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Commissioner

Legal Affairs Division

## MEMORANDUM

TO: Joint Legislative Commission on Governmental Operations

From: A. John Hoomani  
General Counsel  
N.C. Department of Labor

Date: March 9, 2006

RE: Consultation for Establishment/Increase of Fees – N.C. Department of Labor/Boiler and Pressure Vessel Bureau

<b>Boiler and Pressure Vessel Bureau Fee Establishment/Increase</b>
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N.C.G.S. §95-69.11(11) gives the Commissioner of Labor authority to establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use. N.C.G.S. §95-69.11(12) gives the Commissioner of Labor authority to establish reasonable fees for the examination and certification of inspectors. N.C.G.S. §95-69.11(14) gives the Commissioner of Labor authority to perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.

By and through the authority granted to the Commissioner of Labor in March of 1997, as set forth in 13 NCAC 13.0213, the Commissioner of Labor established certain fees for the Boiler and Pressure Vessel Bureau. Effective March 1, 2006, 13 NCAC 13.0213 was amended to increase certain fees assessed by the Boiler and Pressure Vessel Bureau for certificates and inspections.

Since the 1997 fee establishment, the closure of large industries has significantly impacted the N.C. Department of Labor's Boiler and Pressure Vessel Bureau in that its receipts are being reduced each time a boiler or pressure vessel is lost within the state from an industry closure. This resulted in the Bureau losing two thousand one-hundred and six (2,106) boiler and pressure vessels for inspection between the 2003 and 2005 fiscal years. Additionally, with economical expenses increasing, the Bureau is forced to spend more funds on pay raises, mileage expenses, and administrative costs.

Following suit with the March 1, 2006 fee increases, the establishment/increase of additional fees are needed in order to further offset the Bureau's loss resulting from industry closures, to minimize a potential revenue shortfall, and to sustain an effective program.

Therefore, we are requesting approval of rules that will establish/increase the fees for (1) Inspector Qualifications, (2) North Carolina Commissions, (3) Owner-User Inspection Agencies, (4) Shop Inspections and National Board R. Stamp Qualifications, and (5) Inspections Revealing Deficiencies as is set forth in the following text. A detailed explanation as to the need for each fee establishment/increase follows each rule.

### **13 NCAC 13 .0202 INSPECTOR QUALIFICATION~~QUALIFICATION~~**

(a) Deputy Inspectors performing conducting certificate inspections shall be in possession of a valid North Carolina Commission and National Board Commission. Special Inspectors and Owner-User Inspectors shall be in possession of a National Board Commission and a North Carolina Commission. A North Carolina Commission shall be issued to an inspector who has passed an examination administered by the Chief Inspector on the Uniform Boiler and Pressure Vessel Act and the rules of this Chapter. There is no fee for this examination.

(b) A Certificate of Competency shall be issued to an inspector who passes an examination written and graded by the National Board and administered by the Board.Chief Inspector. The Certificate of Competency authorizes an individual to obtain a National Board Commission.

(c) National Board examinations are administered on the first Wednesday and Thursday of March, June, September and December. Applications–Applicants for the examination are available from the Director. should contact the Chief Inspector by the 10<sup>th</sup> of the month prior to the month in which they desire to sit for the examination.Completed applications shall contain an accurate educational and employment history.

(d) The examination:–National Board examination covers the construction, installation, operation, maintenance and repair of boilers and pressure vessels and their appurtenances, and is administered upon payment to the Department of Labor of a fee of one hundred dollars (\$100.00). Unsuccessful Applicants who desire to retake the National Board examination must pay an additional one hundred dollar (\$100.00) fee before retaking the examination.

