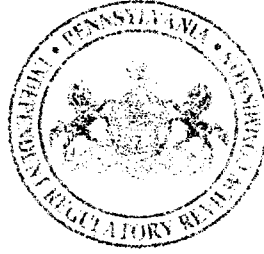


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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

January 5, 2005

Honorable Stephen M. Schmerin, Secretary  
Department of Labor and Industry  
1700 Labor and Industry Building  
Harrisburg, PA 17120

Re: Regulation #12-58 (IRRC #2443)  
Department of Labor and Industry  
Boiler and Unfired Pressure Vessel Regulations

Dear Secretary Schmerin:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). We will send a copy to the standing committees when they are designated.

If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
evp  
Enclosure

**Comments of the Independent Regulatory Review Commission**

**on**

**Department of Labor and Industry Regulation #12-58 (IRRC #2443)**

**Boiler and Unfired Pressure Vessel Regulations**

**January 5, 2005**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Labor and Industry (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on December 6, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Section 3a.1. Definitions. - Consistency with the statute and other regulations; Clarity.**

*ASME Code*

A commentator suggested a correction to this definition to fully reference the pertinent code of the American Society of Mechanical Engineers (ASME). The words "Rules for Construction of Power Boilers" should be replaced with "The Boiler and Pressure Vessel Code" in the final-form regulation.

*Certificate of competency*

In this definition, the noun "inspector" should be replaced with the verb "inspect."

*Process boiler*

This definition in the regulation differs from the statutory definition. The final-form regulation should use the statutory definition in Section 2 of the Boiler and Unfired Pressure Vessel Law (Act) (35 P.S. § 1331.2) or reference the statutory definition.

**2. Section 3a.3. Scope. - Consistency with other regulations; Clarity.**

Subsection (c) reads, ". . . when the heat exchanger operates at 16 psi or greater, and has 5 cubic feet of volume . . ." To increase technical accuracy of Subsection (c), the words "or more" should be placed after the words "5 cubic feet" in the final-form regulation.

In Subsection (d), there is more than one subparagraph labeled as (3). This enumeration error should be corrected in the final-form regulation.

Subsection (d)(10) begins with the following sentence:

Unfired pressure vessels designed to ASME Code section VIII, Division 1 which meet one of the following specifications: [Emphasis added.]

A commentator suggested that the word “meet” should be replaced with “do not exceed” in this subsection. We concur.

**3. Section 3a.5. Examination for inspector commission. - Reasonableness; Implementation procedure; Clarity.**

Subsection (a) states that the Department will conduct the National Board of Boiler and Pressure Vessel Inspectors (National Board) examinations. Subsection (b) indicates that the Department will also conduct a Pennsylvania certificate of competency examination. The role and purpose of these two examinations are unclear. It is our understanding that the Department administers the two different examinations and applicants are required to pass both. The final-form regulation should clearly state that applicants are required to pass these two examinations and how and when each examination will be administered.

Subsection (a)(1) requires that an applicant for examination as a boiler inspector must “meet the National Board rules and regulations, and its education and experience requirements.” The final-form regulation should contain specific references to the pertinent regulations and requirements of the National Board.

Subsection (b)(2) contains a specific list of education and experience prerequisites for those who apply to take the Pennsylvania certificate of competency examination. This list should be moved to the beginning of the section to alert potential applicants of the basic requirements they need to fulfill to qualify to apply for the examination.

**4. Section 3a.6. Certificate of competency, commission, credential card and renewal application. - Clarity.**

Subsection (a) states, “[t]he Department will issue a certificate of competency, credential card and commission to an applicant who passes an examination for inspector.” Since Section 3a.5 includes two different examinations, this section should also clearly affirm that an applicant needs to pass both examinations.

**5. Section 3a.8. Reciprocity. - Clarity.**

A commentator noted an inconsistency between Subsections (a) and (b). As written, the first subsection would allow a person without a National Board commission to obtain a reciprocal commission in Pennsylvania. However, Subsection (b) requires an applicant for reciprocal commission to submit a copy of his National Board commission. This inconsistency should be corrected in the final-form regulation.

**6. Section 3a.24. Boiler controls. - Implementation procedure; Clarity.**

The effective date of this section is not stated. It is unclear whether this section applies to boilers installed before effective dates of the national standards or this regulation. The effective date for this section should be specified in the final-form regulation.

**7. Section 3a.26. Valves and safety devices. - Clarity.**

Subsection (a) refers to Section 3a.152 (relating to safety appliances) which is located in a different Subchapter that sets forth rules for unfired pressure vessels installed before September 1, 1937. It is our understanding that the intent of the Department is to have the safety requirements in Section 3a.152 apply to all boilers and vessels not just those installed in and before 1937. For this reason, we suggest that the substantive provisions of Section 3a.152 be moved to Subchapter B relating to requirements for boilers and unfired pressure vessels. The appropriate cross-reference can be placed in Section 3a.152 to insure that the substantive requirements are also applied to the older units.

**8. Section 3a.37. Special design. - Clarity.**

Subsection (a) reads:

(a) The owner or user of a new boiler or unfired pressure vessel having unusual features of special design intended for installation and operation in this Commonwealth **may** submit all of the following to the Department for approval:

(1) **Duplicate** complete specifications. [Emphasis added.]

There are two concerns. First, there appears to be a conflict between this section and its description in the preamble. According to the preamble, this section “requires owners and operators to submit construction specifications and plans for Department approval prior to the installation . . . .” However, the first paragraph of this section uses the word “may” rather than “shall.” The use of the word “may” implies that the provision is optional for owners or users of units with unusual features of special design. The proposed regulation needs to be clear in stating that owners or users must submit the required information to the Department.

