

DATE: October 21, 1982
TO: Legislative Rule-Making Review Committee (LRMRC)
FROM: Edward R. Fleming, Jr., Analyst
SUBJECT: Proposed Rules for the Inspection of Steam Boilers
Promulgated by the Commissioner of Labor

BASIS

Code 21-3-7, paragraphs 3 and 4 are as follows:

"The commissioner of labor or state boiler inspector shall have the authority to inspect steam boilers in this State. To carry out the provisions of this section, the commissioner of labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class. The commissioner of labor shall be authorized to revoke any permit to operate a steam boiler if the rules prescribed by the commissioner of labor, or his authorized representative, are violated or if a condition shall prevail which is hazardous to the life and health of persons operating or employed at or around the boiler. Any person or corporation who shall operate a steam boiler for which a permit is necessary under the provisions of this section, without first obtaining such permit to operate a steam boiler, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars. Every day a steam boiler requiring a permit to operate is operated without such permit shall be considered a separate offense."

"The commissioner may charge such fee as he determines reasonable for the inspection of boilers by the department of labor boiler inspector of the commissioner's authorized boiler inspection agency, for the processing of inspection reports from insurance companies, for issuing annual permits to operate boilers and for commissioning insurance company boiler inspectors. Such fees shall be established by a rule promulgated in accordance with the provisions of chapter twenty-nine-A of this Code."

PERTINENT DATES

First filing with Secretary of State: May 10, 1982

Date of Hearing: June 15, 1982

Filed as Emergency: September 3, 1982

Filed with LRMRC: September 15, 1982

SUPPLEMENTAL

Other than department personnel, the hearing was attended by nine insurance company representatives and engineering company representatives. Pertinent comments from these individuals will be noted in the analysis.

The analyst has four sets of rules covering rate schedules for steam boilers. They are as follows:

1. The original rules filed May 10, 1982.
2. Rules which were read into the minutes at the hearing June 15, 1982.
3. Emergency rules filed September 3, 1982.
4. Rules filed with LRMRC September 15, 1982. (NB-1)

NB-1A: It appears the rules filed on May 10, 1982, which were subjected to the hearing, are different than the rules read at the beginning of the hearing on June 15, 1982, in that the last three fee sections in the rules were not contained in the rules filed May 10, 1982. For the information of the LRMRC, Code 29A-2-5 through 7 seems to require the hearing must be on the rules as filed with the Secretary of State. LRMRC may desire to ascertain: (a) if the rules discussed at the hearing did, in fact, contain more fees than the rules filed with the Secretary of State and (b) if this would make the hearings invalid.

NB-1B: In the proposed rules filed with LRMRC, the fees for various services are totally different from the rules filed on May 10, 1982. The fees set in the rules before the LRMRC are all lower and there are additional items requiring fees. LRMRC may desire to inquire if these amendments changed "the main purpose of the rule" (Code 29A-3-8 and 9) which would necessitate another hearing.

SUMMARY

These rules set fees for the inspection of boilers.

ANALYSIS

Sect. 1 is administrative in nature.

Sect. 2.01 sets various fees. (See NB-1) (NB-2) (NB-3)

NB-2: Insurance company representatives at the hearing objected to the rules under consideration at the hearing. The objection was primarily aimed at the fee schedule which made the insurance companies responsible for the permit rather than the owner of the boiler. This contention appears valid, per Code 21-3-7, paragraph 3.

For the information of the LRMRC it appears the last three fee sections and the other changes in 2.01, made after the hearing (all of which may be substantive) were an effort to overcome the objections of insurance industry representatives and to comply with the Code.

NB-3: Since 2.01 sets fees for processing reports for insurance companies, LRMRC may desire to ask the Commissioner if the Insurance Commissioner has any objection to the pertinent portion of the proposed regulations.

(Use auto type)

TO : LEGISLATIVE RATE-SETTING REVIEW COMMITTEE (LRMRC)
FROM : Edward J. Fleming, Jr., ANALYST
SUBJECT: PROPOSED RULES FOR THE INSPECTION OF STEAM BOILERS PROMULGATED BY THE
COMMISSIONER OF LABOR

BASIC

Code 21-3-7, paragraphs 3 and 4 are as follows:
(Here copy in quotes)

DEPARTMENT DATES

First filing with Secretary of State: May 10, 1982

Date of hearing: June 15, 1982

Filed as Emergency: Sept. 3, 1982

Filed with LRMRC: Sept. 15, 1982

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SUPPLEMENTAL

Other than department personnel, the hearing was attended by nine insurance company representatives and engineering company representatives. Pertinent comments from these individuals will be noted in the analysis.

The analyst has four sets of rules covering rate schedules for steam boilers. They are as follows:

1. The original rules filed May 10, 1982.
2. Rules which were read into the minutes at the hearing June 15, 1982.
3. Emergency rules filed Sept. 3, 1982.
4. Rules filed with LRMRC Sept. 15, 1982. (NB-1)

~~XXXXXXXXXX~~
NB-1A: It appears the rules filed on 5/10/82, which were subjected to the hearing, are different than the rules read at the beginning of the hearing on 6/15/82, in that the last three fee sections in the rules were not contained in the rules filed 5/10/82. For the information of the LRMRC, Code 29A-2-5 through 7 seems to require the hearing must be on the rules as filed with the Secretary of State. LRMRC may desire to ascertain: (a) if the rules discussed at the hearing did, in fact, contain more fees than the rules filed with the Secretary of State and (b) if this would make the hearings invalid.