(1) ~~covers the construction, installation, operation, maintenance and repair of boilers and pressure vessels and their appurtenances;~~

- (2) ~~is given on the first Wednesday and one half day Thursday in March, June, September, and December at a site selected by the Director, provided that a minimum of four applicants are registered; and~~
  - (3) ~~is administered upon payment to the Department of Labor of a fee of fifty dollars (\$50.00), which is also required when the examination is retaken by an unsuccessful applicant.~~
- (e) A grade of 70 percent or greater must be attained to achieve a passing grade on ~~the examination.~~ both examinations.

*Authority G.S. 95-69.11; 95-69.15*

Explanation: When administering the National Board Examination, the Boiler and Pressure Vessel Bureau is required to have two (2) proctors in the room at all times. The exam takes 1 ½ days to complete and the current fee of \$50.00 does not adequately cover the expense associated with having two (2) proctors in the testing room for this period of time. A review of other states that administer the National Board Examination revealed that \$100.00 is the average fee charged.

### **13 NCAC 13 .0203 NORTH CAROLINA COMMISSION**

- (a) When requested by the employer, a North Carolina Commission, bearing the signature of the ~~chairperson of the board, Commissioner,~~ shall be issued by the Board to persons holding a valid National Board Commission.
- (b) Requests for a North Carolina Commission shall be processed upon proof of a National Board Commission and payment of a ~~fifteen dollar (\$15.00)~~ twenty five dollar (\$25.00) fee to the Department of Labor.
- (c) North Carolina Commissions are valid through December 31, at which time the inspector's employer shall submit a renewal application and a ~~fifteen dollar (\$15.00)~~ twenty five dollar (\$25.00) fee to the Department of Labor.

(d) The North Carolina Commission shall be returned by the ~~inspector-employing company with notification of termination date to the Division upon Bureau~~ within 30 days of termination of employment.

(e) A North Carolina Commission may be suspended or revoked by the ~~board,~~ Board in accordance with G.S. ~~95-69.17~~ 95-69.13 for incompetence, untrustworthiness or falsification of any statement in an application or inspection report. The Board shall give notice of the commencement of proceedings for suspension or revocation of a commission pursuant to G.S. 150B-23. A North Carolina Commission may be suspended prior to the hearing if the ~~Board~~ Chief Inspector determines that the public health, safety or welfare requires this action. In this case, the proceedings shall be promptly commenced and determined. The Board's decision regarding the competency of an inspector shall be determined after consideration of the knowledge, skill, and care ordinarily possessed and employed by boiler and pressure vessel inspection personnel in good standing. Industry custom and practice shall be considered but are not determinative. Failure to ~~perform-conduct~~ the inspections in accordance with this Chapter shall constitute incompetence. The inspector shall be given the opportunity to show that he is ~~performing-conducting~~ his duties in a competent manner and that suspension or revocation is unwarranted. If the inspector believes that the decision of the Board is not warranted, he may file a petition for a judicial hearing-review pursuant to Article 4 of ~~G.S. 150B-~~ Chapter 150B of the N.C. General Statutes.

*Authority G.S. 95-69.11; 95-69.1*

Explanation: When issuing a new North Carolina Commission, the Boiler and Pressure Vessel Bureau is responsible for ensuring, when applicable, that an inspector has received his/her National Board Commission, entering them into their database, preparing a cover letter and commission card, and mailing out the commission. Additionally, at the end of each year, a letter is sent to each insurance company reminding them to submit their requests for renewal. Upon receipt of the renewal requests, the information is verified and/or updated as required, and cover letters and commission cards are prepared and mailed. Increases in expenses such as salaries, postage, supplies, and other administrative costs render the proposed increase necessary.

### **13 NCAC 13 .0205 OWNER-USER INSPECTION AGENCY**

(a) A company seeking to ~~perform~~conduct inspections of its own ~~boilers and~~ pressure vessels shall file an application with the ~~Director~~Chief Inspector and obtain approval from the Board.

