

INDIANA FIRE PREVENTION AND BUILDING SAFETY COMMISSION

REQUEST FOR EXCEPTION FROM REGULATORY MORATORIUM

TO: Cris Johnston, Director
Office of Management and Budget

FROM: Robin Nicoson, Chairman
Fire Prevention and Building Safety Commission

DATE: October 21, 2020

RE: Request for exception from Executive Order 13-03 for amendment of the Indiana Boiler and Pressure Vessel Rules contained in 675 IAC 12-3-13 and 675 IAC 30.

The Fire Prevention and Building Safety Commission (Commission) respectfully requests an exception to the Regulatory Moratorium to amend the Indiana Boiler and Pressure Vessel Rules contained in 675 Ind. Admin. Code 30 and its fee schedule contained in 675 Ind. Admin. Code 12-3-13.

History and Background of the Rule

The Indiana Boiler and Pressure Vessel Rules set minimum standards for the construction, installation, inspection, and repair of regulated boilers and pressure vessels in Indiana. The current rules were originally adopted in 1996 by the now dissolved Boiler and Pressure Vessel Rules Board (Rules Board) and were enforced by the now dissolved Department of Fire and Building Services. The rules supplement the statutory framework laid out for the regulation of boilers and pressure vessels in Indiana Code (IC) Chapter 22-15-6.

In general, these rules adopt national model codes as the standards that must be followed in Indiana and establish requirements for administering Indiana's inspection and permitting program. Through emergency rulemaking power, these national model codes are updated every two years as new versions are released. However, over time, the statutory framework regulating boilers and pressure vessels has changed and these rules are now adopted by the Commission and enforced by the Indiana Department of Homeland Security (IDHS).

Although the statutory framework has changed over time, the administrative provisions contained in the Indiana Boiler and Pressure Vessel Rules has not, resulting in outdated rules. Most notably, during the 2019 legislative session, major changes to IC Chapter 22-15-6 were made that altered how boilers and pressure vessels were regulated in Indiana, specifically: (1) inspections of boiler and pressure vessels no longer were required to be performed by inspectors employed by insurance company or *owner or user* inspection agencies, they could be performed by any licensed inspector; (2) the IDHS was no longer required to perform initial inspections of boilers or pressure vessels that were overseen by insurance company inspectors nor was the IDHS required to perform inspections on any boilers or pressure vessels except those owned by the state; (3) the licensing program of *owner or user* inspection agencies was eliminated; (4) the Rules Board was eliminated

and its rulemaking authority was transferred to the Commission; and (5) the power to grant variances to the Indiana Boiler and Pressure Vessel Rules was transferred to the IDHS or the Commission.

In order to eliminate the conflicting language that existed in the Indiana Administrative Code (IAC) as a result of these statutory amendments and to implement these changes, the legislature granted the Commission emergency rulemaking power to modify the Indiana Boiler and Pressure Vessel Rules in their entirety. On July 2, 2019, the Commission adopted an emergency rule modifying these rules, however, this emergency rule is set to expire July 1, 2021.

Reasons for the Proposed Rule

The primary reasons for the proposed rule is to bring the Indiana Boiler and Pressure Vessel Rules up to date with legislative changes that have occurred over the years, incorporate the current emergency rules that are in place into the IAC, clarify language, reduce unnecessary regulation, and address matters of health and safety.

1. Update the rules to coincide with legislative changes.

As currently drafted, the Indiana Boiler and Pressure Vessel Rules: (1) refer to statutes that have been repealed; (2) implement inspection, permitting, licensing, and variance programs that no longer coincide with statute; and (3) refer to governmental bodies that no longer exist.

The following chart identifies all areas of the current rule that no longer coincide with statute:

Citation of Current Rule	Issue
675 IAC 12-3-13	Subsections (j) and (k) were deleted as they referred to fees charged to owner or user inspection agencies which are agencies no longer recognized by statute. Subsection (n) was modified as it refers to the state building law compliance officer which is no longer a statutory position.
675 IAC 30-1-1	This section refers to the “rules board” which was dissolved and “IC 22-12-4” which was repealed. The Commission now adopts these rules.
675 IAC 30-1-3	This section refers to the “Department of Fire and Building Service” which was dissolved.
675 IAC 30-1-4	This section refers to the “board” which was dissolved. Petitions for administrative review are now heard by the Commission.
675 IAC 30-2	This section establishes the variance process for the Rules Board which was transferred to the IDHS and the Commission and is now regulated by 675 IAC 12-5.
675 IAC 30-3-1	This section refers to the state building commissioner’s duties to organize his office and appoint personnel under IC 22-15-2-3 which was repealed.
675 IAC 30-3-2	This section sets up the framework for licensing “owner or user inspection agencies” under IC 22-15-6-6(c)(3) which was repealed. Owner or user inspection agencies are no longer licensed by the state and inspections of boilers and pressure vessels need only be conducted by a licensed inspector.
675 IAC 30-3-3	Subsection (d) references rules contained in 680 IAC 2-1-1(a)(1) which were transferred to 675 IAC 30-1-1(a)(1) when the Rules Board was dissolved.

