



Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-55
Regulation title	Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors
Action title	Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors
Date this document prepared	June 19, 2006

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*.

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The proposed final regulation changes none of the intent of the original proposed regulation, adopted by the Board at its meeting on August 3, 2004, which required contract fee inspectors operating in the Commonwealth to demonstrate financial responsibility 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. As before, financial responsibility in the form of insurance, guaranty, surety, or self-insurance will be required as follows:

Aggregate limits of \$500,000 for any contract fee inspector with less than 1% market share; \$1 million for those with 1% up to and including 10% market share; and \$2 million for those with more than 10% market share or any contract fee inspector that employs or has an arrangement with other contract fee inspectors.

The major changes in this revision include an amended definition of Amarket share@ and the addition of a definition for Acontract fee inspection agency.@ Further clarified is the coverage when a contract fee inspector is working for a contract fee inspection company, as well as to how the aggregate limits apply to contract fee inspection companies. Minor changes correct errors of grammar and punctuation.

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 June 19, 2006, the Safety and Health Codes Board adopted 16 VAC 25-55, Regulation Governing Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors as a final regulation of the Board with a proposed effective date of October 1, 2006.

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 numbers, 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 40.1-51.9:2 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."

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 it 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 the new regulation is to set minimum aggregate limits for coverage or other means set out in law and approved by the Board to ensure the financial responsibility of boiler and pressure vessel contract fee inspectors operating in the Commonwealth. The intent of this financial responsibility 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.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

In 16 VAC 25-55-10, the final draft definition of a "Contract fee inspection agency" is modified to add the word "certificate" to further define the type of inspection being performed under these regulations. This change, based on a comment received during the 60-day public comment period, does not change regulatory intent, but is made solely to provide further clarification.

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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Contract fee inspectors would be required to indemnify boiler and pressure vessel owners 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 would be 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, surety or self-insurance.

The Department anticipates that any additional costs to the contract fee inspector, as a result of the requirements of this regulation, would be passed on to the boiler or pressure vessel owner, who is the end user of the service. With respect to the impact of the regulation on the Department, the Department anticipates no additional fiscal impact beyond the cost to promulgate the regulation.

Employers, employees, and the general public would be compensated up to the level of the required financial responsibility in cases of bodily injury and property damage resulting from or directly related to a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
16 VAC 25-55-10	“Contract fee inspection agency” means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel inspections to the general public.	“Contract fee inspection agency” means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel <u>certificate</u> inspections to the general public.	Inserting “certificate” will clarify these regulations by further defining the type of inspection being performed.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
<p><u>Where the separate commenters express similar concerns, the agency response is grouped.</u></p> <p>1 Mr. Mark Anderson, American Boiler Inspection Service, Inc., Richmond, VA;</p> <p>Mr. Kurt D. Crist, Tidewater Immediate Inspections, Inc., Virginia Beach, VA; and</p> <p>Mr. John Pitman, Inspection Specialties, Inc., Annandale, VA</p>	<p>1 All commenters state that their firm has never had a claim as a result of the inspector’s negligent inspection or recommendation for certification of a boiler or pressure vessel.</p>	<p>1 DOLI agrees. However, there have been a few cases in the past where Inspectors have submitted inspection reports recommending certificates for boilers/pressure vessels that were no longer at the location which are referred to as “drive-by inspections”. A negligent recommendation for a certification that is based upon a “drive-by inspection” is a potential risk from which the public needs protection.</p>