(b) The company shall, in its application, designate a supervisor who shall be an ~~registered professional~~ engineer within its employ, who, upon approval of the application, shall:

- (1) ascertain that the company's inspectors, pursuant to Rules .0202 and .0203, are issued certificates of competency and owner-user commission cards;
- (2) supervise inspections of ~~boilers and~~ pressure vessels and see that an inspection report, signed by the owner-user inspector, is filed at the equipment site;
- (3) promptly notify the ~~Director~~Chief Inspector of any unsafe ~~boiler or~~ pressure vessel which presents a condition of imminent danger;
- (4) maintain a master file of inspection records which shall be made available for examination by the ~~Director~~Chief Inspector or his representative during business hours:
  - (A) identifying each ~~boiler and~~ pressure vessel by serial number and abbreviated description; and
  - (B) showing the date of the last and next scheduled inspection;
- (5) on a date mutually agreed upon with the ~~Director~~Chief Inspector, file an annual statement signed by the supervisor, showing the number of boilers and certifying that each inspection was ~~performed~~conducted pursuant to this Chapter, accompanied by an ~~inspection certificate~~administrative fee of ~~fifteen dollars (\$15.00)~~twenty dollars (\$20.00) per vessel.

(c) Inspection certificates are not required for pressure vessels inspected under an owner-user program.

*Authority G.S. 95-69.11; 95-69.15; 95-69.16*

Explanation: There is one (1) Owner-User Inspection Agency in North Carolina. They are allowed to hire an inspector who is commissioned in the state to inspect their pressure vessels.

No certificates are issued by the Boiler and Pressure Vessel Bureau; however, since the Owner-Users are allowed to inspect their own vessels, they are required to pay a minimal fee which is less than the processing fee charged for insurance inspected items. The Owner-User Inspection Agency sends a report to the Boiler and Pressure Vessel Bureau each year detailing the vessels that have been inspected along with the applicable fees. On average, there are 170 vessels inspected over a two year period and the Boiler and Pressure Vessel Bureau will realize an increase of approximately \$425.00 per fiscal year from this fee increase. This small increase is necessary and appropriate due to increasing salaries and administrative expenses.

### **13 NCAC 13.0210    ~~SHOP INSPECTION~~INSPECTIONS AND NATIONAL BOARD R STAMP QUALIFICATION AUDITSREVIEWS**

(a) ~~Manufacturers or repair firms seeking to employ deputy inspectors to inspect their fabrication process for boilers, pressure vessels, and nuclear energy system components, the Boiler Safety Bureau to act as their Authorized Inspection Agency pursuant to the ASME Code, Code or National Board Inspection Code,~~ shall enter into a written agreement with the North Carolina Department of ~~Labor~~Labor, Boiler Safety Bureau for this purpose.

(b) ~~The Department of Labor shall perform the qualification audit for issuance of the National Board R symbol stamp pursuant to the National Board Inspection Code as adopted, except as provided in paragraph (c) of this Rule. An audit of the Authorized Inspector and the company in which he/she is working shall be conducted on an annual basis for non-nuclear companies and twice each year for nuclear companies. The subject company will be required to pay the Audit fees required in Rule .0213 of this Section.~~

(c) ~~The Department of Labor shall not perform the qualification audit for those individuals or organizations for which the Department of Labor provides inspection services, for those individuals and organizations in possession of or concurrently applying for an ASME Code symbol stamp, or for those individuals or organizations which specifically request the audit be performed by the National Board. The Chief Inspector or his designee shall conduct the~~

qualification reviews for issuance of the National Board R symbol stamp pursuant to the National Board Inspection Code as adopted, except as provided in paragraph (d) of this Rule.