675 IAC 30-3-4	This section requires payments to be made to the Boiler and Pressure Vessel Safety Division which is no longer a division under Indiana law.
675 IAC 30-3-5	This section refers to the “director” which is defined in this article as the director of the boiler and pressure vessel safety division established in IC 22-15-2-3 which was repealed. This section also refers to the Rules Board, which was dissolved, and requires licenses and identifying cards to be issued to an authorized inspection agency which is no longer a requirement now that inspections only need to be performed by licensed inspectors and not inspectors employed by an inspection agency.
675 IAC 30-3-8	This section refers to boilers and unfired pressure vessels exempted under IC 22-12-1-20 which was repealed.
675 IAC 30-3-9	This section refers to the Rules Board, which was dissolved, and “inspection agencies”, which are no longer relevant as inspections need only be performed by licensed inspectors, not inspection agencies.
675 IAC 30-3-11	This section refers to specific types of inspectors (e.g. state inspectors and owner or user inspectors), the distinction of which is no longer relevant as inspections only need to be performed by licensed inspectors. This section also refers to filing reports in accordance with IC 22-15-6-4, which was repealed.
675 IAC 30-3-13	This section, among other things, discusses the process for first inspections of boiler or unfired pressure vessels covered by insurance companies, which was modified by statute and no longer needs to be performed by a state inspector and can be performed by any licensed inspector.
675 IAC 30-3-14	This section refers to owner or user inspection agencies and IC 22-15-6-4 which were repealed.
675 IAC 30-3-15	This section refers to owner or user inspection agencies and how they obtain an operating permit by filing an annual report under IC 22-15-6-4 which was repealed.
675 IAC 30-3-16	This section refers to operating permits issued under IC 22-15-6-4 which was repealed.
675 IAC 30-3-18	This section refers to the “director” which is defined in this article as the director of the boiler and pressure vessel safety division established in IC 22-15-2-3 which was repealed.
675 IAC 30-3-21	This section refers to inspection agencies which were eliminated in statute.
675 IAC 30-4-2	This section refers to the rules adopted by the Rules Board in 680 IAC 2-1-1(a)(2) which are now adopted by the Commission in 675 IAC 30.
675 IAC 30-4-4	This section refers to rules adopted by the Rules Board in 680 IAC 2-1-1(a)(1) which are now adopted by the Commission in 675 IAC 30.
675 IAC 30-4-8	This section mentions how the chief inspector is appointed and who the chief inspector reports to in a manner that is no longer supported by statute.
675 IAC 30-4-14	This section defines the term director as the “director of the boiler and pressure safety division established in IC 22-15-2-3”, however this statute has been repealed.
675 IAC 30-4-21	The section defines inspection agencies described in IC 22-15-6-4 which was repealed.
675 IAC 30-4-31	The section refers to rules adopted by the Rules Board in 680 IAC 2-1-1(a)(3) which are now adopted by the Commission in 675 IAC 30.

675 IAC 30-4-32	This section refers to rules adopted by the Rules Board in 680 IAC 2-1-1(a)(3) which are now adopted by the Commission in 675 IAC 30.
675 IAC 30-4-37	This section refers to owner or user inspection agencies described in IC 22-15-6-4 which was repealed.
675 IAC 30-4-43	This section refers to the Rules Board established in IC 22-12-4 which was repealed.
675 IAC 30-5-1	This section refers to boilers and unfired pressure vessels exempted by IC 22-12-1-20 which was repealed.
675 IAC 30-5-11	This section references IC 22-15-6-4(a)(2) and 680 IAC 2-4-31 which have been repealed. This section also references the Rules Board which has been dissolved.
675 IAC 30-5-12	This section refers to owner or user inspection agencies, which have been eliminated, and IC 22-12-1-20(b) which has been repealed.
675 IAC 30-6-1	This section refers to boilers and unfired pressure vessels exempted by IC 22-12-1-20 and 680 IAC 2-2 which were repealed.
675 IAC 30-7-1	This section refers to unfired pressure vessels exempted by IC 22-12-1-20 which was repealed.
675 IAC 30-8-2	Subsection (f) refers to the Rules Board which has been dissolved.
675 IAC 30-8-7	Subsection (d) refers to rules adopted by the Rules Board in 680 IAC 2-1-1 which are now adopted by the Commission in 675 IAC 30.
675 IAC 30-10-16	Subsection (c) refers to rules adopted by the Rules Board in 680 IAC 2-3-18 which are now adopted by the Commission in 675 IAC 30.

