

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH1515 CLAY STREET, SUITE 1901
OAKLAND, CA 94612
(510) 286-7000 FAX: (510) 286-7037MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603**INITIAL STATEMENT OF REASONS****Subject: INSPECTION AND PERMIT FEES, PRESSURE VESSELS, TANKS & BOILERS****TITLE 8, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 344 AND 344.1**

This Initial Statement of Reasons (“ISOR”) explains the purpose, necessity, rationale and criteria used by the Division of Occupational Safety and Health (“Division” or “DOSH”) of the Department of Industrial Relations in support of its proposed regular rulemaking to make permanent the increased inspection fee amounts and mileage charges to be assessed by the Division for inspections it performs related to pressure vessels, tanks and boilers operated in California.

Effective March 18, 2013, the Division adopted emergency regulations that amended sections 344 (Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks) and 344.1 (Air Tank, Liquefied Petroleum Gas [L.P.G.], and Boiler Inspection Fees) of the California Code of Regulations, Title 8. The emergency rulemaking is OAL File No.: 2013-0314-03-EFP. Regulations 344 and 344.1 are found in Article 5 (Boiler and Tank Permit and Inspection Fee Schedule), Subchapter 2 (Regulations of the Division of Occupational Safety and Health), Chapter 3.2 (California Occupational Safety and Health Regulations (Cal/OSHA)), and Division 1 (Department of Industrial Relations) of Title 8 in the California Code of Regulations. Labor Code section 7721(e) mandates that fees required to implement the Division’s responsibilities for conducting inspections including shop and resale inspections, audits and consultations for the owners or operators of boilers, pressurized vessels, air tanks and LPG tanks and fees for issuing permits for the use of such boilers and tanks must be adopted as emergency regulations under the Administrative Procedures Act, California Government Code sections 11340 *et seq.*

By the emergency rulemaking, the Division amended regulation 344, effective March 18, 2013, to increase the hourly inspection fee charged for inspections conducted by Division qualified inspectors from \$ 110.00 per hour to \$ 135.00 per hour for shop and resale inspections as well as consultation and audit inspections of boilers and tanks. For inspection work performed after 5 PM or on a Saturday, Sunday or a holiday, the hourly fee was increased to \$ 202.50 per hour (section 344). In addition, the expense for mileage to be added to the hourly inspection fee for such inspections was increased from 31 cents to 55.5 cents per mile under regulation 344.

Also, the Division amended regulation 344.1, effective March 18, 2013, to increase the hourly fee charged for field permit inspections of air tanks, liquefied petroleum gas (L.P.G.) tanks and boilers performed by qualified Division inspectors from \$ 135 per hour to \$ 160 per hour.

To make clear for the interested public how the regulatory language was changed by the emergency rulemaking, and what the Division is now proposing to become permanent regulatory changes in hourly inspection fees and mileage charges, the display of the regulatory language in this rulemaking package shows, by use of underline and strikeout, how the language in sections 344 and 344.1 that existed before the emergency rulemaking is being changed for adoption as new permanent regulatory language. Please refer to the regulatory language to see this display.

The Division invites the interested and affected public to comment on the proposed regulations addressed in this ISOR. Please refer to the Notice of Rulemaking for instructions on how to submit, and the deadlines for, written comments made electronically, by mail or submitted in person and oral comments made at the hearing to be held November 7, 2013, as part of this rulemaking.

Background

The Division is responsible for administering and enforcing the provisions of the California Occupational Safety and Health Act, which begins at section 6300, in Part 1 of Division 5 of the Labor Code, and other parts of Division 5 that previously were the responsibility of the Division of Industrial Safety. (Lab. Code §§ 60.5 and 6308.) More specifically, the Division is responsible for enforcing the provisions of Labor Code sections 7620 through 7804, which comprise Part 6 of Division 5 of the Labor Code and govern the use of tanks, pressure vessels and boilers in California that are not specifically exempted by Labor Code sections 7624 and 7625.¹ Tanks are defined as any unfired pressure vessel used for storage of air pressure or liquefied petroleum gases and any unfired pressure vessel built according to the rules of any nationally recognized pressure vessel code. (Lab. Code § 7622.) Boiler is defined as any fired or unfired pressure vessel used to generate steam pressure by the application of heat. (Lab. Code § 7621.) The Pressure Vessel Unit of the Division enforces the pressure vessel and boiler safety standards through shop inspections, resale inspections, audits, consultations, tank and boiler inspections and the issuance of permits to operate. Pursuant to Labor Code section 7720, the Division is authorized to charge inspection fees and permit fees for the services it provides in carrying out these mandates.

