

DIVISION OF FIRE SAFETY
VERMONT DEPARTMENT OF PUBLIC SAFETY

Rules for Administrative Citations and Penalties

Section 1. Scope

The Commissioner or the representative of the Commissioner may, after notice and an opportunity for a hearing, assess an administrative penalty against any person who violates the laws, rules and standards referenced in this rule.

These rules establish the procedure for issuing administrative citations, assessing penalties and appealing citations. All programs enforced by the Division of Fire Safety including boiler/pressure vessel, fire safety, structural, prevention of carbon monoxide poisoning, fire-safe (reduced ignition propensity) cigarettes, elevator safety, access for persons with disabilities, electrical and plumbing, are covered by these rules ensuring that all programs will have a consistent process for administrative citations. The purpose of these rules is to encourage code compliance that will result in improved safety and access for the public in a timely manner.

Section 2. Authority

These rules are adopted pursuant to:

- (a) 20 V.S.A. § 2885; chapter 173, subchapter 5, Boiler & Pressure Vessels
- (b) 20 V.S.A. § 2734; chapter 173, subchapter 2, Fire Safety
- (c) 20 V.S.A. § 2906; chapter 174 Accessibility Standards for Public Buildings and Parking
- (d) 26 V.S.A. § 897; chapter 15 Electricians
- (e) 26 V.S.A. § 2175; chapter 39 Plumbers
- (f) 20 V.S.A. § 2757; chapter 173, subchapter 2A, Fire-Safe (Reduced Ignition Propensity) Cigarettes
- (g) 21 V.S.A. §§ 150 and 156; chapter 3, subchapter 2A, Elevators

Section 3. Issuance of Administrative Citation

(a) The Commissioner or the representative of the Commissioner may issue an administrative citation, and have the administrative citation served on the person by certified mail or personal service. Each citation shall be in writing and shall specifically describe the nature of the violation, its location and include a reference to the particular section of the law, rule or standard alleged to have been violated. The citation shall also state the amount of the fine and the process for appeal.

(b) The person alleged to have committed the violations shall have twenty days from the date of service to notify the Director of the Division of Fire Safety or the individual identified in the citation, in writing, of any intent to appeal the citation and fine. If no notice or appeal is filed the citation and penalty shall be deemed a final order of the Commissioner.

(c) Administrative citations and penalties issued under these rules shall not limit the authority of the Commissioner or a representative of the Commissioner under other sections of law to issue orders, revoke permits, stop work on construction, seek injunctive relief and penalties through the court system, order buildings closed, demolished or to be fenced off, or to order the electrical power to be disconnected, or to take any other appropriate enforcement action. Administrative citations and penalties issued under these rules shall not limit the authority of the Commissioner of Liquor Control under 7 V.S.A. § 1009 or the Office of the Attorney General under 20 V.S.A. § 2757(h).

Section 4. Appeal of Proposed Penalty

The procedures set forth in 3 V.S.A. §§ 809 and 813 shall cover all hearings under these rules.

- (a) A person who appeals a citation issued pursuant to Section 3 of this rule shall be entitled to a hearing before the Commissioner or designee within 60 days of filing the notice of appeal. The 60 day time frame may be extended if the appellant requests, in writing, additional time to prepare for the hearing.
- (b) A hearing notice to the appellant shall include the following information:
 - (1) A statement of the time, place, and nature of the hearing;
 - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) A reference to the sections of the statutes and rules involved;
 - (4) A short and plain statement of the matters at issue.
- (c) The Commissioner may appoint a hearing officer to hear evidence on any complaint and prepare findings and recommend a decision.
- (d) The applicant may appear at the hearing with Counsel, present evidence and cross-examine witnesses.
- (e) At the hearing the rules of evidence shall be according to 3 V.S.A. § 810.
- (f) Opportunity shall be given all parties to respond and present evidence and argument on all issues involved.
- (g) The hearing officer may compel, by subpoena, the attendance and testimony of witnesses and the production of books and record in accordance with 3 V.S.A. § 809.
- (h) At the close of the evidence the Commissioner or the representative of the Commissioner shall issue a written decision with findings of fact and conclusions of law determining whether a violation or violations have occurred and the amount of any penalty to be assessed.
- (i) Nothing in this section shall prohibit the informal disposition of a citation by stipulation, agreed settlement, consent order or default. Informal disposition may proceed with clear and simple documentation without complete adherence to this section.

Section 5. Administrative Penalty/Fine

When a penalty is assessed the fine shall be as follows:

- (a) Permits:
 - (1) Failure to obtain an identification tag for a boiler or pressure vessel, the fine shall be \$100 for each occurrence.
 - (2) Failure to obtain a construction permit before starting work, the fine shall be an additional amount equal to ½ of the construction permit fee due the Department, but not less than \$500 for each occurrence.
 - (3) Failure to file an electrical or plumbing work notice with the appropriate fee, before starting work, the fine shall be \$100 for an initial violation, and up to \$500 for subsequent violations.

(b) Repair and Construction:

(1) Failure to notify a commissioned inspector for the repair, alteration or relocation of a boiler or pressure vessel, the fine shall be \$100 for each occurrence.

(2) Failure to request a rough electrical inspection or a rough plumbing inspection for priority work, the fine shall be no more than \$250 for each occurrence.

(3) Failure to comply with a stop work order, the fine shall be \$500 for each occurrence.

(c) Operation and Use:

(1) Operating or allowing a boiler or pressure vessel to be operated without a valid certificate of inspection, the fine shall be \$250 for each occurrence.

(2) Failure to obtain a final inspection or a Use and Occupancy Permit before occupancy or using a building, the fine shall be not more than \$1000 for each occurrence.

(3) Failure to obtain a final inspection or an energizing permit before the electrical installation is energized, the fine shall be \$250 for each occurrence.

(4) Failure to obtain a final inspection for priority plumbing work shall be \$250 for each occurrence.

(d) Code Violations:

In assessing the penalty for code violations the Commissioner or a duly authorized representative shall consider the seriousness of the hazard, the number of people exposed to the hazard, whether or not the violation was corrected after notification of its existence, and whether the person has been fined for the same or similar violations in the past. In assessing the penalty where the violation concerns access to the building, whether access to the building is prevented as well as any alternative provisions shall be considered. Where a person has been fined for the same or similar violation in the past the fine may be twice the amount listed in this section, but may not exceed \$1000 for each occurrence.

(1) The fine shall not exceed \$500 for each code violation which poses a serious threat to life safety, or prevents access or use of a building or premise.

(2) The fine shall not exceed \$1000 for each code violation which poses a serious threat to life safety, or prevents access or use of a building or premise, where the person has not corrected the violation after receiving written notification.

(3) The fine shall not exceed \$250 for each technical code violation which does not pose a serious threat to life safety, or does not prevent access or use of a building or premise.

(4) The fine shall not exceed \$500 for each technical code violation which does not pose a serious threat to life safety, or does not prevent access or use of a building or premises, where the person has not corrected the violation after receiving written notification.

(e) Licensing and Certification:

(1) A person who performs electrical, elevator or plumbing work without being properly licensed shall be fined not more than \$500 for each occurrence.

(2) A person or entity who employs a person or persons to perform work for which a license is required or where a helper or apprentice is not properly supervised in violation of any of the programs set forth in section 1 shall be fined not more than \$500 for each occurrence.

(3) A person who performs activities related to fire or life safety that requires a certificate of fitness under the Vermont Fire & Building Safety Code without a certificate of fitness shall be fined not more than \$500 for each occurrence.

(4) Where a person has been fined for the same or similar violation in the past the fine may be twice the amount listed in this section, but may not exceed \$1000 for each occurrence where authorized by statute.

(f) Fire-Safe (reduced ignition propensity) Cigarettes:

The fine shall be assessed in accordance with, and not exceed, the amounts established under 20 V.S.A. § 2757.

(g) Other:

The fine shall not exceed \$500 for each administrative or technical violation not otherwise noted in this section.

Section 6. Overdue Payment

The authority having jurisdiction may refuse to issue a permit, license, certificate of fitness, work notice, energizing permit, final inspection, certificate of occupancy or plan review or take other action under its authority if the owner or a designated representative owes the Department penalties. The Department may notify other state agencies of noncompliance with an order of the Commissioner or nonpayment of penalties.

Section 7. Severability Clause

In the event any part or provision of these rules is held to be illegal, this shall not have the effect of making void or illegal any of the other parts or provisions of these rules.

Section 8. Effective Date

These rules shall take effect on December 1, 2006, and shall supersede Appendix II of the Vermont Electrical Safety Rules adopted November 1, 2005 and Article III, Section 3 of the Vermont Elevator Safety Rules adopted December 1, 2005.