In order to resolve these issues and to provide a clear and enforceable regulatory program, amendments to these sections were required.

2. Adopt the modifications made by emergency rule into the IAC.

Currently, the Indiana Boiler and Pressure Vessel Rules are modified by two emergency rules – LSA Document # 19-334(E) and LSA Document # 19-426(E). A copy of these emergency rules can be found at the following links:

- LSA Doc. # 19-334(E) <http://iac.iga.in.gov/iac//20190703-IR-675190334ERA.xml.pdf>
- LSA Doc. # 19-426(E) <http://iac.iga.in.gov/iac//20190904-IR-675190426ERA.xml.pdf>

LSA Document 19-426(E) is an emergency rule that updates the national model codes that govern the regulation of boiler and pressure vessels, which are incorporated by reference in the Indiana Boiler and Pressure Vessel Rules in 675 IAC 30-1-1. The now dissolved Rules Board has traditionally put in place a new emergency rule every two years to keep the model codes up to date without updating the rules contained in 675 IAC 30-1-1. Since the language of emergency rules do not modify the actual language contained in the IAC, but merely create a separate standalone document that supersedes the language of the IAC (see the links above), continually adopting new emergency rules every two years has confused those regulated by the Indiana Boiler and Pressure Vessel Rules on what standards they must comply with. For example, if someone were to solely look at the IAC for guidance, they would be told that Indiana adopts the 1992 version of the model codes when in reality the 2019 version of the model codes have been adopted through the emergency rule. Not only would the continued adoption of emergency rules fail to address this confusing form of rulemaking, it also cuts the public out of the traditional rulemaking process

contained in IC 4-22-2 which requires notice and an opportunity for public comment. Updates to these national codes can be significant and may impose significant impact on the regulated public, therefore the statutory procedures for notice and comment rulemaking should be afforded. Lastly, this emergency rule modification is desired to be included in the IAC to prevent reverting back to the 1992 codes if the emergency rule were to expire without being replaced.

The next emergency rule, LSA Doc. # 19-334(E), made amendments to the Indiana Boiler and Pressure Vessel Rules to implement the statutory changes made to IC 22-15-6 during the 2019 legislative session. During the 2019 legislative session, the Rules Board was eliminated, the power to grant variances was transferred to the IDHS and the Commission, the framework for licensing owner or user inspection agencies was eliminated, the IDHS was no longer required to perform the initial inspection on boilers or pressure vessels inspected by insurance companies, and the requirement to have a boiler or pressure vessel be inspected by an inspector employed by an inspection agency was eliminated. Since the Indiana Boiler and Pressure Vessel Rules are put in place to implement IC 22-15-6, the amendments to IC 22-15-6 rendered many provisions of the Indiana Boiler and Pressure Vessel Rules meaningless, or in conflict with this statutory chapter, necessitating the granting of emergency rulemaking power to implement these statutory changes. Unlike LSA Doc. # 19-426(E), this emergency rule cannot be readopted or replaced by a new emergency rule. Therefore, this proposed rule is needed to continue the effectiveness of the changes contained in this emergency rule, which puts into effect the legislative changes made in 2019.

3. Modify rules to reduce unnecessary regulation and provide clarity

Due to the necessity of having to rewrite the Indiana Boiler and Pressure Vessel Rules for the reasons mentioned above, the Commission also modified these rules to provide clarity and to reduce any unnecessary impact. These rules update outdated terminology, eliminate duplicative provisions, and modify regulations to achieve their desired effect in the least restrictive way possible.

The following chart identifies the notable modifications made to reduce unnecessary regulation and provide clarity that were not specifically made for reasons contained in item 1 or 2 above:

Citation of Current Rule	Issue
675 IAC 12-3-13	This section was amended to simplify the fee schedule for boiler and pressure vessels.
675 IAC 30	This article was amended throughout to use the terminology of “operating permit” instead of “inspection certificate” to be consistent with the statutory language used in IC 22-15-6.
675 IAC 30-1-2	Clarified and expanded the list of boiler and pressure vessels that are exempt from compliance with the Indiana Boiler and Pressure Vessel Rules. <ol style="list-style-type: none"> 1. Moved the exemption previously contained in 675 IAC 30-1-5(b)(2) to this section to no longer require compliance with the Indiana Boiler and Pressure Vessel Rules, not just the inspection and operating permit requirement. (Potential cost savings, but too speculative to quantify as the data is not available).