<p>2 Mr. Mark Anderson, American Boiler Inspection Service, Inc., Richmond, VA American Boiler Inspection Service, Inc.</p>	<p>2 The proposed requirements appear to address an accident frequency problem.</p>	<p>2 Concern is exposure to severity based upon the statutes' (§40.1-50.9:2C) mandate: "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."</p>
<p>3 Mr. Mark Anderson, American Boiler Inspection Service, Inc., Richmond, VA American Boiler Inspection Service, Inc. and Mr. John Pitman, Inspection Specialties, Inc., Annandale, VA</p>	<p>3 DOLI's response to Mr. Anderson's FOIA request regarding this proposal did not contain any documents which provide factual support for the proposed insurance limits for Contract Fee Inspectors.</p>	<p>3 In the year 2000 there were many meetings, memos, and discussions amongst Mr. Anderson, Mr. Barton, and then Director of State Programs, Mr. Robert (Mac) Krauss to allow for the adding of two companies, Inspection Specialties and Tidewater Immediate Inspections, Inc. under the insurance coverage of another company, American Boiler Inspection Services, Inc.</p> <p>Initially, Inspection Specialties was added to the coverage of American Boiler Inspection Services, Inc. as everyone attempted to resolve the issues of the Virginia Code requiring the Safety and Health Codes Board having to be involved in providing any regulations and the fact that the statute did not address contract fee companies but only individuals. <i>(See Addendum 1 for letter dated 8/21/00).</i></p> <p>Later in 2000 Mr. Crist notified DOLI that a separate company that he had started, Virginia Tidewater Immediate Inspections, had ceased operation because of the cost of the policy for liability insurance (\$1,000,000 worth of coverage). Mr. Anderson advised he was adding the new company, Tidewater Immediate Inspections, Inc. to the same \$1,000,000 aggregate insurance policy as the previous two. There would now be four companies (Contract Fee Inspectors) under the same policy with a \$1,000,000 aggregate instead of four Contract Fee Inspectors with \$4,000,000 aggregate. Mr. Barton expressed strong concern for the lack of public protection with this arrangement.</p> <p>Virginia is one of only two states that allow individuals to perform certificate inspections of boilers and pressure vessels. Therefore, there was no precedence to follow.</p> <p>Consequently, Mr. Barton was directed to contact the boiler insurance industry and get their input. <i>(See Addendum 2 for Mr. Barton's notes of that meeting.)</i> On Oct. 30, 2000, the American Insurance Association sent an E-mail that read in part "that it would make sense to require fee-for- service inspectors to maintain a professional</p>

<p>4 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p> <p>5 Mr. Mark Anderson, American Boiler Inspection Service, Inc.;</p> <p>Mr. James Mannion of Valley Boiler Inspection, Inc.;</p> <p>Mr. John Pitman of Inspection Specialties, Inc.; and</p> <p>Mr. Kurt Crist, Tidewater Immediate Inspections, Inc.</p>	<p>4 “Two incidents had estimated loss values of \$500,000 and one was for \$350,000. DOLI guessed to set these loss values.”</p> <p>5 “There is no indication that DOLI has approached the primary Contract Fee Inspection companies for their input. ... DOLI should not ignore good administrative practice and due process, and try to slide this through unnoticed.”</p>	<p>liability policy with at least \$2 million in coverage.” (See Addendum 3 for e-mail dated 10/30/00.) Mr. Barton did not believe \$2,000,000 for all Contract Fee Inspectors was warranted.</p> <p>Therefore, a three-tiered concept was developed: \$500,000 coverage for small businesses starting up, in order to resolve Mr. Crist’s concern and as suggested by a representative of the Bureau of Insurance to Mr. Dennis Merrill of the Department and reported to Mr. Robert Krauss. (See Addendum 4 for an e-mail dated 2/23/01); and continuing upward for coverages of \$1,000,000; and then \$2,000,000 for companies with highest exposure.</p> <p>Prior to the start of the current APA process, the Department dealt with this issue administratively.</p> <p>Three of the four worst incidents in the last five years had actual property damages values provided by the owner/users of approximately \$317,000, \$330,000, and \$626,000, respectively, excluding litigation costs. DOLI did not develop estimates.</p> <p>4 Three of the four worst incidents in the last five years had actual property damages values provided by the owner/users of approximately \$317,000, \$330,000, and \$626,000, respectively, excluding litigation costs. DOLI did not develop estimates.</p> <p>5 DOLI has followed the Administrative Process Act and all state regulations to involve all Contract Fee Inspectors in the process of rulemaking. On November 15, 2003, the Safety and Health Codes Board approved the Department’s request to initiate regulatory rulemaking procedures. The proper notice was published in The Virginia Register on January 12, 2004.</p> <p>There were no comments received during the 30-day comment period which began on January 12, 2004 and ended on February 12, 2004. As there was no proposal or other comments offered by the public, DOLI prepared a proposal with required reviews from both the Department of Planning and Budget and the Office of the Attorney General. Once a public hearing date was known Mr. Barton notified Mr. Anderson by e-mail as a professional courtesy. During the regulatory process DOLI continued to remind Contract Fee Inspectors as their Certificate/Financial document came due. Note the last paragraph of memos dated 9/10/03 and 12/2/04 to Mr. Anderson. American Boiler Inspection Services, Inc. had been providing the Insurance</p>
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<p>6 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>6 “A tiered insurance requirement is not in the best interest of the businesses and citizens of Virginia.”</p>	<p>Certificate for Inspection Specialties, Inc.; Tidewater Immediate Inspections, Inc; and Valley Boiler Inspection, Inc. <i>(See Addenda 5 & 6 for memos dated 9/10/03 and 12/2/04.)</i></p> <p>In addition, Mr. Barton reminded all Inspectors attending the Spring 2005 meeting of the Virginia Boiler and Pressure Vessel Inspectors Association that the proposed Regulation Governing Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors was still progressing.</p> <p>6 The statute, §40.1-50.9:2C, mandates otherwise: “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.”</p>
<p>7 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>7 “Because all Contract Fee Inspectors will have the opportunity to inspect boilers with the same exposure to loss, they should be required to carry the same insurance limits.”</p>	<p>7 The statute, §40.1-50.9:2C, mandates otherwise: “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.”</p>
<p>8 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>8 “Since the probability of a high frequency of the type of claim is very low, the Board should focus on the severity of a possible claim.”</p>	<p>8 DOLI agrees. Three of the four worst incidents in the last five years had actual property damages of approximately \$317,000, \$330,000, and \$626,000, excluding litigation costs.</p>
<p>9 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>9 “My premium for 2006 will most likely exceed \$20,000 for the \$2,000,000 limits; not \$10,000 as DOLI sets forth.”</p>	<p>9 A figure of \$10,000 was the approximate cost in mid 2004 when the estimate was obtained in preparation of the Aug. 3, 2004 Briefing Package. In response to Mr. Anderson’s memo of July 7, 2003, <i>(See Addendum 7)</i>, Commissioner Ray Davenport had ordered the memorandum of March 9, 2001 that administratively required financial responsibility be suspended and replaced with communications requiring only documentation confirming each Inspector’s financial responsibility. Therefore, as of September, 2003 DOLI was no longer requiring any minimum financial limits for any Contract Fee Inspector. A memo was sent to each Contract Fee Inspector as their Certificate of Insurance expired. <i>(See Addenda 5 & 6 for memos dated 9/10/03 and 12/2/04.)</i></p>
<p>Mr. James Mannion, Valley Boiler Inspection, Inc.</p>	<p>“Our current policy premium for our \$2,000,000 limit significantly exceeds the DOLI maximum estimated figure of \$10,000.”</p>	
<p>Mr. Kurt Crist, Tidewater Immediate Inspections, Inc.</p>	<p>“The amount that we currently pay for our insurance of \$2,000,000 is well above the amounts reported in the Financial Impact Analysis that DOLI presents at \$10,000”.</p>	
<p>Mr. John Pitman, Inspection Specialists, Inc.</p>	<p>“What happens if \$2,000,000 limit is adopted, but later cannot be secured from a carrier? Does the affected company go out of business?”</p>	<p>It is important to emphasize that the proposal broadens the choices of instruments each Contract Fee Inspector or Contact Fee Agency can make.</p>