No tank or boiler shall be operated in California unless a permit for its operation has been issued by, or on behalf of, the Division (Lab. Code § 7680.) The Division's Pressure Vessel Unit conducts regular inspections of such equipment prior to issuing a permit to operate air tanks, liquefied petroleum gas (L.P.G.) tanks and boilers. (Lab. Code §§ 7681 - 7683.) Qualified safety engineers employed by the Division, and persons who are certified by the Division and employed by a county, city, insurer or employer for the purpose of inspecting only the employer's tanks and

¹ Exempted tanks are those under the jurisdiction or inspection of the federal government, air pressure tanks used in household domestic services, tanks of 1 ½ cubic feet or less not subject to a pressure of more than 150 pounds per square inch, and air pressure tanks supplied with air by the same air compressor which supplies air for the brakes of any motor vehicle or street car under the jurisdiction of the federal Department of Transportation or the California Highway Patrol. (Lab. Code § 7624.) Exempted team boilers are those under the jurisdiction or inspection of the federal government, boilers operated by employers not subject to Division 4 of the Labor Code (§§ 3201 *et seq*), boilers on which pressure does not exceed 15 pounds per square inch, boilers on automobiles and road motor vehicles. (Lab. Code § 7625.)

boilers, may also perform inspections. (Lab. Code § 7650.) If a tank or boiler is found after inspection to be in a safe condition for operation, a permit for its operation must be issued by or on behalf of the Division. (Lab. Code 7683.) The Division issues permits based on inspection reports filed either by Division qualified safety engineers or those certified inspectors who are employed by a county, city, insurer or employer in compliance with the Labor Code and applicable regulations. (Lab. Code § § 7681, 7682 and 7683. See also sections 450 through 560 and 750 through 797, title 8, California Code of Regulations.)

The owner/operator of a tank or boiler may request the Division to inspect and issue a permit to operate the equipment, or may have the inspection performed by one of the certified inspectors listed in Labor Code section 7650. The Division is authorized to charge fees for conducting field inspections, conducting resale and shop inspections, providing consultations, conducting surveys, audits and other activities required or related to meeting national standards for the safe design and construction of tanks and boilers, and for processing permit applications (Lab. Code § 7721). Whenever the inspection of a pressurized air tank, L.P.G. or boiler is performed by a certified inspector employed by a city, county, insurer or the employer for the purpose of inspecting the employer's equipment, the Division may charge only \$ 15.00 to "cover the cost of processing the permit" (Lab. Code § 7721(b)). The actual costs to the Division of processing the permit based on the inspection by such a certified inspector include the Division's costs of reviewing and evaluating the inspection report, maintaining a portion of the permit inspection database and issuing a permit to operate.

Generally, permits for unfired L.P.G. tanks are valid for 3 years and other unfired air tanks are valid for 5 years. (8 Cal. Code Regs. § 462.) Permits for fired boilers are valid generally for 12 months, except for specified petroleum, chemical and power generating facilities that may obtain permits for longer periods after meeting specified conditions. (8 Cal. Code Regs. §§ 770, 771.)

The regulation text for sections 344 and 344.1, now proposed for adoption as permanent regulations, is the same text as was adopted on an emergency basis effective March 18, 2013.

TECHNICAL, THEORETICAL OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON

1. Program Cost Detail of the Division's Pressure Vessel Unit, which is attached to this ISOR as Appendix A.
2. Report of Pressure Vessel Special Fund Revenue and Resources, made pursuant to Labor Code section 7722.

REQUIRED USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT: None.

PROBLEM ADDRESSED BY THIS RULEMAKING

The Division is mandated by Labor Code sections 7620 *et seq.*, as described above, to protect the public safety, health and welfare from preventable boiler, pressure vessel and tank explosions by means of a safety inspection and permit program. The inspection of air tanks, LPG tanks and boilers prior to issuing a permit to operate enables the Division to determine that the equipment complies with the standards set out in specific regulations that govern the construction, maintenance and operation of such equipment in a safe manner.

Pressurized tanks, vessels and boilers present a serious public and workplace menace from explosions if not properly constructed, maintained and operated. The inspection of pressurized tanks, vessels and boilers, for compliance with the regulations and statutes that govern safe maintenance, use and operation, is necessary to protect the public and employees working in the vicinity of such vessels from the danger of injury or illness from explosion and exposure to hot, toxic or other hazardous substances or gases held under pressure inside such tanks and boilers. (Lab. Code §§ 7681 – 7683, 7680 and 7750.) Labor Code sections 7680 and 7750 require any person who owns or has custody of a pressurized tank and boiler as defined in Part 6 of Division 5 of the Labor Code to obtain a permit to operate from the Division based on an inspection of such equipment. The Division must be able to collect sufficient revenue through fees and mileage reimbursement to cover its costs of personnel, operating expenses, travel and administration of Part 6 (“Tanks and Boilers”) of Division 5 (“Safety in Employment”) of the California Labor Code. (Lab. Code §§ 7720-7722 and 7728.) Currently the Division’s Pressure Vessel Unit is funded through inspection, consultation and permit fees, as well as mileage charges, which are deposited into the Pressure Vessel Fund, a special fund in the state Budget. In addition, the Pressure Vessel unit receives a portion of its funding from surcharges assessed on employers pursuant to Labor Code section 62.5(d), which are deposited into the Occupational Safety and Health Fund (OSH Fund). This portion of the Unit’s funding covers the Division’s expenses and costs for performing pressure vessel, tank and boiler inspections for public agencies. (Lab. Code §§ 62.5(d), 7721, 7722, 7726 and 7728.) The Unit receives no General Fund revenue or appropriation.

The benefits of the proposed changes in fees and mileage rates are:

- 1) the fees and mileage charges made to private sector businesses for the services performed by Division inspectors and by the issuance of permits will cover the Division’s costs in conducting the private sector inspections of pressure vessels, tanks and boilers as required by the Labor Code;
- 2) by maintaining the inspection and the permit program, the Division will protect the public safety and the safety of employees required to work in the vicinity of pressurized vessels, tanks and boilers by ensuring such equipment meets safety requirements under California statutes and regulations; and
- 3) by ensuring safe operation of such equipment, people living and working in California will be protected from unnecessary physical injuries, illnesses and death due to preventable explosions of such equipment, and California businesses will be protected from the costs and business disruption that also result from preventable explosions.

At the direction of the Director of the Department of Industrial Relations, the Division has evaluated the costs associated with its Pressure Vessel Unit (“the Unit”) in performing these mandates. As set forth below, the Division has found that the Unit is expending significantly more

money performing inspections and providing related services, including the issuance of permits, for private, non-governmental businesses than it recoups through current fees and mileage costs for permits, inspections and consultations at such private businesses.² To continue performing inspections of boilers, tanks and pressure vessels as mandated under the Labor Code, the Division must increase the hourly inspection fees and mileage charges in order to cover its costs.

Summary of Proposed Changes – Specific Purpose, Rationale and Necessity for Each Amendment (Government Code 11346.2(b)(1))

SECTION 344. Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks.

Specific Purpose: Section 344 applies to all shop inspections, field erection and resale inspections, consultations, surveys, audits and other reviews and activities required or related to American Society of Mechanical Engineers (ASME) Code or other national standards concerning the design of boilers or pressure vessels or for evaluating a fabricator’s plant facilities when requested by entities desiring these services. The purpose of section 344 is to set out the hourly inspection fee amounts, rules governing how inspection and travel time is charged, conditions under which a penalty for late payment of fees may be assessed and the penalty amount, and the basis and amount for expenses to be charged by the Division when Division inspectors are requested to inspect pressure vessels, tanks, boilers, parts of tanks and boilers and nuclear components. The only wording in the regulation being changed in this rulemaking is in subdivision 344(a), to change the hourly fee amount from \$ 110.00 per hour to \$ 135.00 per hour, and to add wording that provides that the hourly inspection fee amount will be \$ 202.50 per hour for inspection work performed after 5 PM and at any time on Saturday, Sunday and holidays.

Necessity: For the reasons set out in the Program Cost Detail, Appendix A of this ISOR, the Division determined the hourly inspection amount needed to enable the Division to meet its expenses and costs for conducting the inspection and permit services described in Part 6, Division 5, of the Labor Code for the pressure vessel, boiler and tank safety inspections performed for private sector owners and operators of such equipment. The Division’s inspection and permit system protects the public and local workers and employers from possible death and serious injury or illness, and protects local businesses and local government from economic disruption and the use of emergency rescue and police services that would result from an explosion or uncontrolled leak of hot, toxic or otherwise harmful contents in pressurized boilers and tanks. By having sufficient fee revenue to meet the Division’s costs of conducting these inspection and permit services, the Division will be able to continue protecting the safety and health of the public, the safety and health of employees working in the vicinity of such boilers and tanks and the uninterrupted commerce of businesses and government operating near such equipment.

Authority and Reference

² Government Code § 6103 prohibits the Division from charging fees for inspections or permits for pressure vessels and boilers owned or operated by public entities including the state or any city, county, district or other political subdivision. Effective January 1, 2010, the costs associated with such inspections by the Division and permits issued to public entities have been funded through revenues received pursuant to Labor Code § 62.5(d).

Authority cited: Sections 60.5, 6308, 7721 and 7722, Labor Code. Labor Code section 60.5(b) provides that the Division of Occupational Safety and Health succeeds to and is vested with all of the powers duties, purposes, responsibility, and jurisdiction of the Division of Industrial Safety. Regulations and actions of the Division of Industrial Safety are deemed to be regulations of the Division of Occupational Safety and Health (Lab. Code 60.1(d).) Section 6308 of the Labor Code provides, in pertinent part, that:

“...in enforcing occupational safety and health standards and orders and special orders [the division] may do any of the following:...declare and prescribe declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.”

Labor Code section 7721(a) expressly provides the division may:

“...fix and collect fees for the shop, l field, and resale inspection of tanks and boilers and for consultations, surveys, audits and other activities required or related to national standards concerning the design or construction of boilers or pressure vessels or for evaluating fabricator’s plant facilities when these services are requested of the division by entities desiring these services.”

Subsection 7721(c) expressly provides the “...division may fix and collect fees for field consultations...” Labor Code section 7721(e) provides, in pertinent part, “Any fees required pursuant to this section shall be embodied in regulations...”

Section 7722 of the Labor Code requires the division to “establish criteria upon which fee charges are based...”, and to deposit inspection fees collected in the Pressure Vessel Account created to be used for the administration of the division pressure vessel safety program.

Reference: Sections 7721 and 7728, Labor Code. As explained above, Labor Code section 7721 enumerates the various fees the division may fix and collect for its inspection of pressure vessels, tanks and boilers. Subsection 7721(b) limits the division to charging a “...fee of not more than fifteen dollars (\$ 15) to cover the cost of processing a permit.” Section 7720 of the Labor Code states, in pertinent part: “No fee shall be charged by the division where an inspection is made by a certified inspector...” Sections 344 and 344.1 of Title 8 of the California Code of Regulations are regulations that interpret, make specific and implement the provisions of these statutes.

SECTION 344.1. Air Tank, Liquefied Petroleum Gas (L.P.G.) and Boiler Inspection Fees

Specific Purpose: Section 344.1 applies to the hourly fee charged by the Division, including specified travel time, and penalties for late payment, for field permit inspections of air tanks, liquefied petroleum gas (L.P.G.) tanks and boilers performed by its qualified safety engineers when requested by the owner or operator of such equipment. The only wording being changed by this rulemaking is to increase the hourly amount from \$ 135.00 per hour to \$ 160.00 per hour.

Necessity: For the reasons set out in the Program Cost Detail, Appendix A of this ISOR, the Division determined a ‘blended’ hourly inspection amount needed to enable the Division to meet

its expenses and costs for conducting these field inspection and permit services described in Part 6, Division 5, of the Labor Code under the pressure vessel, boiler and tank safety program. The Division's inspection and permit system protects the public and local workers and employers from possible death and serious injury or illness, and protects local businesses and local government from economic disruption and the expense incurred for emergency rescue and police services that would occur from an explosion or uncontrolled leak of hot, toxic or otherwise harmful contents in pressurized boilers and tanks. By having sufficient fee revenue to meet the Division's costs of conducting these inspection and permit services, the Division will be able to continue protecting the safety and health of the public, the safety and health of employees working in the vicinity of such boilers and tanks, and the uninterrupted commerce of businesses and government operating near such equipment.

Authority and Reference

Authority cited: Sections 60.5, 6308, 7721 and 7722, Labor Code. Reference: Sections 7721 and 7728, Labor Code. The reasons explained above under Authority and Reference, respectively, for section 344 apply equally to section 344.1.

ECONOMIC IMPACT ANALYSIS

Approximately 40% of the pressure vessels and boilers to be operated in California and requiring an inspection during a fiscal year are inspected by the Division. Seventy five percent of these businesses are small businesses. The remaining 40% of private sector pressure vessels and boilers are inspected by inspectors employed by an insurance company, city or county, or by an employer solely to inspect the employer's equipment, as allowed under the Labor Code. The remainders of permit inspections are for state, local government or other public sector political subdivision entities (special districts, etc.) In the case of permit inspections performed by certified inspectors employed by an insurance company or an employer, the Division receives an inspection report with the permit application, reviews and evaluates the report for compliance with applicable regulations and statutes, enters relevant data into the pressure vessel permit database system and, when appropriate, issues the permit. Division safety engineers also spend considerable time on the phone and in the field providing advice to the inspectors employed by cities, counties, insurance companies and specified employers about applicable laws, regulations, code interpretations and technical matters.

Labor Code section 7721(b) mandates, in pertinent part, "...that the Division may charge a fee of not more than \$ 15 to cover the cost of processing a permit...", based on the inspection reports filed by non-Division inspectors. Under current law the Division is unable to increase the statutorily fixed permit fee to cover the Division's costs of maintaining the inspection and permit database that includes permits issued on the basis of non-Division inspections. To meet the Division's costs, it must increase the hourly inspection fees for the inspections, consultations, audits and field permit inspections the Division conducts. In addition the Division proposes to raise the mileage reimbursement rate to the amount the Division must reimburse Division employees or otherwise pay for vehicle transportation used by Division inspectors. Also, as noted above, there is no statutory authority for assessing inspection or permit fees on public entities.

The Division's hourly inspection fees in sections 344 and 344.1 of title 8 of the California Code of Regulations, and the mileage reimbursement fee, were last increased in 2000. The Division's costs have increased each year in the interim. If the Division is unable to increase the hourly inspection fees and the mileage reimbursement rate, as proposed by the amendments to regulations 344 and 344.1 summarized above, the Division may be required to suspend its safety inspection and permit program for pressure vessels and boilers operated in California, which would expose the public and employees in the vicinity of such pressurized vessels and boilers to a credible risk of significant injury, impairment or death upon failure of a pressure vessel, tank or boiler. In addition, should a vessel or boiler explode, there would be related economic losses due to business interruption.

Evidence Supporting Finding of No Significant Statewide Adverse Impact Directly Affecting Business

The Division estimates that approximately 18,042 businesses, which includes every business from every type of industry that uses pressurized air tanks, propane tanks, LPG tanks or boilers, throughout California, request the Division to inspect and issue permits for the use of such equipment per year. Approximately 25% of these businesses fall within the definition of small businesses under Government Code section 11342.610.

The hourly inspection fee increase proposed under section 344 is an increase of \$ 25.00 per hour for shop inspections, resale inspections, audits and consultations, which on average would result in an increase of \$ 3884 per business having such an inspection assuming all such inspections take the same number of hours.

The hourly inspection fee increase proposed under section 344.1 is an increase of \$ 25.00 per hour for field permit inspections of air tanks, LPGs and boilers. These inspections generally take one hour per piece of equipment. This represents an increase in the fee for a boiler inspection of 18.5% from the existing hourly field inspection rate of \$ 135.00 per hour. Because the permits for air tanks are valid for 5 years this increase is effectively an increase of \$ 5.00 per year. Because the permits for LPGs are valid for three years this increase is effectively an increase of \$ 7.55 per year over the life of a permit.

As noted above, the hourly inspection fees and mileage rates have not been increased since 2000. If calculated since the last fee increase, the proposed shop inspection, resale inspection, audit and consultation fee represents an increase of approximately \$ 299 per year over the fee amounts set in 2000, or 8% above the average shop inspection fees. For field permit inspections of air tanks and LPGs, for example, the hourly fee amount represents an increase of under \$ 2.00 per year since the last field permit inspection fee was set.

Creation or Elimination of Jobs Within the State of California

The Division does not anticipate any jobs in California will be created or eliminated due to the financial impact of the proposed fee increases on individuals and businesses affected by the proposed changes to regulation 344 or 344.1. The dollar amount, and therefore the financial impact, of the increase in fees as proposed by the Division to be assessed to a business that owns

or operates a pressure vessel, tank or boiler, and requests the Division's services to inspect the equipment, is too small to result in the creation or elimination of jobs.

Creation of New Business, Elimination of Existing Business or the Expansion of Business in California

The Division does not anticipate any jobs in California will be created or eliminated due to the financial impact of the proposed fee increases on individuals and businesses affected by the proposed changes to regulation 344 or 344.1. A private sector business that requests the Division to inspect a pressure vessel, tank or boiler must need the equipment to operate the business. Such an owner or operator has the option, under Labor Code section 7650, of having the inspection performed by their insurer or of obtaining certification for one or more employees at the business as a person qualified under Labor Code section 7650 to inspect the equipment of that employer. The dollar amount, and therefore the financial impact, of the increase in fees as proposed by the Division to a business that owns or operates a pressure vessel, tank or boiler is too small to result in the elimination of the business, the expansion of the business or the creation of a new business.

Benefits of the Regulations

As discussed more fully above, the benefits of the proposed changes in fees and mileage rates to be charged by the Division for its inspection services are:

- 1) the fees and mileage charges assessed on private sector businesses for the services performed by Division inspectors and by the issuance of permits will cover the Division's costs in conducting the private sector inspections of pressure vessels, tanks and boilers as required by the Labor Code;
- 2) by maintaining the inspection and the permit program, the Division will protect the public safety and the safety of employees required to work in the vicinity of pressurized vessels, tanks and boilers by ensuring such equipment meets safety requirements under California statutes and regulations; and
- 3) by ensuring safe operation of such equipment, people living and working in California will be protected from unnecessary physical injuries, illnesses and death due to preventable explosions of such equipment, and California businesses will be protected from the costs and business disruption that also result from preventable explosions.

Impact on Housing Costs: None is expected.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Division must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons and small businesses than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Reasonable Alternatives Considered by the Division/Reasons for Rejecting the Alternatives:

The Division has considered increasing both the hourly inspection fees as well as the mileage rates charged for Division inspections and initiating a statutory change to increase the existing permit

inspection fee in Labor Code section 7721(b) for permits issued on the basis of inspections performed by other certified inspectors under Labor Code section 7950. Section 7721(b) provides, in pertinent part, that the Division "...may charge a fee of not more than fifteen (\$ 15.00) to cover the cost of processing a permit."

Section 7721(b) applies to the fee charged by the Division when it receives a request to issue a permit based on an inspection performed by a certified inspector employed by a county, city, an insurer or an employer for the purpose of inspection only tanks and boilers under the employer's jurisdiction. The statutory maximum fee in section 7721(b) was last increased in 2000 from a maximum of \$ 5.00. The Division's costs of reviewing and evaluating the 'certified' inspector's inspection report, and costs of updating and maintaining the permit database for pressure vessels and boilers exceed the amount of revenue obtained from the statutory maximum fee of \$ 15.00.

As the need to increase Division's revenue from the inspection and permit fees in order to cover its actual expenses and costs became clear, it also became clear that a statutory change of the fee amount in Labor Code § 7721(b) would not be an effective immediate solution because it would not take effect in the same fiscal year. Therefore, the Division initiated this rulemaking to increase hourly inspection fees and mileage reimbursement fees, while the statutory maximum fee for permits based on non-Division inspections will remain the same until the amount can be changed statutorily.

Consideration of Performance Standard:

The regulations being amended by this regulation are not, and cannot be adequately addressed by, a performance standard as defined in Government Code § 11342.570. The Labor Code sections discussed above require the Division to perform inspections and otherwise ensure the safe use, maintenance and operation of pressurized air tanks, L.P.G. tanks and boilers by issuing permits to operate only after such inspections, whether performed by the Division or other certified inspectors as allowed by statute. In addition, the permit fee paid based on a non-Division certified inspector's inspection is fixed by statute.

Duplication or Conflict with Federal Laws (Government Code 11346.2(b)(7)): The authority to regulate the safe construction, operation and use of boilers, pressure vessels and tanks in order to protect the health and safety of the public from preventable explosions and the uncontrolled release of hot, toxic or harmful contents of such equipment falls within state police powers and is governed by state, not federal, law.

Inconsistency or Incompatibility with Existing State Regulations: Sections 344 and 344.1 of Title 8, California Code of Regulations are the only regulations governing inspection and permit fees charged by the Division for the services of its qualified safety inspectors in issuing permits to operate or in performing inspections of pressure vessels, tanks and boilers. The proposed amendments are not inconsistent with these regulations.