2. Historical boilers were added to the exempt list to provide clarity to current exemptions contained in 675 IAC 30-1-2(f)(15) and (16). This was not intended to expand any current exemptions as these were not required to be regulated in the past.
3. Miniature boilers and model boilers were split into their own category and specifically defined to provide clarity to the current exemption contained in 675 IAC 30-1-2(f)(12) which left the exemption up to the Rules Board to make. The specific exemptions will now be clearly articulated in rule.
4. Moved the exemption previously contained in 675 IAC 30-1-5(b)(4) to this section to no longer require compliance with the Indiana Boiler and Pressure Vessel Rules, not just the inspection and operating permit requirement. (Potential cost savings, but too speculative to quantify as the data is not available).
5. Added an exemption for pressure vessels that have multiple chambers if each chamber meets another listed exemption. This was a clarification on past interpretations.
6. Fired process heaters were added to the exempt list to provide clarity that these boilers are exempt as they had been exempted in the past by way of language contained in 675 IAC 30-4-5(b) but were not specifically included in this list.
7. Instant on water heaters were added to the list of exemptions. These boilers did not exist when the rule was last drafted, and the decision was to exempt these from regulation as the explosion risk is so small due to the volume contained in the vessel. It is estimated that this would exempt around 700 vessels currently required to comply with the Indiana Boiler and Pressure Vessel Rules. Each one of these vessels would no longer need to obtain an inspection (which the state would charge \$10 for) or an operating permit at the cost of \$25 every two years. Additionally, it is estimated that 50-100 new instant on water heaters would be installed in each year as these become more widely used. A conservative cost savings due to this change would be \$26,250. This figure was arrived at by adding the amount of existing vessels (700) with the amount of new vessels (50 per year) and multiplying this figure (750) by the cost of obtaining an operating permit and inspection (\$35) which comes to \$26,500 (750 vessels x \$35 (\$25 for operating permit + \$10 for an inspection)).
8. Pool/spa heaters were added to the list of exemptions to provide clarity as they had been exempted in the past by way of language contained in 675 IAC 30-4-5(b), as they were not closed vessels, but were not specifically included in this list.

	<p>9. Water softeners were added to the exempt list to provide clarity. Under the current rules, these vessels were exempted by some inspectors under 675 IAC 30-1-2(f)(2) as the water and salt mixture in these vessels was found to not be materially more hazardous than water and therefore, the desire was to specifically exempt these vessels for clarity.</p> <p>10. Modified the current exemption contained in 675 IAC 30-1-2(f)(11) to solely refer to the general term “steam kettle” for clarity and eliminated reference to surgical sterilizers and coffee urns.</p>
675 IAC 30-1-5	<p>Modifications to this section were made moving the vessels described in subitems (b)(2) and (b)(4) to the exempt list in 675 IAC 30-1-2. Added two exemptions from the permitting and inspection requirements, that were not previously identified, for: (1) boilers that: contain a volume of less than 1 and ½ cubic feet, operate entirely full of a liquid heat transfer fluid that will not vaporize at the operating temperature and atmospheric pressure; have a gross output rating of 300,000 btus per hour, and are not located in a place of public assembly; and (2) steam cleaners.</p> <p>Under the first new exemption, it is estimated 150 to 170 boilers will be exempt from the operating permit and inspection requirements that were not exempt in the past. This would result in a savings of \$25 per boiler for the annual operating permit plus \$24 for the annual internal inception and \$18 for the external inspection. Resulting in an annual savings of \$10,750. This figure was arrived at by multiplying the number of boilers it would apply to (160) times the cost of a permit and inspection (\$67). These are no longer being inspected and permitted due to the size and volume of the boiler as the safety risk is equivalent to other exempted vessels.</p> <p>Under the second new exemption, steam cleaners are being exempted for clarity as they were exempt in the past under the definition of boiler in 675 IAC 30-4-5(b) but complied with the construction and operation standards.</p> <p>The modifications to 675 IAC 30-1-5(b)(3) where made to clearly articulate how this exception was intended to apply and had been enforced in the past.</p>
675 IAC 30-3-3	<p>Modifications to this section were made to clarify how to obtain an inspector license. Additionally, this rule offers a new avenue to become eligible to obtain an inspector license – hold an API 510 certification by way of passing the API 510 certification exam.</p>
675 IAC 30-3-4	<p>This section was repealed as it conflicted with 675 IAC 12-3-13(l) of the current rule.</p>
675 IAC 30-3-4.1	<p>This new section removes the requirement for the IDHS to hold the Indiana inspector examination quarterly on specified dates and now permits the IDHS to merely offer the examination quarterly to allow flexibility.</p>
675 IAC 30-3-5	<p>This section was modified to provide clarity on how inspector licenses must be issued, when they expire, how they can be renewed, and how they can be sanctioned.</p>

675 IAC 30-3-6	This section was repealed as its requirements were moved to 675 IAC 30-3-3 for clarity.
675 IAC 30-3-8	This section was deleted as its requirements are contained in other sections of the Indiana Boiler and Pressure Vessel Rules.
675 IAC 30-3-9	This section was amended to provide clarity regarding: (1) the schedule by which boiler and pressure vessels must be inspected and permitted; and (2) how to obtain an operating permit. Additionally, this section was amended to allow operating permits for certain power boilers to be extended up to three years, instead of the currently allowed two-year period. Allowing this extended permit easily may result in saving millions of dollars as these vessels are used to generate electricity and must be shut down to be properly inspected. During the time these boilers are shut down they are not able to produce electricity.
675 IAC 30-3-11	This section was amended to refer to the appropriate forms as indicated in the most current edition of the model codes adopted by reference in the Indiana Boiler and Pressure Vessel Rules.
675 IAC 30-3-14	This section was repealed as the process for paying for an operating permit, and any associated inspections, is contained in 675 IAC 30-3-9.
675 IAC 30-3-15	This section was amended to allow operating permits to be kept in any manner so long as they are readily available for review. Removed the requirement that the permits must be posted under glass. It is estimated the cost of glass is \$3 and typically 8,000 to 10,000 vessels are installed each year, resulting in a potential savings of \$30,000.
675 IAC 30-3-18	This section was amended to eliminate the practice of requiring metal tags to be used to identify equipment in order to allow cheaper stickers to be furnished.
675 IAC 30-3-24	This section was repealed as its requirements are contained in other sections of the Indiana Boiler and Pressure Vessel Rules.
675 IAC 30-4	This rule containing definitions was modified to provide clarity.
675 IAC 30-5-2	This section was amended to provide clarity on how a boiler or unfired pressure vessel must be prepared for inspection.
675 IAC 30-5-5	This section was amended for simplicity and longevity. When this rule was originally drafted the requirements for performing a hydrostatic pressure test were transferred from the adopted model codes to this section. However, as new model codes have been published and incorporated in these rules, this language was not updated to incorporate the changes to these requirements, resulting in conflicting language in the Indiana Boiler and Pressure Vessel Rules. To eliminate the conflicting language and to ensure future adoption of model codes do not conflict with this language, the requirement that a hydrostatic pressure test not exceed one and one half times the maximum allowable working pressure was changed to state the pressure shall not exceed the original hydrostatic pressure test.
675 IAC 30-5-6	This section was amended for clarity.
675 IAC 30-5-8	This section was amended to provide clarity on the requirements for blow-off tanks and piping.
675 IAC 30-5-11	This section was amended to provide clarity on the requirements for repairing boilers and unfired pressure vessels.

675 IAC 30-6-1; 675 IAC 30-7-1	These sections were amended to provide clarity on the requirements for new installations of boilers and unfired pressure vessels.
675 IAC 30-6-2; 675 IAC 30-7-2	These sections were amended to no longer require vessels to be “stamped” to allow for vessels to merely be assigned a state registration number. It is estimated that no longer providing metal tags for boilers and transitioning to stickers will save the state somewhere between \$12,000 to \$13,000 annually.
675 IAC 30-8-16	This section was amended to clarify the rules that existing boilers must comply with.
675 IAC 30-9	This rule was deleted as there are no longer any boilers covered by this rule in the state.

4. Modify rules to address health and safety concerns.

Lastly, the Indiana Boiler and Pressure Vessel Rules are being modified to address health and safety concerns. The following chart identifies the notable modifications made to address matters of health and safety that were not specifically mentioned above:

Citation of Current Rule	Issue
675 IAC 30-3-4.1	This section was added to modify the requirements in the current 675 IAC 30-3-3, specifically the requirements regarding how the IDHS shall administer the inspector examination. The main change here was the length of time an applicant must wait before retaking the examination upon failing. Currently, an applicant who fails the examination is not required to wait any amount of time before retaking the examination. However, this requirement was modified to require a waiting period to ensure an applicant could not immediately retake the examination after failing to prevent an applicant from merely learning the contents of the examination and not the subject matter to ensure inspectors are knowledgeable in the field in which they are licensed.
675 IAC 30-3-5	This section was modified to address the requirements to renew an inspector license. However, this change is currently law as it was incorporated in the current emergency rule that is in place. Additionally, obtaining and keeping an NBBI Commission is the only available means by which an applicant can obtain an inspector license.
675 IAC 30-3-9	This section was modified to clarify and emphasize the internal inspection requirement for unfired pressure vessels. This language was added to specifically address matters of health and safety resulting from fatal incidents in Illinois and Missouri. It should be noted, this requirement is already clarified in the current emergency rule and is currently provided for in the adopted model code which provides the frequency upon which internal inspections shall be completed. This change comes about as the current 675 IAC 30-3-9 never specified whether internal inspections must be performed – it only required “certificate inspections” but went on to spell out process for paying for and preparing for internal inspections unfired pressure vessels. It should also be

	noted, this requirement was not always implemented in the past, which this modification is aimed at addressing.
675 IAC 30-3-23	This section was modified to expand the scope of this section to cover nonstationary boilers and unfired pressure vessels and to require them to obtain a new inspection and operating permit when they are moved. Note, this change was covered by the emergency rule which is currently in effect. This modification would apply to about 50 vessels. The cost for a new permit would be \$25 and the cost for an inspection would be between \$15 and \$60 per vessel depending on the size (with the average cost being around \$20). Therefore, this modification would result in an additional cost of about \$2,250 (\$45 for the inspection and permit multiplied by 50 (the number of vessels). This modification permits the ability to track where the vessel is currently located and ensure when it is moved that it is reinstalled in accordance with code.
675 IAC 30-3-26	This section was added, as a modification to the language currently contained in 675 IAC 30-3-25, to expressly prohibit the ability to use a lower factor of safety than allowed by a vessels original code of construction. Using a lower factor of safety could permit a vessel to be used for an extended period of time, potentially resulting in unsafe conditions. Note, 675 IAC 30-3-25 was repealed by the emergency rule. Additionally, using a lower factor of safety was prohibited prior to the emergency rule, as the IDHS had never allowed this practice. This language merely clarifies, in rule, that a prohibited practice in Indiana is not allowed.
675 IAC 30-5-14	The section was modified to require not only a pressure relief device, but a temperature and pressure relief device for service water heaters. This modification was made more for clarification as it is assumed that most service water heaters already have these devices installed. However, assuming that a service water heater did not have a temperature and pressure relief device already installed, it would cost around \$15 to purchase the device and take around 10 minutes to install. It is estimated that there are around 9,000 service water heaters in Indiana.

Statutory Authority for the Proposed Rule

IC § 22-12-6-6, IC § 22-13-2-8, IC § 22-13-2-13, and IC § 22-15-6-2

Executive Order 13-03 Exceptions to the Regulatory Moratorium

As outlined below, the Commission respectfully requests an exception under Paragraph 6, subparagraphs (b), (e), (f), and (g) to the Regulatory Moratorium for the proposed rule modifying the Indiana Boiler and Pressure Vessel Rules.

This proposed rule repeals existing rules and reduces the regulatory impact of 675 IAC 30.

Pursuant to subparagraph 6(b), the Regulatory Moratorium does not apply to “rules that repeal existing rules or reduce their regulatory impact.” Here, the proposed changes to 675 IAC 30:

- (1) repeal outdated provisions that reference entities that no longer exist or practices that have been modified by statute;
- (2) expand the list of boilers and pressure vessels that are exempt from regulation in Indiana (*see* 675 IAC 30-1-2(f) for the exempt categories);

- (3) expand the list of boilers and pressure vessels that are not required to be permitted and inspected in Indiana (*see* 675 IAC 30-1-5);
- (4) provide an additional avenue to obtain a boiler and pressure vessel inspector license (*see* 675 IAC 30-3-3);
- (5) allow for certain power boilers to have their operating permit and inspection schedule extended up to three years from the previous two year allowance (*see* 675 IAC 30-3-9);
- (6) remove the requirement to attach metal tags to vessels (*see* 675 IAC 30-3-18, 675 IAC 30-6-2, and 675 IAC 30-7-2); and
- (7) removed the requirement for operating permits to be posted under glass (*see* 675 IAC 30-3-15).

This proposed rule addresses matters pertaining to the control of waste, fraud, or abuse within the IDHS and perpetrated against the IDHS.