<p>11 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>11 “In addition to the <i>nine</i> companies listed on the DOLI website as <i>Contract Fee Inspectors</i>, two companies, Seneca Insurance Company and XL Insurance America Incorporated, provide contracted inspections for the boiler or pressure vessels, thereby qualifying as <i>Contract Fee Inspectors</i>.”</p>	<p>Professional Liability or Errors and Omission Insurance is just one avenue for financial responsibility. Alternatively, a guaranty, a surety, or self-insurance should be carefully considered as they also are allowable.</p> <p>11 Seneca Insurance Company and XL Insurance America have been listed on the DOLI website as insurance companies only. Management of Seneca Insurance Company and XL Insurance America have written letters that they do not perform any certificate inspections for a fee in Virginia. (<i>See Addenda 9 & 10</i>) XL Insurance America/ARISE does perform third party inspections for “R” Stamp holders performing repairs and alterations. To clarify that this proposal only applies to boilers and pressure vessels operating in Virginia, we have recommended that the new definition of a “Contract fee inspection agency” be modified as follows: “Contract fee inspection agency” means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel <u>certificate</u> inspections to the general public.</p>
<p>12 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>12 “The proposed regulation treats companies, certified by DOLI, which have a substantial nationwide inspection business, differently than those which inspect only in Virginia.”</p>	<p>12 DOLI does not, nor has it ever, certified companies, only individuals. Virginia is one of only two states that allow individuals to perform certificate inspections of boilers and pressure vessels. One of the longstanding issues from other jurisdictions throughout the United States over allowing private individuals to perform boiler and pressure vessel inspections has been, and continues to be, that private individuals have no financial interest in the object as an insurance company inspector would.</p> <p>Refer to “<i>Boiler Inspection Programs- A Question of Value</i>” published by the National Board of Boiler and Pressure Vessel Inspectors. As contract fee agencies expand to other states their financial responsibility will be closely scrutinized.</p> <p>One major boiler insurer reports that they had nine (9) incidents nationwide over the last five years with losses over \$500,000, six (6) losses were over \$1,000,000 and two (2) were over \$2,000,000. High limits for whichever financial instrument the contract fee agency chooses most likely would satisfy a very real perspective.</p>