~~(d) An audit to be performed by the Department shall be scheduled upon receipt of request by the National Board. Payment of the fee as required in Rule .0213 of this Section shall be the responsibility of the individual or organization being audited. Should an applicant not be successful in obtaining accreditation, the applicable fee shall be paid before a new audit is performed. The Chief Inspector or his designee shall not conduct the qualification reviews of those companies for which the Boiler Safety Bureau provides inspection services, or those companies which specifically request the review be conducted by the National Board.~~

(e) A review to be conducted by the Boiler Safety Bureau shall be scheduled upon receipt of request by the National Board. A deposit of twelve hundred dollars (\$1,200.00) shall be made by the applying company to cover the fees and expenses incurred and shall be received by the Boiler Safety Bureau no less than thirty (30) days prior to the subject review. This deposit will be applied to the cost of the review. Payment of the fee as required in Rule .0213 of this Section shall be the responsibility of the company being reviewed. Should an applicant not be successful in obtaining accreditation, the applicable deposit shall be paid before a new review is conducted.

*Authority G.S. 95-69.11; 95-69.14*

Explanation: This deposit is necessary due to the Boiler and Pressure Vessel Bureau having to absorb the costs of audits when companies fail to remit payment after an audit is conducted. Based on a typical 1 ½ day audit, the expense of conducting an audit, along with travel, lodging, and meals of the auditor typically total in excess of \$1,200.00. These are legitimate expenses to charge companies applying for a National Board “R” Stamp so that they can legally conduct repairs on boilers and pressure vessels. When payment is not remitted, the Boiler and Pressure Vessel Bureau must absorb the costs by relying on regular inspection fees to pay for their own expenses. This presents a significant financial burden to the Bureau and can be avoided through requiring a deposit from those companies requesting audits. Should the expenses incurred by the Bureau be less than the \$1,200.00 deposit, the remaining funds would be refunded accordingly. In order to avoid budget shortfalls, the audit deposit is needed to guarantee the Bureau that the

expenses associated with said audit are received in order to avoid forced absorption of the costs for those who fail to remit payment.

### **13 NCAC 13 .0303 INSPECTIONS REVEALING DEFICIENCIES**

- (a) The owner or user shall complete any required repairs or corrective action and request an additional inspection within ~~30~~60 days of the inspection, except in cases where the boiler or pressure vessel is removed from service, in which case the owner or user shall send in written confirmation, signed by the owner or user, that use of the boiler or pressure vessel has been discontinued and that the boiler or pressure vessel has been removed from the source of energy.
- (b) Upon notification by the inspector of a boiler or pressure vessel for which continued operation creates a condition of imminent danger, the ~~Director~~Chief Inspector shall determine if the recommendations of the inspector are valid, and if so, he shall immediately notify the owner or user by the most expedient means possible, followed by written notification within 15 days stating that the use of the boiler or pressure vessel shall be discontinued immediately.
- (c) The owner or user may continue operation of the boiler or pressure vessel, including those boilers or pressure vessels which are condemned, during the ~~30~~60 day period, except that this provision shall not apply to boilers and pressure vessels after verbal notification by the ~~Director~~Chief Inspector to the owner or user that a condition of imminent danger exists.
- (d) After completion of any required repairs or corrective action, the boiler or pressure vessel shall be reinspected to the extent necessary to verify satisfactory completion of the required repairs or corrective action. ~~For reinspections performed by deputy inspectors, an external inspection fee shall apply.~~
- (e) For each reinspection or follow-up inspection conducted by Deputy Inspectors, a fee of thirty-five dollars (\$35.00) shall be paid to the North Carolina Department of Labor.

*Authority G.S. 95-69.11*

Explanation: This fee is being established to make it more equitable for customers. The old rule required an external fee to be charged for follow-up inspections or repairs. For example,



currently, if an external inspection is conducted, a fee of \$35.00, \$45.00, or \$75.00, etc. is assessed even if the vessel fails inspection. The charge for a repair follow –up inspection would be equivalent to that of the original inspection up to \$100.00. The Boiler and Pressure Vessel Bureau feels that charging such a large amount for a re-inspection is exorbitant and should be reduced to a set fee of \$35.00 regardless of the fee charged for initial inspection. Establishment of this fee will result in re-inspections costing equal to or less than the current cost of repair follow-up inspections, but will be more equitable for the Boiler and Pressure Vessel Bureau customers.