Pursuant to subparagraph 6(e), the Regulatory Moratorium does not apply to “rules to address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within a state agency or wasteful or abusive activities perpetrated against a state agency.” Here, the proposed changes to 675 IAC 30, generally, address waste that is created by the continued existence of outdated rules that conflict with statutory changes that have occurred over the years, which creates complexity, confusion, and inefficiencies in administering and complying with Indiana law on the subject. For example, 675 IAC 30-3-14 (which refers to IC 22-12-6-10 and IC 22-12-6-11) and 675 IAC 30-5-12 (which refers to IC 22-12-6-12) both reference the charging of fees in accordance with statutes that have been repealed. While alternative authority has been created for the charging of these fees, the continued existence of these rules creates the potential for claims to be filed against the IDHS for enforcement of these fees, which would result in costly litigation. This proposed rule addresses this potential waste of government time and resources.

This proposed rule reduces State spending.

Pursuant to subparagraph 6(f), the Regulatory Moratorium does not apply to “rules that reduce State spending.” Here, the proposed rule will reduce State spending by eliminating the requirement to: (1) provide metal tags to boilers and unfired pressure vessels (*see* 675 IAC 30-3-18, 675 IAC 30-6-2, and 675 IAC 30-7-2); (2) perform initial inspections of boilers and unfired pressure vessels inspected by other licensed inspectors (*see* 675 IAC 30-3-13); (3) issue, or obtain permits for, or have inspections performed on, or perform inspections of, newly exempt boilers and unfired pressure vessels; and (4) eliminate the requirement to host the examination for an inspector license on specific dates.

The predominate purpose and effect of 675 IAC 30 is to address matters of health and safety.

Pursuant to subparagraph (g), the Regulatory Moratorium does not apply to “rules whose predominate purpose and effect are to address matters of emergency or health or safety.” Here, the predominate purpose and effect of the proposed amendments to 675 IAC 30 is to address matters of health and safety. The sole purpose of the regulatory framework for the regulation of boiler and pressure vessels is to ensure their safe operation. Major items of note, that address matters of health and safety, in the modifications to 675 IAC 30, are:

- (1) Emphasizing the requirement to internally inspect unfired pressure vessels, following fatalities that occurred in Illinois and Missouri, to ensure defects in pressure vessels are found before their failure;

- (2) Requiring new operating permits for vessels to be obtained when they are moved so their location can be identified and an inspection is required to verify they were placed in service in accordance with the rules; and
- (3) Specifically eliminating the ability to lower the factor of safety on a boiler or unfired pressure vessel to extend the useful life of a vessel which could result in unsafe conditions.

For these reasons, the Regulatory Moratorium does not apply to the modifications to the Indiana Boiler and Pressure Vessel Rules.

Fiscal Impact Analysis as described in FMC #2010-4

According to Financial Management Circular #2010-4, the agency proposing the adoption of a new rule or adoption of an amendment to an existing rule must complete, and submit to the Budget Agency, a fiscal impact analysis on state and local government. The following is the Commission's fiscal impact analysis of the modifications to 675 IAC 30.

Estimated Fiscal Impact on State and Local Government

The proposed changes to 675 IAC 30 will result in a cost savings on state government of at least \$12,000 a year. This savings will be realized from transitioning away from the requirement of identifying vessels with metal tags and using a cheaper sticker application.

Additionally, state and local government should see a savings from the expanded categories of exemptions from regulation and exemptions from obtaining inspections and operating permits. However, at this time it is unknown how many vessels currently owned by state and local government exist, and therefore, a specific savings was unable to be calculated. However, it should be noted, savings would be realized by no longer having to pay for an operating permit and inspection of the vessel. Additionally, reducing the number of vessels required to be inspected and permitted will ultimately reduce the amount of resources the IDHS must expend on employing inspectors and paying for other overhead associated with performing inspections (e.g. vehicle costs, technology costs, etc.). Additionally, savings should be realized from no longer being required to place operating permits under glass. These speculative savings should greatly outweigh the income that will no longer be collected from permit fees for exempt vessels which is estimated to be reduced by 460 permits a year at \$25 per permit resulting in a reduction of revenue of \$23,000 per year. The amount of permits per year was arrived at by dividing the amount of instant on water heater vessels currently permitted (700) by two as they receive a permit every two years, and adding that figure to the amount of vessels that would be exempt under the modifications to 675 IAC 30-1-5 (160) and subtracting this number by 50 (the amount of vessels that will be required to now obtain a permit every time they are moved).

Anticipated Effective Date of the Rule

July 1, 2021

Sources of Revenue Affected by the Rule

Potential sources of revenue that would be affected by the proposed rule are:

1. Income generated from the collection of operating permit fees will be decreased due to the exemption of certain categories of boilers and pressure vessels from the operating permit requirements. The operating permit fee is contained in 675 IAC 12-3-13(f) and is \$25.

2. Income generated for the collection of inspection fees will decrease due to the exemption of certain categories of boiler and pressure vessels from the operating permit requirements. Inspections fees can be found in 675 IAC 12-3-13.

Appropriations, Distributions, or Other Expenditures of Revenue Affected by the Rule.

NA

Administrative Impact to State and Local Governments

This rule does not have an administrative impact on state government or local government. The current framework for regulation of boilers and pressure vessels is already in place and no new administrative obligations will be created. If anything, administrative requirements will be lessened for the state as this rule should provide much needed clarity, eliminate confusion and conflict in current law, and memorialize current practices.

Does this Rule Create an Unfunded Mandate on a State Agency or Political Subdivision?

The amendments to the Indiana Boiler and Pressure Vessel Rules do not create an unfunded mandate.

Cost-Benefit Analysis as described in FMC #2010-4

According to Financial Management Circular #2010-4, the agency proposing the adoption of a new rule or adoption of an amendment to an existing rule must complete and submit to the Budget Agency a cost-benefit analysis of the proposed rule or amendment. The following is the Commission's cost-benefit analysis of the amendments to the Indiana Boiler and Pressure Vessel Rules.

Statement of Need

The amendments to the Indiana Boiler and Pressure Vessel Rules are needed, as provided above, to: (1) bring 675 IAC 30 up to date with legislative changes that have occurred over the years; (2) adopt the current emergency rules that are in place; (3) reduce unnecessary regulation; (4) clarify language; and (5) address matters of health and safety.

The number of businesses and individuals affected by this rule is in the thousands. It is estimated that 80,000 boilers and pressure vessels are regulated by these rules.

This proposed rule is a general rule that is intended, in most part, to be a regulatory clean-up. There was no single item that this update was intended to address. The promulgation of this proposed rule was conducted by a committee of individuals which included state inspectors, the regulated public, and professionals in the boiler and pressure vessel field. All meetings were open to the public and conducted in conformance with the Open Door Law. All changes were voted on by the committee members.

Evaluation of Costs and Benefits

The benefits of the amendments to 675 IAC 30 undoubtedly exceed the costs. As provided above, this rule will: (1) reduce the regulatory impact by exempting certain categories of boilers and pressure vessels from regulation or the inspection and permitting requirements; (2) eliminate waste that may be caused by conflicting language in statute and rule; (3) eliminate duplicated inspections being performed by insurance company inspection agencies; (4) put into place the emergency rules in a more permanent manner to provide clarity and consistency in the law; (5) repeal outdated

provisions that reference entities that no longer exist or practices that have been modified by statute; (6) provide an additional avenue to obtain a boiler and pressure vessel inspector license; (7) allow for certain power boilers to have their operating permit and inspection schedule extended up to three years from the previous two year allowance; and (8) eliminate needless regulations such as requiring metal tags or permits to be posted under glass.

These rules were drafted in a manner to eliminate the imposition of additional or unwarranted costs. The only new costs imposed (inspection and permitting of vessels when they are moved and the hypothetical cost of requiring a temperature and pressure gauge instated of just a pressure gauge) are justified, as explained above, and result in minimal cost. In conclusion, the benefits of this rule outweigh the costs.

Total Estimated Economic Impact On All Regulated Persons Greater than \$500,000?

The total estimated economic impact of the proposed rule on all regulated persons is less than \$500,000. As provided above, this rule should reduce regulatory impact and costs, however, the extent of these savings is too speculative to calculate but is expected to be in the millions. However, when analyzing the impact that is based on reliable data, the total estimated impact is expected to be a cost savings of \$79,000 per year.

This figure was arrived at based on the below figures as calculated above:

1. Savings of \$12,000 for no longer using metal tags.
2. Savings of \$30,000 for no longer requiring permits to be placed under glass.
3. Savings of \$26,250 for exempting instant on water heaters from regulation.
4. Savings of \$10,750 for exempting small boilers in 675 IAC 30-1-5 from inspection and permitting.

Copy of the Proposed Rule

A copy of the proposed rule has been attached.

Contact Information for Agency Staff

Justin K. Guedel
Deputy General Counsel
Indiana Department of Homeland Security
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204
(317) 234-9515
JGuedel@dhs.IN.gov