



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16VAC25-40-10, Definitions; 16VAC25-40-20, Authority and Application; and 16VAC25-40-30, Certification
Regulation title	Boiler and Pressure Vessel Operator Certification
Action title	Amendments to the Standard for Boiler and Pressure Vessel Operator Certification
Date this document prepared	March 20, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Pursuant to the Executive Regulatory Reform Initiative, the Department of Labor and Industry (the Department) identified for amendment the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40. As currently enacted, this regulation requires the chief boiler inspector of the Commonwealth, or his designee, to provide and evaluate the written examination for boiler operator certification.

The Safety and Health Codes Board seeks to discontinue the requirement that the Program provide and evaluate such written examinations of Subsection C. of 16VAC25-40-30 for local governments and amends this subsection to eliminate this requirement. Since the enactment of the regulation, no locality has ever requested the Department to provide and evaluate any such written examinations for boiler operators who would be covered under this regulation.

Amending the regulation is non-controversial and no individual or entity will be adversely affected.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 14, 2013, the Safety and Health Codes Board approved the Department's request to amend the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*, pursuant to the Virginia Code §2.2-4012.1.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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."

The Safety and Health Codes Board is authorized by Title 15.2-910.C. of the Code of Virginia to: "...establish standards to be used in determining an applicant's ability, proficiency and qualifications."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to delete requirements in Subsection C. of 16VAC25-30, necessitating actions by the Commonwealth's chief boiler inspector to provide or evaluate the written examination for boiler operator certification under this regulation for any locality in the Commonwealth because no such requests to the Department have ever been made by any county, city or town.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The Boiler Safety Compliance Program of the Department of Labor and Industry sought the repeal of the requirement that it provide and evaluate written examinations of Subsection C. of 16VAC25-40-30 since the Department has never been asked to provide or evaluate the written examination for boiler operator certification for a boiler operator who operates/maintains boilers in any county, city or town in the Commonwealth. This Subsection C. has never been implemented by any locality. Therefore, it has been determined by the Department to be of no value in protecting the public health, safety or welfare.

Amending the regulation is non-controversial and no individual or entity will be adversely affected.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing

sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

- In 16VAC25-40-30.C., deleted the phrase “provided and evaluated by the chief boiler inspector of the Commonwealth, or his designee, and be administered by the agent or board.” The sentence now reads: “The written examination for boiler operator certification shall be administered by the agent or board.”
- In 16VAC25-40-30.I., deleted the terms “receive and” preceding “evaluate” to be consistent with the changes made in Subsection C. Subsection I. now will read: “The agent or board shall evaluate the applications and examinations and issue Certificates of Competency to applicants successfully completing the examination process.”
- In 16VAC25-40-30.L., for continuity with the revisions proposed for Subsection C, the following revisions are being made: deleted the term “receipt” preceding “examination”; inserted the term “date” following “following the”; inserted “the” preceding “examination”; and deleted the phrase “results from the chief boiler inspector of the Commonwealth or his designee” following “the examination”. Subsection L. now will read: “Applicants shall be notified in writing by the agent or board of the results of their application within 30 days following the date of the examination.”
- In 16VAC25-40-30. N., substituted the term “Competency” for “competency” following Certificates of” to more accurately reflect the reference; and removed the terms “the department and issued by” also for continuity with Subsection C. Subsection N. now will read: “Certificates of Competency shall be provided by the adopting jurisdiction at a frequency established by the adopting jurisdiction.”
- In 16VAC25-40-30. O., substituted the term “Certificate of Competency” for “certificate of competency” to more accurately reflect this reference.
- In 16VAC25-40-10, Definitions, deleted the unnecessary definitions of terms “Commissioner” and “Department”, for continuity with revisions to Subsection C of 16VAC25-40-30; and
- In 16VAC25-40-20.D., substituted the term “Board” for “Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry” following “amendment to the”.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*
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- 1) The Department does not anticipate any advantages or disadvantages to Virginia employers, Virginia employees, or self-employed individuals, with the adoption of these changes.
- 2) The Department does not anticipate any advantages or disadvantages to the Department or the Commonwealth with the adoption of these changes. This regulation, requiring the chief boiler inspector of the Commonwealth, or his designee, to provide and evaluate the written examination for boiler operator in 16VAC25-40-30.C., is being repealed because the Department has never been requested to provide and evaluate written examinations for boiler operator certification pursuant to this subsection nor has this section ever been implemented by any locality.
- 3) The Department believes that there are no disadvantages to the public or the Commonwealth with the adoption of these changes as these services have never been requested or utilized.

The Department believes that these amendments are non-controversial and no individual or entity will be adversely affected.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulatory revision.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

By eliminating the requirement in Subsection C. of 16VAC25-40-30 for the Commonwealth's chief boiler inspector to provide and evaluate such written examinations for boiler operator certification, the Board establishes less stringent compliance requirements for companies that own boilers, and boiler operators in any county, city or town in the Commonwealth, and as well as the Department.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	No additional cost to the state is anticipated.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs associated with changes to existing regulations on localities.

Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Local governments in Virginia. Companies that own boilers; and boiler operators who operate/maintain boilers in any county, city or town in the Commonwealth.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The changes in the regulation do not affect the number of entities involved. The number of entities ranges from several dozen to several hundred, depending upon the locality.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	The regulatory revisions do not cause any changes to the costs. No cost projections have been made due to the fact that the regulations were never implemented. Any costs incurred by the Department of Labor and Industry would have been passed on to the locality/entities involved.
Beneficial impact the regulation is designed to produce.	This amendment will delete regulatory requirements of the Commonwealth's chief boiler inspector to provide and evaluate the written examination for boiler operator certification for a boiler operator who operates/maintains boilers in a locality. The chief boiler inspector has never been requested by any county, city or town to provide these services.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The actions by the Board to remove the requirement that the chief boiler inspector of the Commonwealth provide and evaluate the written examination for boiler operator certification have never been requested by any county, city or town; therefore, there are no other viable alternatives to removing requirements in the standard.

Family impact

Please assess the 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 amendments proposed in this regulatory action will not impact the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
16VAC25-40-10		"Commissioner" means the Commissioner of the Department of Labor and Industry".	<p>"Commissioner" means the Commissioner of the Department of Labor and Industry".</p> <p><u>Rationale:</u> Term deemed unnecessary. Deleted for continuity with other revisions.</p>
16VAC25-40-10		"Department" means the Department of Labor and Industry."	<p>"Department" means the Department of Labor and Industry."</p> <p><u>Rationale:</u> Term deemed unnecessary. Deleted for continuity with other revisions.</p>
16VAC25-40-20.D.		"Localities shall forward a copy of their certification ordinance upon adoption or amendment to the Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry."	<p>"Localities shall forward a copy of their certification ordinance upon adoption or amendment to the Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry Board".</p> <p><u>Rationale:</u> Deleted for continuity with other revisions.</p>
16VAC25-40-30.C.		"The written examination for boiler operator certification shall be provided and evaluated by the chief boiler inspector of the Commonwealth, or his designee, and be administered by the agent or board."	<p>"The written examination for boiler operator certification shall be provided and evaluated by the chief boiler inspector of the Commonwealth, or his designee, and be administered by the agent or board."</p> <p><u>Rationale:</u> Repeal requirement that the Boiler safety Compliance Program of the Department of Labor and Industry provide and evaluate written examinations because the Department has never been asked to provide and evaluate the written examination for boiler operator certification for a boiler operator who</p>

16VAC25-40-30.I.		<p>“The agent or board shall receive and evaluate the applications and examinations and issue certificates of competency to applicants successfully completing the examination process.”</p>	<p>operates/maintains boilers in any county, city or town in the Commonwealth. Therefore, the Department determined that this requirement has no value in protecting the public health, safety or welfare. Amending the regulation was deemed non-controversial and no individual or entity will be adversely affected.</p> <p>“The agent or board shall receive and evaluate the applications and examinations and issue certificates of competency <u>Certificates of Competency</u> to applicants successfully completing the examination process.”</p> <p><u>Rationale:</u> Deleted for continuity with revisions in subsection C.</p>
16VAC25-40-30.L.		<p>“Applicants shall be notified in writing by the agent or board of the results of their application within 30 days following the receipt of the examination results from the chief boiler inspector of the Commonwealth or his designee.”</p>	<p>“Applicants shall be notified in writing by the agent or board of the results of their application within 30 days following the receipt date of the examination results from the chief boiler inspector of the Commonwealth or his designee. <u>receipt date of the examination results from the Commonwealth or his designee.</u>”</p> <p><u>Rationale:</u> Deleted for continuity with revisions in subsection C.</p>
16VAC25-40-30.N.		<p>“Certificates of competency shall be provided by the department and issued by the adopting jurisdiction at a frequency established by the adopting jurisdiction.”</p>	<p>“Certificates of competency <u>Competency</u> shall be provided by the department and <u>issued by the adopting jurisdiction</u> at a frequency established by the adopting jurisdiction.”</p> <p><u>Rationale:</u> Deleted for continuity with revisions in subsection C.</p>
16VAC25-40-30.O.		<p>“When a certificate of competency has been lost or destroyed, the owner shall present a notarized statement to that effect and pay a processing charge established by that jurisdiction for issuance of a duplicate certificate.”</p>	<p>“When a certificate of competency <u>Certificate of Competency</u> has been lost or destroyed, the owner shall present a notarized statement to that effect and pay a processing charge established by that jurisdiction for issuance of a duplicate certificate.”</p> <p><u>Rationale:</u> Revised to more accurately reflect the reference.</p>

**Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, et seq.;
Amendment**

As Adopted by the
Safety and Health Codes Board

Date: March 14, 2013



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16VAC25-40, Boiler and Pressure Vessel Operator Certification

CHAPTER 40

STANDARD FOR BOILER AND PRESSURE VESSEL OPERATOR CERTIFICATION

16VAC25-40-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accredited" means accredited by an accrediting body recognized by the U.S. Department of Education.

"Act" refers to § 15.2-910 of the Code of Virginia.

"Agent" means the agent established by a county, city or town, under local ordinance to examine and determine an applicant's qualifications for certification under the Act.

"Approved" means acceptable to the Commissioner of Labor and Industry.

"Board" means the board established by a county, city or town, under local ordinance to examine and determine an applicant's qualifications for certification under the Act.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination of them, under pressure or vacuum for use externally to itself by the direct application of heat. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

"Boiler operator" means an individual who would normally be the senior operational and maintenance person at the site of the boiler who would be expected to react to changing operational and maintenance situations.

"Certificate of Competency" means a certificate issued to a person who has passed the prescribed examination as provided in subsection C of 16VAC25-40-30.

~~"Commissioner" means the Commissioner of the Department of Labor and Industry.~~

~~"Department" means the Department of Labor and Industry.~~

"Heating plant" means a heating system containing a low pressure steam or hot water boiler used to generate energy for use in heating buildings, potable water or processing.

"High pressure boiler" means a steam boiler where the safety valves are set to relieve at a pressure of more than 15 pounds per square inch.

"Horsepower rating of a boiler" for the purpose of this chapter shall be the largest rating determined in accordance with each of the following (i) by dividing the square feet of boiler heating surface by 10; or (ii) the manufacturer's rated output in horsepower; or (iii) where the manufacturer's rated output is expressed in

terms other than horsepower, such rating converted into horsepower by the use of one of the factors as defined in this chapter.

"Hot water heating boiler" means any hot water boiler operated at pressures not exceeding 160 psi or temperatures not exceeding 250°F.

"Jurisdiction" as referred to in this standard shall mean counties, cities and towns in the Commonwealth.

"Low pressure boiler" means a steam boiler where the safety valves are set to relieve at a pressure of 15 pounds per square inch or less and hot water heating boilers.

"Pressure vessel" as referred to in this chapter shall be any vessel in which (i) the pressure is obtained from an external source, or by an internal or external application of heat; and (ii) is an auxiliary to a boiler plant.

"One boiler horsepower" shall be defined as (i) the evaporation of 34.5 pounds of water per hour from and at 212°F; or (ii) 33475 British Thermal Units (B.T.U.) per hour; or (iii) 140 square feet of steam radiation; or (iv) 224 square feet of water radiation at 150°F; or (v) 10 kilowatt per hour electrical input to boiler.

"Steam plant" means a system containing a high pressure boiler to generate energy for use in heating, power generation or processing operations.

16VAC25-40-20. Authority and application.

A. This chapter is established in accordance with § 15.2-910 of the Code of Virginia for use by counties, cities and towns for the certification of boiler and pressure vessel operators.

B. This chapter shall apply to any person who engages in, or offers to engage in, for the general public for compensation, the operation or maintenance of a boiler or pressure vessel. All jurisdictions who choose to regulate the certification of boiler and pressure vessel operators shall utilize this standard for control of certification within the Commonwealth.

C. This chapter shall not affect licensing or inspection under any other provision of the Code of Virginia.

D. Localities shall forward a copy of their certification ordinance upon adoption or amendment to the ~~Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry Board~~.

E. The Department of Labor and Industry will provide advisory opinions concerning interpretation and application of this chapter upon request.

F. This chapter shall not apply to any person who, in his capacity as an employee, is engaged in the operation or maintenance of a boiler or pressure vessel owned by his employer.

16VAC25-40-30. Certification.