NB-1B: In the proposed rules filed with the LRMRC the fees for various services are totally different from the rules filed on 5/10/82. The fees set in the rules before the LRMRC are all lower and there are additional items requiring fees. LRMRC may desire to inquire if these amendments changed "the main purpose of the rule" (Code 29A-3-8 and 9) which would necessitate another hearing.

SUMMARY

The schedule set fees for the inspection of ^{of} boilers.

ANALYSIS

Sect. 1 is administrative in nature.

Sect. 2.01 sets various fees. (See NR-1) (NE-2) (NE-3)

NR-2: Insurance company representatives at the hearing objected to the rules under consideration at the hearing. The objection was primarily aimed at the fee schedule which made the insurance companies responsible ~~with~~ for the permit rather than the owner of the ~~boiler~~ boiler. This contention appears valid, per Code 21-3-7, paragraph 3.

~~NR~~ For the information of the LRMRC it appears the last three fee sections and the other changes in 2.01, made after the hearing (all of which may be substantive) were an effort to overcome the objections of insurance industry representatives and to comply with the Code.

NE-3: Since 2.01 sets fees for processing reports for insurance companies, LRMRC may desire to ask the Commissioner if the Insurance Commissioner has any objection to the pertinent portion of the proposed regulations.



STATE OF WEST VIRGINIA
THE DEPARTMENT OF LABOR
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

September 13, 1982

Mr. John R. Homburg
Legislative Rule-Making Review Committee
West Virginia Legislature
The Capitol
Charleston, West Virginia 25305

Dear Mr. Homburg:

We are submitting information for the Legislative Rule-Making Review Committee. We previously submitted fifteen copies of the rules and regulations. For additional information refer to the enclosed copy of a letter to Mr. Nelson and Mr. Shingleton. Please acknowledge receipt of this material by returning to me the enclosed copy of this letter.

If you need further information or clarification, please contact Mr. Kenneth DuBois.

Sincerely,

Lawrence Barker
Commissioner of Labor

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SEP 13 1982

Legislative Services



STATE OF WEST VIRGINIA
THE DEPARTMENT OF LABOR
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

September 3, 1982

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Legislative Services

Mr. John R. Homburg
Legislative Rule-Making Review Committee
West Virginia Legislature
The Capitol
Charleston, West Virginia 25305

Dear Mr. Homburg:

Enclosed herewith are seventeen copies of proposed rules and regulations of the Department of Labor designated Chapter 21, Article 3, Section 7 of the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

Please acknowledge receipt of this material by signing and returning to me the enclosed copy of this letter.

Very truly yours

Lawrence Barker
Commissioner of Labor

enclosures

The Senate of West Virginia
Charleston

September 13, 1982

ROBERT R. NELSON
PRESIDENT PRO TEMPORE
STATE CAPITOL
CHARLESTON 25305

COMMITTEES:
BANKING AND INSURANCE,
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RULES
JOINT COMMITTEE ON
GOVERNMENT AND FINANCE
COMMISSION ON SPECIAL
INVESTIGATIONS

Mr. John Homburg
Legislative Services
Building #1, Room EW-132
Capitol Complex
Charleston, West Virginia 25305

Dear John:

Please respond under my signature to the enclosed letter dated September 1st from Commissioner of Labor Lawrence Barker.

Make sure that Commissioner Barker is aware of all the legal requirements relative to the contents of his letter, and also the process relative to the Legislative Rule-making Review Committee.

Sincerely,



Robert R. Nelson

RRN/pw

enclosure

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SEP 14 1982

Legislative Services



STATE OF WEST VIRGINIA
THE DEPARTMENT OF LABOR
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

September 1, 1982

The Honorable Robert R. Nelson
The Honorable William E. Shingleton
Co-chairmen
Legislative Rulemaking Review Committee
West Virginia Legislature
Capitol Complex
Charleston, West Virginia 25305

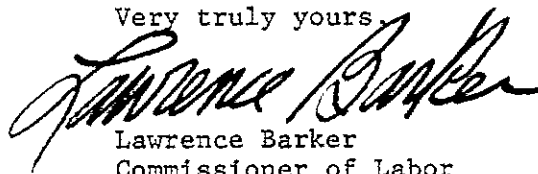
Dear Chairmen:

The 1982 Legislature enacted an amendment to the Steam Boiler Inspection Law, Section 7, Article 3, Chapter 21 of the Code. This amendment authorizes the commissioner of labor to charge fees (1) for the inspection of boilers by those whom the Commissioner of Labor has authorized as inspectors, (2) for the processing of inspection reports from insurance companies, (3) for issuing annual permits to operate boilers, and (4) for commissioning insurance company boiler inspectors.

A public hearing on this amendment (H.B. 1575) was held on June 15, 1982. At this hearing the basic contention of the insurance companies was that the burden and obligation for obtaining a boiler operating permit is removed from the owner of the boiler and placed upon the insurance company and there is no burden in the case of uninsured boilers.

After due consideration of this contention of the insurance companies, it was decided to establish a separate fee for issuing an annual permit to operate boilers. A meeting was held with a representative of the American Insurance Association and their objections were again discussed and they were in agreement with the changes that the Department of Labor had made in the rules and regulations. The revised rules and regulations for the inspection of steam boilers of the Department of Labor, designated Chapter 21, Article 3, Section 7 of the Code of West Virginia have been submitted to the Secretary of State under the emergency provisions of the West Virginia Administrative Procedures Act and will become effective on September 3, 1982.

Very truly yours,



Lawrence Barker
Commissioner of Labor