<p>13 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>13 “Regarding my first concern, the FOIA package contained a DOLI March 9, 2001 Memorandum addressed to all Contract Fee Inspectors, stating that there was a change in the Financial Requirements. However, there was no indication of this Health and Safety Code Board’s approval, as required by Section 40.1-51.9.2-C.”</p>	<p>13 The Safety and Health Codes Board was appraised of this oversight under Purpose of the Proposed Rulemaking in the Briefing Package for the November 5, 2003 NOIRA. “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.”</p>
<p>14 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>14 “Mr. Barton told me that he was going to retire in two years and set up a competing “contract fee inspection” company. I do not object to competition, however, it seems inappropriate for such a government employee to be charged with proposing regulations with unusually high limits for his future competition, which will have established clients, when Mr. Barton starts his business.”</p>	<p>14 The comment about possibly retiring and starting a contract fee inspection company was made as a humorous aside during a telephone conversation with Mr. Anderson about the requirement for external inspections of high pressure boilers in addition to the required internal inspection. At first, Mr. Anderson stated that external inspections were not required for high pressure boilers. Later, he admitted he couldn’t perform external inspections because his customers wouldn’t pay for them. That’s when Mr. Barton mentioned, with a humorous intent and to make a point, that he would retire in two years, start an inspection company and include external inspections in his fee structure.</p>
<p>Mr. Kurt Crist, Tidewater Immediate Inspections, Inc.</p>	<p>“This appears to be an old fashioned witch-hunt directed towards contract fee inspection companies that might be your competition in the future.”</p>	<p>This is an example where a company has 270 high pressure boilers and doesn’t perform necessary and informative external inspections on perhaps 180 of them because of economic reasons. It should be noted that the decision to have a \$2,000,000 limit came from a recommendation by the American Insurance Association in 2000. <i>(See Addendum 3.)</i></p>
<p>15 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>15 “Mr. Barton’s DOLI memorandum of December 12, 2000 to Mac Krauss contains personal attacks on my integrity, and indicates restraint of trade actions directed towards me and Tidewater Immediate Inspections, Inc.”</p>	<p>15 The December 12, 2000 memo, <i>(See Addendum 11)</i>, was an internal memo to Mr. Barton’s supervisor, Mac Krauss, about different issues one of which related to the employment of a contract fee inspector. Mr. Krauss decided against one recommendation and no further action was taken. Furthermore, as soon as DOLI received a memo from the Bureau of Insurance of the State Corporation Commission, <i>(See Addendum 12)</i> stating that there was nothing in the insurance statute that prevented DOLI from requiring a certain limit of liability insurance. Mr. Krauss approved the signing of Mr. Barton’s memo of 3/9/01. <i>(See Addendum 13.)</i></p>

