended	<u>3</u>	Repealed	___

Date Adopted: October 28, 2022

Name: Joel Sacks

Title: Director

Signature:

