

OPERATIONS MANUAL

BOILER AND PRESSURE VESSEL SAFETY COMPLIANCE

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Revision 1- Approved 10/99

CHAPTER ONE: ORGANIZATION AND ADMINISTRATIVE PROCEDURES

A. IN PREPARATION

B. Certificate of Inspection Extensions

The Virginia Code [16 VAC 25-50-150] allows an extension of inspection certificate for up to three additional months beyond a two month grace period following the expiration of the Certificate of Inspection. The following describes how Owner/user requests for extensions of valid Certificates of Inspections are to be handled:

1. **In service Inspector** - The Inservice Certificate Inspector shall provide a current External Inspection Report. The report shall indicate the result of the inspection including testing of controls, and confirm that an extension is agreeable.
2. **Boiler Compliance Inspector** - Upon receipt of an acceptable External Inspection Report the appropriate Boiler Compliance Inspector or Chief Inspector will either phone or write to the Owner/user to explain the procedural requirements. The Owner/user shall provide a written request with the desired extended date and reason. A check for \$20.00 for each object for each month [maximum of 3 months] over the grace period shall be included with the written request. An extension is not needed as long as the required internal inspection is satisfactorily completed by the end of the grace period.
3. **Office Supervisor Senior** - The Office Supervisor Senior will maintain all of the following correspondence:
 1. Satisfactory External Inspection Report.
 2. Owners/users written request for an extension.
 3. Check for money to cover desired extension time.
4. **Executive Secretary**- The Executive Secretary shall prepare the letter to the Owner/user extending the appropriate Certificates and obtain the Chief Inspector's signature. The Executive Secretary will maintain a list of Owners/users with extended certificates maintain the file until the Certificate inspection [internal] has been received. Appropriate comments should be added to the comment line of the Master File.

CHAPTER FOUR: INSPECTION PROCEDURES

A. Procuring of Certificate of Competency

Any person may apply for an examination for an Inspector's Virginia Certificate of Competency. (See Exhibit A). In order to qualify as a prospective National Board commissioned Inspector (Exhibit C) an applicant shall have, as a minimum, a high school education (12 years or equivalent educational system) and shall meet the following requirements:

1. Credit Points Required:

An applicant shall have a minimum of **5 credit points** accumulated under paragraphs (a) **Education** and (b) **Experience**, as follows:

a. Education (1 credit minimum, 4 credits maximum)

<u>Points</u>	<u>Category</u>	<u>Credit</u>
1)	<u>Technical Training in Boiler and Pressure Vessel Inspection (1 pt. maximum)</u>	1
	* <u>Continuing Education</u> : Having completed and received a passing grade in a training course in at least one (1) of the following (or related) subjects: quality assurance, engineering, fabrication methods, nondestructive examination or inspection. The training course(s) may be a correspondence course or conducted in a classroom.	
	* <u>Code Courses</u> : Completion of course on knowledge, understanding and general structure of the National Board Inspection Code or other codes or related standards, as applicable.	
	* <u>Other Courses</u> : Completion of a course on procedures and techniques of auditing, and/or basic inspection methods.	
2)	<u>Technical Curriculum</u>	2
	Includes the following:	
	* a diploma from an accredited technical school	
	*Power Engineering Certificate	
	*Accredited Trade Certificate in such skills as a: Boilermaker, Mechanic, Steam Fitter, Machinist, Millwright, or Welder	
	*Evidence of completion of a military or merchant marine training course in the	

area of marine or stationary boilers or pressure vessels.

- 3) **College/University** **3**
 Includes the following:
 *Associate 's Degree in Science, Mathematics or Engineering
 *Bachelor 's Degree in Science or Mathematics
- 4) **College/University** **4**
 Bachelor's Degree in Engineering

b. Experience (1 credit minimum, 4 credits maximum)

Credit as shown for each full year's technical associated with boilers and pressure vessels in the categories listed below.

<u>Category</u>	<u>Credit Points</u> <u>Each full year of experience</u>
1) Engineering, design	1
2) Manufacturing, including fabrication methods or processes in either shop or field.	1
3) Responsible charge in the operation of boilers exceeding 50,000 lbs. of steam per hour total capacity.	1
4) Perform repair, alteration or maintenance of boilers or pressure vessels.	1
5) Quality control systems related to boiler or pressure vessel manufacturing, repair or alteration in either shop or field.	1
6) Inspection of boilers or present vessels either inservice or during construction including either shop or field.	1
7) A NDE Level II examiner of boilers and pressure vessels	1

The examination fee is **\$50.00** payable to Treasurer of Virginia and sent to the Chief Inspector. Examinations are given four (4) times a year on the first Wednesday and Thursday of March, June, September and December. If the applicant's education and experience meet the above requirements, a National Board written examination shall be given dealing with the construction, installation, operation, maintenance, and repair of boilers and pressure vessels. The examination consists of 100 questions and is "open book".

The first day will be five (5) mathematical questions and a weld procedure document review. The second day, there are fifty (50) multiple questions related to in-service inspections and the National Board Inspection Code.

The reference sources for all questions are the National Board Inspection Code, Section I- Power Boilers, Power Piping B31.1, Section IV - Heating Boilers, Section VIII Division 1-Unfired Pressure Vessels, Section IX-Welding and Section V-NDE.

The passing grade is 70% correct. After 90 days an applicant who fails an examination may take another examination. Upon receiving notice of the grade from the National Board, the Commissioner may issue a Certificate of Competency and an identification card to:

1. An inspector who is employed full-time by a governmental authority having an authorized inspection agency as defined in Part I of the Boiler and Pressure Vessel Rules and Regulations.
2. An inspector who is employed by an insurance company authorized (licensed) to write boiler and pressure vessel insurance in this Commonwealth.
3. An inspector who is employed by a company that operates unfired pressure vessels in Virginia and who has a valid owner/user inspection agency agreement as provided in Part II, Section 2.II of the Boiler and Pressure Vessel Rules and Regulations.
4. A Contract Fee Inspector. ("Contract Fee Inspector" means any certified boiler inspector contracted to inspect boilers or pressure vessels on an independent basis by the owner or operator of the boiler or pressure vessel).

The Chief Inspector or designee shall send a letter containing the examination results to any inspector who is not employed as described in the preceding paragraph.

B. Procuring a National Board Commission

Any person holding a Certificate of Competency and meeting the employment criteria found in the National Board Rules and Regulations may apply for a National Board Commission in accordance with the Rules and Regulations.

C. Procuring a Reciprocal Certificate of Competency

Inspectors who hold current National Board Commission and Work Cards shall request a Virginia Certificate of Competency and identification card on the appropriate application form (**See Exhibit B**). The completed applications shall be accompanied by, when applicable, a facsimile of the applicant's National Board commission; current work card, other certificates of competency, and a processing fee of **\$20.00** payable to the Treasurer of Virginia.

D. Renewals

Each person holding a valid Virginia certificate of competency and who conducts inspections may apply and obtain an identification card biennially, not later than June 30 of the year in which the certificate expires. A processing fee of **\$20.00** for each certificate, payable to the Treasurer of Virginia, shall accompany the application (**See Exhibit B**).

An unexpired Virginia identification card shall be returned when the certificate holder is no longer employed by the organization employing him at the time that the certificate was issued or, in the case of a self employed contract fee inspector, has ceased inspection activities.

E. Revocation of a Certificate of Competency

A Virginia Certificate of Competency may be revoked or suspended by the Chief Inspector for any falsification found in any statement contained in the application for a Virginia Certificate of Competency. Written notice of intended revocation shall be given to the Inspector and his employer. The inspector shall have thirty (30) days from the receipt of written notice in which to respond in writing and/or schedule an informal hearing before the Chief Inspector. Persons whose certificate of competency has been revoked or suspended may, within 10 days from receipt of the decision, appeal to the Safety and Health Codes Board. The inspector may be represented by legal counsel either before the Chief Inspector, or the Safety and Health Codes Board.

Under the above procedures, a Virginia Certificate of Competency may be revoked or suspended by the Chief Inspector for incompetence, untrustworthiness or falsification in any matter or statement contained in a report or certificate of inspection.

CHAPTER SEVEN: PENALTIES

A. Penalties

1. **General Policy.** The basis for requiring certification of objects is to ensure compliance with the Boiler and Pressure Vessel Rules and Regulations established by the Board to protect human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of such objects in the Commonwealth. The penalty structures under Title 40.1 of the *Code of Virginia* are not designed as punishment nor as a source of income for the Commonwealth.

a. The penalty structure is designed as an incentive to correct the failure to:

(1.) obtain certification;

(2.) retain certification; or,

(3.) operate an object only at certified pressure levels.

These incentives are addressed towards the offending owner/operator and towards other owner/users whose objects may have the same hazards or the same infractions of the certification requirements.

b. The penalty amounts should be sufficient to deter such violations, therefore, serve the intended public purpose. Criteria guiding approval of such penalties by the Commissioner are based on meeting this public purpose.

c. The penalty structure outlined in this section is designed as a general guideline. If warranted, the Chief Inspector may deviate from this guideline, with appropriate documentation, to achieve the

appropriate deterrent effect.

2. **Civil Penalties**

- a. **Statutory Authority.** *Virginia Code § 40.1-51.12(A)* provides the Commissioner with the statutory authority to propose civil monetary penalties for operating a boiler or pressure vessel without an inspection certificate, or operating an object at a pressure exceeding that specified in such inspection certificate. *Virginia Code § 40.1-51.12(A)* provides that any owner/user who has received a notice of penalty for an alleged violation of this provision may be assessed a civil penalty of up to \$100 for each violation. **Each day of unlawful operation shall be deemed a separate offense**

- b. **Exception.** Local government and other state agencies shall not be assessed monetary penalties. Non monetary penalties shall be assigned by the Chief Inspector.

- c. **Penalty Schedule for Alleged Violations** The following penalty rate guidelines apply. *Refer also to Section A.2.c. of this chapter for procedures for calculating the number of calendar days that will be used as a multiplier to the following daily penalty:*

(1) **Excessive Pressure**

Operation of a boiler or pressure vessel at a pressure exceeding that specified in the object’s inspection certificate,
- **\$100 per day**

(2) **Lapsed Certificate - With No Inspection Non-conformances**

Failure to pay the certificate renewal fee after the expiration of the grace period and no installation, operational, or repair non-conformances were found as the result of an inspection -
\$ 100 per day.

(3) **Suspended Certificate - With Inspection Non-**

conformances

Failure to correct installation, operational or repair non-conformances within the abatement period specified, found as the result of an inspection. Penalties will be levied if corrections are not accomplished by the end of the abatement period which shall be a maximum of 60 days - **\$60 per day.**

(4) No Certificate - No Inspection

Lapsed certificate and failure to secure an inspection - **\$100 per day.**

(5) Lapsed Certificate - With Inspection Non-conformances

Failure to correct alleged installation, operational or repair non-conformances indicated in an inspection prior to the expiration of the statutory grace period - **\$60 per day.**

(6) No Certificate - Multi-year Violation

Knowingly operating of an object on an ongoing annual basis 30 days following an inspection without obtaining a valid certificate - **\$100 per day .**

Notwithstanding the guidelines provided above, at the discretion of the Assistant Commissioner a greater penalty than that provided above up to a maximum of \$100 per day may be proposed for a violation. Application of greater penalties shall be accompanied by the appropriate case file documentation, and the rationale for such action; e.g., achievement of an appropriate deterrent effect.

The minimum penalty assessed and payment due for the above rates in paragraphs 2 [b][2,3, 4, or 5] is \$70.

- c. **Calculation of Penalty.** The daily proposed penalty shall be multiplied by the number of calendar days that the violation has

continued unabated, except as provided below:

(1) The number of days unabated shall be counted from the day following the abatement date specified in the notification. It will include all calendar days between that date and the date of issuance of the violation.

(2) The maximum total proposed penalty shall not exceed **ten times** the daily proposed penalty for the first issuance of a violation to an owner/user; and **twenty times** the daily proposed penalty for the second issuance for failure to abate the same violation, except where exceeding these amounts is deemed appropriate by the Chief Inspector AND Assistant Commissioner, and documented in the case file.

The Assistant Commissioner will coordinate collection activities between issuances. Copies of all case files of unresponsive Owner/user shall be forwarded to the Assistant Commissioner within 60 days of each Final Order date. Contested case files shall be forwarded to the Assistant Commissioner within 30 days of notification. The Chief Inspector shall receive status reports on each unresponsive Owner/user monthly thereafter.

d. **Penalties for Non-conformance** Unless otherwise provided in this manual, the Chief Inspector will propose no penalties for an alleged physical or operational non-conformance if all three of the following criteria are met:

(1.) the owner/user has a valid certificate for the object;

(2.) operational pressure does not exceed that specified in the certificate; and

(3.) the owner/user immediately corrects or initiates steps to correct the infraction when informed of it by the inspector.

B. Notice of Penalty.

1. Verification

Prior to issuance of a Notice of Penalty, the operational status of a boiler or pressure vessel and the identity of the current owner/user shall be verified.

2. Issuing Notice of Penalty.

- a. Sending Notices to the Owner/user. Notices shall be sent by certified mail; hand delivery of notices to the owner/user or an appropriate agent of the same may be substituted for certified mailing if it is believed that this method would be more effective. A signed receipt shall be obtained whenever possible; otherwise the circumstances of delivery shall be documented in the file.

3. Amending or Withdrawing Notice of Penalty

- a. **Notice Revision Justified.** The Chief Inspector or designee shall amend or withdraw a notice of penalty when:

- (1) Administrative or technical error exists:
 - (a) Reference to an incorrect standard or regulation.
 - (b) Incorrect or incomplete description of the alleged violation.
- (2) Additional facts establish a valid affirmative defense.
- (3) Additional facts establish a need for modification of the correction date, or the penalty, or reclassification of violation items.

- b. **Penalty Revision Not Justified.** The Chief Inspector or designee shall not amend or withdraw a notice of penalty when:

- (1) Valid notice of contest is received.
- (2) The 15 working days for filing a notice of contest has expired and the penalty has become a final order.
- (3) There is an interest in editorial and/or stylistic modifications.

- c. **Procedures for Amending or Withdrawing Penalties** The following procedures are to be followed in amending or withdrawing

penalties:

- (1)** Withdrawal of or modifications to the penalty, shall normally be accomplished by means of an informal settlement agreement (ISA).
- (2)** Changes initiated by the Chief Inspector without an informal conference are exceptions. In such cases the procedures given below shall be followed:
 - (a)** If proposed amendments to penalties change the amount of the penalties, the original penalties shall be withdrawn and new, appropriate penalties issued.
 - (b)** The amended Notice of Penalty Form shall clearly indicate that:
 - (i)** The period of contest of the amended penalties will begin from the day following the date of receipt of the amended Notice of Penalty; and
 - (ii)** The contest period is not extended as to the unamended portions of the original penalty.
 - (c)** A copy of the original Notice shall be attached to the amended Notice of Penalty Form when the amended form is forwarded to the owner/user.
 - (d)** When circumstances warrant it, a penalty may be withdrawn in its entirety by the Chief Inspector. Justifying documentation shall be placed in the case file. If a penalty is to be withdrawn, a letter withdrawing the Notice of Penalty shall be sent to the owner/user.

CHAPTER EIGHT: POST VIOLATION AND PENALTY ISSUANCE PROCESSES

A. Post-Notice of Penalty Processes.

1. Informal Conferences

- a. **General.** The owner/user may request an informal conference. When an informal conference is conducted, it shall normally be conducted within the 15 working day contest period. If the owner/user's intent to contest is not clear, the Chief Inspector shall attempt to contact the owner/user for clarification.
- b. **Procedures.** Informal conferences may be held by any means practical. Documentation of the Chief Inspector's actions notifying the owner/user of the informal conference shall be placed in the case file.
- c. **Participation by Special Inspectors.** The insurance company or contract fee inspector who made the inspection shall be notified of an upcoming informal conference and, if practicable, be given the opportunity to participate in the informal conference (unless the Chief Inspector anticipates that only a penalty adjustment will result).

At the discretion of the Chief Inspector, one or more additional agency employees (in addition to the Chief Inspector) may be present at the informal conference. In cases in which proposed penalties total \$50,000 or more, a second agency staff member shall attend the informal conference.

- d. **Conduct of the Informal Conference** The Chief Inspector or designee shall conduct the informal conference in accordance with the following guidelines:

- (1) **Opening Remarks.** The opening remarks shall include discussions of the following:
 - (a) Purpose of the informal conference.
 - (b) Rights of participants.
 - (c) Contest rights and time restraints.
 - (d) Limitations, if any.

- (e) Settlement of cases.
- (f) Other relevant information.
- (g) If the Chief Inspector states any views on the legal merits of the employer's contentions, it should be made clear that those views are personal opinions only and are not legally binding on the Commonwealth.

(2) **Closing.** The main issues and potential courses of action shall be summarized at the conclusion of the discussion. It is appropriate to tape record the informal conference and to use the tape recording in lieu of written notes. A tape recording may only be made with the written consent of all parties obtained before the meeting. A copy of the summary, and any other relevant notes or tapes of the discussion made by the Chief Inspector, shall be placed in the case file.

- e. **Decisions.** At the end of the informal conference, the Chief Inspector shall make a decision as to what action is appropriate in light of the facts brought up during the conference.

Changes to penalties, correction dates and the measures that will have to be taken to correct the condition normally shall be made by means of an informal settlement agreement and the reasons for such changes shall be documented in the case file.

2. **Petitions for Modification of Correction Date (PMC)** The owner/user may request additional time to correct a violative condition after the 15-working-day contest period has passed, provided that the following procedures for PMCs are observed:

- a. **Filing Date.** A PMC must be filed in writing with the Chief Inspector no later than the close of the next working day following the date on which abatement was originally required.

(1) If a PMC is submitted orally, the owner/user shall be informed that an oral petition is not acceptable and that a written petition must be mailed within the end of the next working day after the correction date. If there is not sufficient time to file a written petition, the owner/user shall be informed of the requirements below for late filing of the petition.

(2) A late petition may be accepted only if accompanied by the owner/user's statement of exceptional circumstances explaining the delay.

3. **Services Available to Owner/Users** An owner/user requesting assistance in correcting violations shall be informed that the agency is willing to advise them even after penalties have been issued.

4. **Guidance for Determining Final Dates of Settlements and Commissioner's Orders**

a. **Notice of Penalty Not Contested**. The Notice of Penalty and correction date becomes a final order of the Commissioner on the date the after 15- working-day contest period expires.

b. **Notice of Penalty Resolved by Informal Settlement Agreement (ISA)**. The ISA becomes final, with penalties due and payable, on the date of the last signature.

[NOTE: A later due date for payment of penalties may be set by the terms of the ISA.]

[NOTE: Settlement is permitted and encouraged by the Commissioner at any stage of the proceedings.]

CHAPTER NINE: LEGAL PROCESS

A. Outline of Legal Process.

1. After notice of contest is received and all required attempts at settlement have failed the Assistant Commissioner may authorize a request to issue summons. The Office of Legal Support will draft the request for issuance. Legal Support will also arrange contact with the Commonwealth's Attorney in the jurisdiction where the violation occurred. A copy of the case file will be sent to the Commonwealth's Attorney.
2. The Attorney assigned to the case will contact the Commonwealth's Attorney to arrange a date to file the bill of complaint. The bill is filed with the Circuit Court Clerk who shall issue a subpoena to start the suit.
3. Attempts may be made to settle the case by the Office of Legal Support and Compliance Division Director even after filing of the suit. If a settlement can not be reached the case will proceed to trial.
4. Prior to trial both parties may engage in discovery as authorized by §40.1-49.4 L.2. of the Code of Virginia. Discovery may include the subpoena of the Inspector or Special Inspector's notes, findings, and narrative.
5. Trial preparation will include at least one pretrial meeting between the Department (Attorney, inspector and/or Chief Inspector) and the Commonwealth's Attorney.
6. The Commonwealth's Attorney will present the case on behalf of the Commissioner. The Commonwealth's Attorney will call the inspector as a witness to explain the events leading up to the notice of penalties.
7. After all testimony is heard at the trial the judge will issue an order affirming, modifying or vacating the citation or proposed penalty.

B. Appeals.

1. **General.** Appeals from Circuit Court may be heard by the Virginia Court of Appeals. Should the Circuit Court Judge not decide any or all issues in a case in favor of the Department, the Commissioner has thirty days to file an appeal with the Court of Appeals. Because of this time limitation the following procedures must be done in a timely manner.

2. **Legal Support Memorandum** After each trial the Legal Support Attorney who attended the trial in consultation with other agency personnel in attendance will prepare a memorandum outlining the results of the trial. The memorandum will discuss the strengths and weaknesses of the case and the result and make a recommendation on the appeal.
 - a. The memo will be given to the Director of Legal Support by the fifth working day after the entry of the final order. A copy of this memorandum will be sent to the Assistant Attorney General.

 - b. The Director of Legal Support will review the memorandum and make a recommendation on appeal within three working days. This recommendation will be given to the Assistant Commissioner for review.

 - c. The Assistant Commissioner will make a final recommendation on the appeal to the Commissioner within three working days.

3. **Commissioner's Decision** The final decision on appealing the Judge's decision will be made by the Commissioner.

