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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 25-40
VAC Chapter title(s)	Standard for Boiler and Pressure Vessel Operator Certification
Date this document prepared	August 24, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Department – Department of Labor and Industry
SHCB - Safety and Health Codes Board

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 40.1-51.6 of the Code of Virginia authorizes the Board 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." Section 15.2-910 of the Code of Virginia state the Board "... shall establish standards to be used in determining an applicant's ability, proficiency and qualifications" for operation of a boiler and pressure vessel.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The Department of Labor and Industry did not consider any alternatives because the regulation is mandated by section 15.2-910 of the Code of Virginia.

Per Report to SHCB on June 27, 2023: To the Department's knowledge no locality has chosen to adopt an ordinance, and as noted above, the regulation is mandated by statute, [Va. Code § 15.2-910](#). The Department will be seeking to repeal this statute during the next General Assembly session since they are not being used by localities. The repeal of the statute would repeal this regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received on this regulation during the public comment period that began on May 23, 2022, and ended on June 13, 2022. The Department and the Safety and Health Codes Board did not establish an informal advisory group for the purpose of assisting in the periodic review.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation has two goals:

- To ensure statewide uniformity in the determination of the ability, proficiency and qualifications of boiler and pressure operators certified under a local government ordinance.
- To ensure the protection of the public's health, safety and welfare with the least

possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The regulation achieves these goals by providing uniform statewide criteria to be used by all counties, cities or towns which choose to regulate the certification of boiler and pressure vessel operators. It protects the safety, health, and welfare of the citizens of the Commonwealth from the dangers of boiler or pressure vessels being operated in an unsafe manner or by unqualified operators. The regulation is clearly written and not overly complex. To the Department's knowledge no locality has chosen to adopt an ordinance, and as noted above, the regulation is mandated by statute, [Va. Code § 15.2-910](#).

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Safety and Health Codes Board voted to retain the regulation without change at this time. The SHCB also voted to give authority for the Department to seek repeal of [Va. Code § 15.2-910](#) during the next General Assembly session. The repeal of the statute would repeal this regulation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) 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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

As a result of this periodic review, the Department has determined that the regulation has no negative economic impact on small business.

There is a continued need for this regulation as the requirements are mandated by state law.. No comments were received during this periodic review. The regulation is not overly complex and is clearly written. It does not duplicate, overlap, or conflict with state or federal laws or regulations, and there is no apparent negative impact on the regulated community. The Department will be seeking to repeal this statute during the next General Assembly session since they are not being used by localities.