Second, it is unclear what is meant by the phrase “duplicate complete specifications.” It is our understanding that one copy of the complete manufacturer’s specifications is needed by the Department. These items should be clarified in the final-form regulation.

**9. Section 3a.81. Major repairs and alterations. - Reasonableness; Clarity.**

This section describes the procedures and requirements for repairs to a boiler or unfired pressure vessel. Subsection (b) states that a manufacturer or repair company may not perform certain repairs without holding an “R” stamp. However, Subsection (c) includes the following sentences:

A manufacturer holding the appropriate ASME Code stamp may alter a boiler or vessel. A manufacturer holding an ASNI/NB 23 "R" stamp may perform alterations to other vessels.

These two sentences appear to limit alterations or repairs to manufacturers who hold the appropriate ASME or "R" stamp. We acknowledge that anyone who makes repairs or alterations should hold the appropriate stamp. But, is it the Department's intent to limit alterations or repairs to manufacturers, or can a repair company or anyone with the appropriate stamp also make alterations? If anyone with the appropriate ASME or "R" stamp can make alterations and repairs, this should be clearly stated in the final-form regulation.

In addition, a typographical error is repeated in Subsections (b) and (c). Both use the acronym "ASNI/NB 23" which should be "ANSI/NB 23." The later term is defined in Section 3a.1 as the "National Board Inspection Code, 2001 edition, issued by the National Board of Boiler and Pressure Vessel Inspectors." The term "ANSI" is defined in Section 3a.1 as the "American National Standards Institute." The error should be corrected in the final-form regulation.

**10. Section 3a.93. Insurance notification. - Reasonableness; Implementation procedure; Need; Clarity.**

A commentator questioned the practicality of this requirement since many users of boilers are unaware of insurance changes that occur at the corporate level. We question the need for and effectiveness of this section. The Act is silent concerning this type of notice requirement. The Department should explain how it would use this information or delete the provision from the final-form regulation.

**11. Section 3a.94. Accident notification. - Reasonableness; Consistency with statute; Clarity.**

Subsection (a) refers to Section 16 of the Act and mirrors the statutory directive that an owner or user must "immediately notify" the Department of an accident. We have three concerns.

First, Section 16 of the Act includes the word "operator" among those who must notify the Department. Rather than limit the contact to the owner or user, this subsection should fully reflect the Act by including the term "operator."

Second, if the Department interprets "immediately notify" as within 24 hours, this specific standard should be in the regulation.

Third, the final-form regulation should include a number or title for the "Department prescribed form" and indicate where and how owners, users or operators can obtain copies of the form. For example, will it be available on the Department's website?

**12. Section 3a.96. Condemnation. - Clarity.**

In Subsections (a) and (b), it is unclear whether the "XX" will cover over or be above the existing stamping from the Commonwealth or National Board. If the "XX" are to cover over the existing stamping, this needs to be expressly stated in the final-form regulation.

The second sentence of Subsection (b) is missing the word “be” between the words “will” and “at least.” This correction should be made in the final-form regulation.

**13. Section 3a.100. Notice of deficiency. - Reasonableness; Implementation procedure; Clarity.**

Subsection (a)(2) includes this sentence: “The Department may inspect the boiler or unfired pressure vessel to verify the corrective action or repair.” Are there specific circumstances in which the Department will conduct an inspection? If so, the circumstances in which an inspection will occur for any provision in this section should be described in the final-form regulation.

**14. Section 3a.111. Field inspections. - Reasonableness; Implementation procedure; Clarity.**

This section gives the impression that the Department will be conducting all inspections. However, this is not the case. Field inspections may also be conducted by insurance inspectors. This section should be changed in the final-form regulation to reflect this fact.

Subsections (d) and (h) state, “an inspector may require an internal inspection because of a vessel’s age or condition.” Department staff members indicate that the inspector will notify the operator, owner or user of the need for an internal inspection verbally during the external inspection or later in writing. This notification process should be described in the final-form regulation.

**15. Subchapter H. Special Installations. - Implementation procedure; Clarity.**

This subchapter includes 11 sections (§§ 3a.161 - 3a.171). These sections set forth the applicable national standards and other requirements for different types of equipment which include:

- |   |                                       |
|---|---------------------------------------|
| Modular boilers;  | Hot water/steam heat exchangers;      |
| Portable boilers;   | Autoclaves and quick opening vessels; |
| Fired coil water heaters and instantaneous water heaters; | Fuel trains and piping systems;       |
| Storage water heaters;                                    | Swimming pool heaters; and            |
| Steam/hot water coil storage water heater;                | Locomotive boilers.                   |
| Miniature boilers and kitchen equipment;                  |                                       |

Only one of these sections (§ 3a.168 relating to autoclaves and quick opening vessels) specifically mentions inspectors. Subchapter D includes specific provisions on inspections but does not reference Subchapter H or the equipment types in Subchapter H. Hence, it is unclear what, if any, inspection requirements apply to Subchapter H beyond what is expressly mentioned in Section 3a.168. The inspection requirements for this subchapter should be included in the final-form regulation.

## Facsimile Cover Sheet

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Administrative Officer



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Brian Abela  
**Agency:** Department of Labor & Industry  
**Phone:** (717) 787-5087  
**Fax:** (717) 783-5225  
**Date:** January 5, 2005  
**Pages:** 7

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Labor & Industry's regulation #12-58 (IRRC #2443). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Marcella R. Norton Date: 1/5/05