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## **Cost-Benefit Analysis**

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### **Chapter 296-104 WAC, Board of Boiler Rules – Substantive Board of Boiler Rules**

*May 2024*

## Table of Contents

<b>Introduction.....</b>	<b>3</b>
<b>Probable Costs and Benefits of the Adopted Amendments.....</b>	<b>6</b>
<b>Cost-Benefit Determination .....</b>	<b>7</b>
<b>Least Burdensome Alternative Analysis .....</b>	<b>8</b>

## Introduction

### Administrative Procedure Act Requirements

The Administrative Procedure Act (APA) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (L&I) must analyze the probable costs and benefits of the rule, and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs.” [RCW 34.05.328(1)(d)]

RCW 34.05.328(5)(c)(iii) defines a "significant legislative rule" as a rule, other than a procedural or interpretive rule, that:

- Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction;
- Establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- Adopts a new, or makes significant amendments to, a policy or regulatory program.

Under certain circumstances, a rule or rule component is exempt from this requirement.

### Adopted Amendments

The purpose of this rulemaking is to adopt amendments to the boiler rules under chapter 296-104 WAC, Board of Boiler Rules – Substantive. The changes affect safety codes, installer and clearance requirements, and fees for boilers and pressure vessels. The amendments are needed to ensure the rule is consistent with national boiler and unfired pressure vessel safety standards and industry practice.

The adopted amendments will:

- Increase fees by the fiscal growth factor rate of 6.40% to support operating expenses for the Boiler Program.
- Make installers responsible for correcting deficiencies found on initial inspection and paying subsequent inspection fees.
- Remove the National Board Inspection Code, current edition Part 4, Section 6, and Supplement 3 from the non-mandatory guidelines for pressure relief devices for consistency with the code.
- Add a new Section XIII from the 2023 edition of the American Society of Mechanical Engineers, to the standards for new construction of boilers and pressure vessels for consistency with the code.
- Allow for clearances less than 18 inches for boilers when recommended by the manufacturer’s instructions for better direction on clearances.

- Add a new exception that allows for side clearances less than 18 inches for pressure vessels when recommended by the manufacturer’s instructions for better direction on clearances. This also includes:
  - Notating that exceptions must be documented in the state’s jurisdictional database.
  - Clarifying the access requirements for manholes.
- Make updates for general housekeeping. This includes:
  - Rearranging existing requirements under WAC 296-104-255 to restructure the rule section for new language; and
  - Renumbering subsections and converting spelled numbers to numerals for formatting.

The Boiler Program’s (Program) rule development process includes a review and approval of all rule proposals by the Board of Boiler Rules (Board). The Board consists of five members appointed by the Governor, to represent Manufacturers, Owner/Users, Professional Engineers, Insurance Companies and Boilermakers/Operators in the industry. The function of the Board is to promulgate definitions, rules and regulations for the safe and proper construction, installation, repair, use and operation of boilers and the repair of unfired pressure vessels in the state of Washington ([Chapter 70.79 RCW](#)).

The Board holds public meetings in February, May, August, and November of each year, as required by statute ([RCW 70.79.010](#)).

The board has held discussion about these proposals over the course of several board meetings.

The Board authorized the filing of the CR-101 Preproposal Statement of Inquiry at the August 23, 2023, meeting.

On October 10, 2023, L&I filed a CR-101 Preproposal Statement of Inquiry ([WSR 23-21-043](#)).

The Board authorized the filing of the CR-102 Proposal at the November 8, 2023, meeting.

On January 02, 2024, L&I filed the CR-102 Proposed Rule Making ([WSR 24-02-070](#)).

On February 21, 2024, L&I held a hybrid public hearing on the proposed rules at the L&I Tumwater Office. Written comments were accepted until February 13, 2024.

On February 21, 2024, the Board authorized the filing of the CR-103 Adoption Order to adopt the rules as proposed.

On April 16, 2024, L&I filed a continuance of the CR-102 Proposed Rulemaking ([WSR 24-09-062](#)). A continuance was filed to extend the public comment period and provide a second public hearing.

On May 22, 2024, L&I held a hybrid public hearing on the proposed rules at the L&I Tumwater office. Written comments were accepted until May 15, 2024.

