



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Labor and Industry/Safety and Health Codes Board
VAC Chapter Number:	16 VAC 25-55
Regulation Title:	Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors
Action Title:	Regulate Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors
Date:	November 7, 2003

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this rulemaking is to set minimum aggregate limits for professional liability or errors of omission coverage for contract fee inspectors operating in the Commonwealth. It will also examine the other methods of insuring financial responsibility established in the law, i.e., self-insurance, insurance, guaranty or surety, or any other method approved by the Board. The intent of this regulation is to assure additional protection to the public, including compensation to third parties, in cases where there is bodily injury and property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The Safety and Health Codes Board is authorized by Title 40.1-51.9:2 C of the Code of Virginia to, "...promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter.

Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified." (Full text of statute is provided in Appendix A.)

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

These regulations would govern financial responsibility. These regulations would require the boiler or pressure vessel owner to be indemnified for any bodily injury and property damage resulting from or directly related to an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. Contract fee inspectors are statutorily required to provide documentation of their means of indemnification at the time of their certification or before performing inspections and at renewal of the instrument of insurance, guaranty, or surety.

This request for proposed rulemaking is necessary, as the guidelines for insurance coverage previously issued by the Department did not have the force of law. The Department therefore needs this rulemaking to comply with the mandate and intent of the governing statute, §40.1-51.9:2.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

None. Proposed regulatory procedures will fulfill statutory requirement.

Family Impact Statement

Please provide a preliminary analysis of 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 amendment of this regulation has no impact on the institution of the family or family stability.

APPENDIX A--Code of Virginia Section Authorizing Action.**§ 40.1-51.9:2. Financial responsibility requirements for contract fee inspectors.**

A. Contract fee inspectors inspecting or certifying regulated boilers or pressure vessels in the Commonwealth shall maintain evidence of their financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

B. Documentation of financial responsibility, including documentation of insurance or bond, shall be provided to the Chief Inspector within thirty days after certification of the inspector. The Chief Inspector may revoke an inspector's certification for failure to provide documentation of financial responsibility in a timely fashion.

C. The Safety and Health Codes Board is authorized to promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.

D. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. A contract fee inspector whose financial responsibility is accepted by the Board under this subsection shall notify the Chief Inspector at least thirty days before the effective date of the change, expiration, or cancellation of any instrument of insurance, guaranty or surety.

E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification. Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

F. The Chief Inspector, after notice and opportunity for hearing, may revoke his acceptance of evidence of financial responsibility if he determines that acceptance has been procured by fraud or misrepresentation, or a change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

G. It is not a defense to any action brought for failure to comply with the requirement to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the owner or operator of an inspected boiler or pressure vessel possessed evidence of financial responsibility accepted by the Chief Inspector or the Board.

(1996, c. 294.)