



PROPOSED RULE MAKING

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

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STATE OF WASHINGTON
FILED

DATE: April 16, 2024

TIME: 9:44 AM

WSR 24-09-062

Agency: Board of Boiler Rules (Department of Labor & Industries)

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR 24-02-070

- Preproposal Statement of Inquiry was filed as WSR 23-21-043 ; 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) Board of Boiler Rules: WAC 296-104-020, Administration – What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?; WAC 296-104-102, Inspections – What are the standards for in-service inspection?; WAC 296-104-200, Construction – What are the standards for new construction?; WAC 296-104-255, Installation – What are the required clearances for boilers?; WAC 296-104-260, Installation – What are the required clearances for unfired pressure vessels?; and WAC 296-104-700, What are the inspection fees – Examination fees – Certificate fees – Expenses?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 22, 2024	10:20 a.m.	Department of Labor & Industries 7273 Linderson Way SW Tumwater, WA 98501 OR Join electronically (Zoom): https://lni-wa.gov.zoom.us/j/86866173024?pwd=ZnhCejZrSlIxRG9CRTCZDYNZnSVpBZz09 Passcode: X*y7x8Z* OR Join by phone (audio only): 253-215-8782 Meeting ID: 868 6617 3024 Passcode: 79245079	The in-person and virtual/telephonic hearing starts at 10:20 a.m. and will continue until all oral comments are received

Date of intended adoption: June 4, 2024 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Meagan Edwards
 Address: Department of Labor & Industries
 Field Services & Public Safety Division
 PO Box 44400
 Olympia, WA 98504-4400
 Email: Meagan.Edwards@Lni.wa.gov
 Fax: 360-704-1980
 Other:
 By (date) 5 p.m. on May 15, 2024

Assistance for persons with disabilities:

Contact Meagan Edwards
 Phone: 360-522-0125

 Fax: 360-704-1980
 TTY:
 Email: Meagan.Edwards@Lni.wa.gov
 Other:

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this continuance is to extend the public comment period and provide a second public hearing for changes under chapter 296-104 WAC, Board of Boiler Rules – Substantive. L&I filed a CR-102 Proposal on January 2, 2024 ([WSR 24-02-070](#)). A hybrid public hearing was held on February 21, 2024, with written comments accepted through February 13, 2024. During the process, some stakeholders did not receive notice of the CR-102 filing. This continuance extends the opportunity for public comments.

Proposed amendments to the chapter are as follows:

WAC 296-104-020, Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?

- Adds a new subsection that installers are responsible for correcting deficiencies found on initial permit inspection and paying subsequent inspection fees.
- Renumbers subsections and converts spelled numbers to numerals for formatting.

WAC 296-104-102, Inspection—What are the standards for in-service inspection?

- Removes the National Board Inspection Code (NBIC), current edition Part 4, Section 6, Supplement 3 from the non-mandatory guidelines for pressure relief devices for consistency with the code.

WAC 296-104-200, Construction—What are the standards for new construction?

- Adds new Section XIII from the 2023 edition of the American Society of Mechanical Engineers (ASME), to the standards for new construction of boilers and pressure vessels for consistency with the code.
- Converts a spelled number to a numeral for formatting.

WAC 296-104-255, Installation—What are the required clearances for boilers?

- Allows for clearances less than 18 inches for boilers when recommended by the manufacturer’s instructions to provide better direction for clearances.
- Rearranges the existing requirements and renumbers subsections for formatting.

WAC 296-104- 260 Installation—What are the required clearances for unfired pressure vessels?

- Adds a new exception that allows for side clearances less than 18 inches for pressure vessels when recommended by the manufacturer’s instructions and it does not inhibit inspection, maintenance, or repair to provide better direction for clearances. This also includes:
 - Notating that exceptions must be documented in the state’s jurisdictional database.
 - Clarifying the access requirements for manholes.

WAC 296-104-700, What are the inspection fees—Examination fees—Certificate fees—Expenses?