On May 22, 2024, the Board authorized the filing of the CR-103 Adoption Order to adopt the rules as proposed.

Stakeholders were notified of this rulemaking directly by email and through the Rules Update, Boiler, Contractor Outreach, and Plumbers email lists via GovDelivery throughout the rulemaking process. Information about rulemaking is also available on L&I's website.

## Probable Costs and Benefits of the Adopted Amendments

Most of the adopted amendments are not significant legislative rules and are exempt from the cost-benefit analysis requirement. The adopted amendments that are considered significant legislative rules are as follows:

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

- Overview

Adds new language that installers are responsible for correcting deficiencies found during initial permit inspection and paying any subsequent inspection fees.

- Cost/Benefit Analysis

The adopted amendment makes installers of boilers and pressure vessels responsible for corrective actions that is already existing practice complied with by the industry, therefore it does not add any new costs above existing practice or baseline. Current rule requires boiler and pressure vessel installations to pass inspection for an owner 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 simply makes the installer responsible for any subsequent re-inspection fees as a result of a non-compliant installation, rather than the owner. Ensures the installer is held responsible for correcting deficiencies and installations are done correctly so the boiler and pressure vessel is safe. Specific to fees, while exempt from the cost-benefit analysis under RCW 34.05.328(5)(b)(vi), as the installer works for the owner, the installer has the ability to negotiate their pay for the work they perform.

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

- Overview

Allows clearances of less than 18 inches for boilers when recommended by the manufacturer's instructions.

- Cost/Benefit Analysis

The adopted amendment provides an allowance for clearances of less than 18 inches and does not add any additional cost to affected parties. For owners, the adopted amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval. The adopted amendment allows for installations based on the manufacturer's recommendations. The benefits are the reduction in regulatory requirements where not necessary for public safety.

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

- Overview

Adds a new exception that allows side clearances of less than 18 inches for pressure vessels when recommended by the manufacturer's instructions. Any exceptions must be documented in the state's jurisdictional database. The adopted amendment also clarifies the existing clearance requirements for manholes.

- Cost/Benefit Analysis

The adopted amendment provides an exception for clearances and does not add any additional cost to affected parties. For customers, the result is a cost saving for installing pressure vessels without needing to complete and submit a variance request to L&I. The adopted amendment allows for installations based on the manufacturer's recommendations. The benefits are the reduction in regulatory requirements where not necessary for public safety.

The adopted amendment also clarifies L&I's existing practices of documenting exceptions for clearance requirements and providing safe access for manholes, as such it does not add costs as it is not a substantive change. For owners, the adopted amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval. Rather, the inspector would note the clearance exception in the state's database. The adopted amendment streamlines the inspection process and reduces inspection delays.

## **Cost-Benefit Determination**

As described above, many of the changes subject to the cost-benefit analysis requirement will result in a cost savings to customers. For those changes where costs are associated, the benefits include increased boiler safety. In total, the probable benefits of these rule amendments are likely much greater than the probable costs.

## **Least Burdensome Alternative Analysis**

L&I is required to determine, after considering alternative versions of the rule and the analysis required, that the amendments being adopted are the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute. RCW 34.05.328(1)(e).

### **Requirements for boiler and pressure vessel installations**

The change makes the installer responsible for correcting deficiencies found during initial permit inspection and paying any subsequent inspection fees. The change is the best approach because it provides the ability to assess re-inspection fees to installers that do not comply with installation requirements, rather than owners that did not install the equipment.

### **Boiler clearances**

The change allows for clearances of boilers of less than 18 inches when recommended by the manufacturer. The change is the best approach because it streamlines the inspection process. It eliminates the need to submit a variance request to L&I for installation approval when clearances of less than 18 inches are recommended by the manufacturer; therefore, reducing inspection delays.

### **Pressure vessel clearances**

The change allows for clearances of pressure vessels of less than 18 inches when recommended by the manufacturer. The change is the best approach because it clarifies existing requirements and streamlines the inspection process. It eliminates the need to submit a variance request to L&I for installation approval when clearances of less than 18 inches are recommended by the manufacturer; therefore, reducing inspection delays.