A. Boiler operators and pressure vessel operators covered under this chapter shall be duly certified in the proper class by the examining agent or board of the jurisdiction adopting a boiler certification ordinance.

B. The agent or board shall be appointed by the adopting jurisdiction. Any such agent or board shall provide for the examination of applicants for boiler and pressure vessel operator certification no less than 12 times per year.

C. The written examination for boiler operator certification shall be ~~provided and evaluated by the chief boiler inspector of the Commonwealth, or his designee, and be~~ administered by the agent or board.

Such examination shall include questions, diagrams and practical tests of sufficient scope to demonstrate that the applicant has the necessary qualifications, experience and knowledge of the basic principles involved in operation, care and maintenance to operate safely the boiler and auxiliary pressure vessels of the class for which an application for certification has been made.

Specific competencies shall include, but not be limited to the following:

1. Principles of boiler design;
2. General operation practices;
3. Effects of water treatment;
4. Inspection requirements; and
5. Emergency shutdown procedures.

D. The class of certification and the training and experience requirements are as follows:

1. Class-1 Boiler Operator - To take charge of and operate or maintain any steam plant.

Requirements:

Two years experience as an operator of high pressure boiler beyond that experience which is required for a Class-2 operator.

Substitution of a degree in mechanical engineering from an accredited college, university or school of technology or successful completion of an approved boiler operator apprenticeship program or a U.S. military training course may be permitted for one year of the required experience.

2. Class-2 Boiler Operator - To take charge of and operate any of the following:

- a. A high pressure steam plant where the total horsepower rating of the boiler is not in excess of 500 boiler horsepower, or a combination of high pressure boilers and heating boilers and auxiliary pressure vessels; or

- b. A heating plant having low pressure boilers with a pump return with no limitation on total capacity; or
- c. A heating plant having hot water heating boilers, with no limitation on total capacity.

Requirements:

At least two years experience as a boiler operator or an assistant boiler operator, fireman or oiler, in a high pressure steam plant of more than 75 boiler horsepower; or

Four years of such experience in a plant of not less than 50 boiler horsepower.

Substitution of a degree in mechanical engineering from an accredited college, university or school of technology or successful completion of any approved boiler operator apprenticeship program or a U.S. military training course may be permitted for one year of the required experience.

E. In cases where a boiler operator has been operating a plant for a period of at least one year prior to the effective date of implementation of this chapter by the adopting jurisdiction, or where the classification of such a boiler operator has been changed by this chapter, such an operator may be conditionally certified for a three-year period by the agent or board in order that the operator may continue operation of that plant and no other. A suitable endorsement should be noted on his certification documents.

F. Application for examination in the class of certification shall be made on an approved form provided by the agent or board of the adopting jurisdiction. A notarized statement of education, training and experience in operating steam boilers or low pressure boiler plants and auxiliary pressure vessels shall be provided with the application.

G. No certification shall be required of an individual holding a valid license or certificate, under Chapter 3.1 (§ 40.1-51.5 et. seq.) of Title 40.1 of the Code of Virginia, or certified under this chapter by another jurisdiction. An applicant who holds a valid certificate or license from any state or local government outside the Commonwealth may be certified without examination upon the presentation of the following to the agent or board (i) a valid certificate or license from that authority and (ii) the certification or licensure requirements of that authority; provided that the authority's requirements for certification or licensure are equal to or greater than those established under this chapter.

H. Applicants must successfully complete an examination and the other requirements to be deemed certified, except as indicated in subsection G above.

I. The agent or board shall ~~receive and~~ evaluate the applications and examinations and issue ~~certificates of competency~~ Certificates of Competency to applicants successfully completing the examination process.

J. The agent or board of the adopting jurisdiction may permit an applicant to sit for a written examination at a lower class than that for which the applicant has applied, if it is determined that an applicant lacks either experience or requisite knowledge of the class applied for.

K. Applicants who fail to pass the required examination may not be reexamined until 90 days after the date of the last examination.

L. Applicants shall be notified in writing by the agent or board of the results of their application within 30 days following the receipt date of the examination results from the chief boiler inspector of the Commonwealth or his designee.

M. The certification fee shall be established by the adopting jurisdiction.

N. Certificates of ~~competency~~ Competency shall be provided by the department and issued by the adopting jurisdiction at a frequency established by the adopting jurisdiction.

O. When a ~~certificate of competency~~ Certificate of Competency has been lost or destroyed, the owner shall present a notarized statement to that effect and pay a processing charge established by that jurisdiction for issuance of a duplicate certificate.