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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-50
Regulation title	Boiler and Pressure Vessel Rules and Regulations
Action title	Proposed regulation to adopt revisions to the Boiler and Pressure Vessel Rules and Regulations
Date this document prepared	March 17, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this NOIRA is to provide both increased protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia and to address the costs of doing business.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Safety and Health Codes Board is authorized by Title 40.1-51.6.A. of the *Code of Virginia* to, “formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth.

In promulgating such rules, regulations and standards, the Board shall consider any or all of the following:

1. Standards, formulae and practices generally accepted by recognized engineering and safety authorities and bodies....”

Title 40.1-51.6.B. of the *Code of Virginia* authorizes the following: “The Commissioner shall ensure that the costs of administering this chapter shall not exceed revenues generated from fees collected pursuant to the provisions of this chapter.”

The Safety and Health Codes Board is authorized by Title 40.1-51.15.A. of the *Code of Virginia* to: “establish fees required under this chapter....”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is necessary to provide both increased protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia and to address the costs of doing business.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Department seeks to adopt revisions to its Boiler and Pressure Vessel Rules and Regulations as follows:

1. Delete “welded” from Form R-1, Report of Repairs to conform with current forms;
2. Delete last two sentences of paragraph D of 16 VAC 25-50-480, which reads as follows: “A seal weld is a tube-to-tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P-1) tube joints made by qualified welders will not require an inspection nor a Form R-1.”
3. In paragraph A of 16 VAC 25-50-430, change “1 ½” to “1 ¼” for the maximum allowable working pressure for a hydrostatic pressure test, when applied to boilers or pressure vessels. The revision is necessary to conform to current International Boiler and Pressure Vessel Code;
4. Adopt the 2007 Edition of the International Boiler and Pressure Vessel Code, including

- sections XII and VIII, Div 2 for compliance with the most recent edition of documents incorporated by reference;
5. Adopt the 2007 Edition of the National Board Inspection Code (NBIC) to comply with the most recent edition of documents incorporated by reference;
 6. Adopt the 2006 Edition of B31.1, ASME Code for Pressure Piping, American National Standards Institute to comply with the most recent edition of documents incorporated by reference;
 7. Adopt the 2006 Edition of API 510 as listed in the National Board Inspection Code to comply with the most recent edition of documents incorporated by reference;
 8. In paragraph D of 16 VAC 25-50-150, Inspection Certificate and inspection fees, revise fees from "\$800" to "\$1000" to reflect cost of living adjustment;
 9. In paragraph A of 16 VAC 25-50-150, add a reprint of certificate fee of \$10.00 to cover direct administrative costs, e.g., printing, mailing and employee's work-related time.
 10. In paragraph B.3., Factors of safety, of 16 VAC 25-50-380, Pressure Vessels, insert "for vessels built prior to 1999. After 1999 the factor of safety may be 3.5" following "The minimum factor of safety shall in no case be less than four for existing installations". The first two sentences of 16 VAC 25-50-380 B.3, Factors of safety, would then read as follows:

"The minimum factor of safety shall in no case be less than four for existing installations for vessels built prior to 1999. After 1999, the factor of safety may be 3.5". The revision is necessary to conform to current International Boiler and Pressure Vessel Code.
 11. In paragraph C.5.a., Factors of safety, of 16 VAC 25-50-360, Power and high-pressure, high-temperature water boilers, insert "for vessels built prior to 1999. After 1999 the factor of safety may be 4.0" following "The lowest factor of safety permissible on existing installations shall be 4.5". The first two sentences of 16 VAC 25-50-360. C.5.a., Factors of safety, would then read as follows: "The lowest factor of safety permissible on existing installations shall be 4.5 for boilers built prior to 1999. After 1999 the factor of safety may be 4.0". The revision is necessary to conform to current International Boiler and Pressure Vessel Code.
 12. Adopt latest edition of CSD-1 and section on maintenance that includes revised inspector's checklist. This change is needed to comply with the most recent edition of documents incorporated by reference; and
 13. Possibly add paragraphs from ANSI 21.10 addressing rules for gas trains of hot water heaters and/or international building codes/UL standards covering the installation and testing of carbon monoxide alarms. Allow inspectors to check these only at renewal certificate inspections.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Many of the suggested changes involve updating the Boiler and Pressure Vessel Rules and Regulations, §§40.1-51.5, *et seq.*, mandated by Chapter 3.1 of Title 40.1 of the *Code of Virginia*, for consistency with the most recent editions of forms or national and international documents incorporated by reference into the Boiler and Pressure Vessel Rules and Regulations; therefore, there is no alternative to adopting related changes. Monetary increases primarily cover either direct administrative costs, i.e., printing, mailing and employee's work-related time or reflect a cost of living adjustment. The Boiler Program could continue to operate without the monetary increases, however, not as efficiently.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.01 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Mr. Ed Hilton, Director, Chief Boiler Inspector, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219; Telephone no.: (804) 786-3262; Fax no.: (804) 371-2324; email: Ed.Hilton@doli.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

Although a date has not yet been determined, a public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website

(www.townhall.virginia.gov) and will be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is not using the participatory approach in the development of the proposal because the agency has authorized proceedings without using the participatory approach.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulation will have no impact on the institution of the family or family stability.

Periodic review - Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This NOIRA is the result of periodic review. There were no comments received concerning this regulation during the public comment period following the publication of the Notice of Periodic Review on November 12, 2007. This regulation meets the criteria set out in Executive Order 21, and is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Periodic review - Discussion

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency's consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This NOIRA is the result of periodic review. The Department of Labor and Industry determined that there is a continued need for the Boiler and Pressure Vessel Rules and Regulations, §§40.1-51.5, *et seq.*, which is mandated by Chapter 3.1 of Title 40.1 of the *Code of Virginia*, to continue to protect the public's health, safety, and welfare with the least possible cost and intrusiveness to citizens and businesses in the Commonwealth.

The Department determined that the regulation is not complex. Most of the suggested amendments are necessary updates to comply with the latest documents that have been incorporated by reference into the Boiler and Pressure Vessel Rules and Regulations, e.g., adopting the 2007 Edition of the National Board Inspection Code (NBIC) or the current International Boiler and Pressure Vessel Code.

The proposed regulation does not overlap, duplicate or conflict with any federal or state law or regulation.

This proposed regulation was last evaluated in 2003. Although there have been advances in technology since that time, as well as some changes in economic conditions, the degree of change in technology, economic condition, and other factors have not altered sufficiently as to require significant amendments to the regulation. Proposed revisions dealing with cost increases are needed to either reflect a cost of living adjustment and are spread over a three-year span, or are necessary to cover administrative costs, i.e., printing, mailing and the use of employee's work-related time.