- Increases fees by the fiscal growth factor rate of 6.40 percent to support operating expenses for the Boiler Program.

Reasons supporting proposal: This rulemaking is needed to ensure that Washington’s rules are clear and consistent to improve public safety, and that inspection fees will support the Boiler Program’s operating expenses. According to RCW 70.79.330 and 70.79.350, a fee schedule for inspections is to be set by the Board of Boiler Rules and the fees are to be used to administer the Boiler Program.

Statutory authority for adoption: Chapter 70.79 RCW, Boilers and Unfired Pressure Vessels

Statute being implemented: Chapter 70.79 RCW, Boilers and Unfired Pressure Vessels

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.

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:	Mike Carlson, Prog. Mgr.	Tumwater, WA	360-902-5270
Implementation:	Steve Reinmuth, Asst. Dir.	Tumwater, WA	360-902-6348
Enforcement:	Steve Reinmuth, Asst. Dir.	Tumwater, WA	360-902-6348

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: Meagan Edwards
Address: Department of Labor & Industries, Field Services & Public Safety Division, PO Box 44400, Olympia, WA 98504-4400
Phone: 360-522-0125
Fax: 360-704-1980
TTY:
Email: Meagan.Edwards@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 checked="" 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 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:

(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	This proposed rule section is <u>not exempt</u>- Analysis is required	This proposed rule section is <u>exempt</u>. Provide RCW to support this exemption.
1.	WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?	<input checked="" type="checkbox"/>	
2.	WAC 296-104-102 Inspection—What are the standards for in-service inspection?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310(4)(c) because it adopts national consensus codes that generally establish industry standards.
3.	WAC 296-104-200 Construction—What are the standards for new construction?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310(4)(c) because it adopts national consensus codes that generally establish industry standards.
4.	WAC 296-104-255 Installation—What are the required clearances for boilers?	<input checked="" type="checkbox"/>	
5.	WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels?	<input checked="" type="checkbox"/>	
6.	WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310(4)(f) because it sets or adjust fees under the authority of RCW 19.02.075.

- 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. Most of the rule changes are exempt from the Small Business Economic Impact Analysis (SBEIS) under RCW 19.85.025. Those changes that are not exempt from the SBEIS requirement are the following:
- Making the installer responsible for correcting deficiencies found during installation inspection and paying subsequent re-inspection fees: Current rule requires boiler and pressure vessel installations to pass inspection to obtain a certificate of inspection to operate the equipment. As such, where corrective action is required following an initial inspection before the boiler or pressure vessel installation can be considered to pass inspection, the installer must make the corrective action and have a re-inspection. Under the current rule, the owner is responsible for inspection fees for installations inspected by state inspectors, including re-inspections. This change makes the installer responsible for any subsequent re-inspection fees as a result of a non-compliant installation, rather than the owner. While rules setting fees are exempt from the SBEIS requirement under RCW 34.05.310 (4)(f), as the installer works for the owner, the installer has the ability to negotiate their pay for the work they perform.
 - Allowing for clearances of boilers of less than 18 inches when recommended by the manufacturer: For owners, the proposed amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval and allowing for clearances of pressure vessels of less than 18 inches when recommended by the manufacturer.
 - Allowing for side clearances of less than 18 inches for pressure vessels when recommended by the manufacturer's instructions clarifies L&I's existing practices of documenting exceptions for clearance requirements and providing safe access for manholes: For owners, the proposed amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval, and clarifies L&I existing practices so does not add a substantive change.

These changes will either result in a cost savings to customers or no increased costs over current practice or the baseline.

According to the Regulatory Fairness Act under RCW 19.85.030(1)(a), an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rulemaking under RCW 34.05.320. As the portions of the rule amendments not meeting exemptions will either

result in a cost savings to customers or no increased costs over current practice or the baseline, the proposed amendments are not expected to impose more than minor costs, so an SBEIS is not required.

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: April 16, 2024

Name: Tim Barker

Title: Chair, Board of Boiler Rules

Signature:

Timothy Barker