<p>16 Mr. Mark Anderson, American Boiler Inspection Service, Inc.</p>	<p>16 “Mr. Barton singles me out of all the Contract Fee Inspection Companies and personnel to provide a Certificate of Insurance with \$2,000,000. Aggregate limit....His memorandum infers a hidden punishment for some alleged and unidentified, violation. The Board should not endorse such unfair, and possibly defamatory and illegal behavior.”</p>	<p>16 The December 12, 2000 memo was an internal memo to Mr. Barton’s supervisor, Mac Krauss, about different issues one of which related to the employment of a contract fee inspector. The third paragraph of the first page (<i>See Addendum 11</i>) clearly stated the issue that was being brought to the attention of Mr. Barton’s supervisor for a decision. Mr. Krauss decided against this recommendation and no further action was taken. Further, the sixth and seventh paragraphs of this internal memorandum explain why Mr. Barton was recommending \$2,000,000 liability coverage for one company.</p>
<p>17 Mr. James Mannion, Valley Boiler Inspection, Inc.</p>	<p>17 “Paragraph II-H further states that the proposed changes would “give contract fee inspectors a vested interest in the performance of the inspections they conduct”. This statement is an unwarranted assault on the quality of the inspections we conduct....To insinuate that the quality of an inspection is going to change based on employer is absurd and offensive.”</p>	<p>17 Virginia is one of only two states that allow individuals to perform certificate inspections of boilers and pressure vessels. One of the longstanding issues from other jurisdictions throughout the United States over allowing private individuals to perform boiler and pressure vessel inspections has been, and continues to be, that private individuals have no financial or other vested interest in the object as an insurance company inspector would. Refer to “Boiler Inspection Programs- A Question of Value,” published by the National Board of Boiler and Pressure Vessel Inspectors. As Contract Fee Agencies expand to other states their financial responsibility will be closely scrutinized.</p>
<p>18 Mr. John Pitman, Inspection Specialties, Inc.</p>	<p>18 “Based on a July 28, 2005 email from Mr. John Crisanti to Mr. Fred Barton saying to limit contact and keep “our control” the input into “our regulation”, it seems that DOLI wanted to control and adopt this proposal without input.”</p>	<p>18 The comments made by Mr. Crisanti to Mr. Barton were germane to an internal discussion regarding steps in the APA regulatory adoption process and to clarifying that Crisanti was to provide answers to the APA procedural questions and Barton was to respond to inquiries regarding the technical boiler issues.</p>
<p>19 Mr. John Pitman, Inspection Specialties, Inc.</p>	<p>19 “Why are other states reportedly extending Sovereign Immunity to inspectors, while Virginia tries to burden them with dictates.”</p>	<p>19 An e-mail from Mr. Eric Goldberg of American Insurance Association dated 9/13/00 to Mr. Fred Barton, (<i>See Addendum 14</i>), wherein the concept of sovereign immunity was discussed was in reference to insurance inspectors not contract fee inspectors. The Commonwealth of Virginia does not offer sovereign immunity to any boiler inspectors.</p>

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All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

This is a new regulation that requires:

1. Current certified contract fee inspectors or contract fee inspection agency to provide documentation of financial responsibility as follows:

<u>Contract fee inspector market share</u>	<u>Required level of insurance, guaranty, surety, or self-insurance</u>
Less than 1% share	\$500,000 minimum
1% to 10% share	\$1 million minimum
More than 10% share	\$2 million minimum

2. Current contract fee inspectors to provide documentation within 90 days of the effective date of regulation.
3. Contract fee inspectors certified after the effective date of regulation to provide documentation within 30 days of certification.

The regulation also describes the processes for submitting the documentation, and notifying the Chief Inspector of changes, expiration or cancellation of insurance, guaranty, surety, or self-insurance.

In 16 VAC 25-55-10. Definitions. To improve clarity, the definition of “Contract fee inspection agency” was revised to read as follows: “Contract fee inspection agency” means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel certificate inspections to the general public. Inserting “certificate” will clarify these regulations by further defining the type of inspections being performed. Also, “Market share” was revised to read: “a fraction, (a) the numerator of which is the total fees charged by the inspector or agency under 16 VAC 25-50-150

for conducting power boiler and high temperature water boiler, heating boiler, and pressure vessel inspections in the most recent calendar year and (b) the denominator of which is the total fees charged by all inspectors and agencies under 16 VAC 25-50-150 for conducting power boiler and high temperature water boiler, heating boiler, and pressure vessel inspections in the most recent calendar year.” Also, a definition was added for “contract fee inspection agency” to mean a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel inspections to the general public.

In 16 VAC 25-55-20. Financial Requirements. In section B., “by” was inserted before “self-insurance” to improve the clarity of the sentence. In paragraphs B.1., B.2. and B.3., “or contract fee inspection agency” was inserted following “contract fee inspector” to improve the clarity of the phrase. In paragraph B.4., the phrase “for inspections not conducted for the benefit of their employer or company with which the inspector has a contractual arrangement such instrument, instruments or self-insurance must also cover” was substituted for “such coverage must extend to the inspections conducted by” following “To be acceptable as proof of financial responsibility”. In paragraph D., the phrase “at least thirty days before the effective date of any change in coverage, expiration, or cancellation of an instrument of insurance,” was substituted for “at least thirty days before the effective date of the change, expiration, or cancellation of an instrument of insurance,” to improve the clarity of the paragraph.

Other non-substantive changes were also made in this proposed regulation to improve clarity.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	16 VAC 25-55	N/A	N/A

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.

The proposed regulation includes alternative instruments other than insurance. It sets minimum aggregate limits for insurance coverage or other means provided for in the Code of Virginia. The standard minimum in other jurisdictions with similar requirements is \$1,000,000. In Virginia, the Department recommended \$500,000 as a minimum to provide for small businesses with less potential exposure to risk.

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.

This final regulation has no potential impact on the institution of the family or family stability.