

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

**NOTICE OF PROPOSED RULEMAKING**

Subject: Pressure Vessel Fees

TITLE 8 of the CALIFORNIA CODE OF REGULATIONS  
Division 1. Department of Industrial Relations  
Chapter 3.2. California Occupational Safety and Health Regulations  
Subchapter 2. Regulations of the Division of Occupational Safety and Health  
Article 5. Boiler and Tank Permit and Inspection Fee Schedule  
Section 344. Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks  
Section 344.1. Air Tank, Liquefied Petroleum Gas (L.P.G.), and Boiler Inspection Fees.  
Section 344.2. Boiler, Tank and Resale Inspection Reports and Permits to Operate.

The Department of Industrial Relations, Division of Occupational Safety and Health (“the Division”) is proposing to permanently amend sections 344, 344.1 and 344.2 of title 8 of the California Code of Regulations<sup>1</sup> to take the action described in the Informative Digest/Policy Statement Overview (hereinafter “the Proposed Rulemaking”), which includes increasing most pressure vessel-related inspection and permitting fees from their pre-emergency regulation amount. The Proposed Rulemaking was adopted by the Division as emergency regulations, pursuant to Labor Code, section 7721, subdivision (e), effective November 15, 2018. The purpose of the Proposed Rulemaking is to codify the emergency regulations as regular, non-emergency regulations after considering all public comments and recommendations.

**PUBLIC HEARING**

The Division will hold a hearing to receive public comments on the Proposed Rulemaking on:

**Friday, January 24, 2020**  
**10:00 a.m. to 3:00 p.m., with a noon recess**  
**Elihu Harris State Building, 2nd Floor, Room 1**  
**1515 Clay Street, Oakland, California, 94612**

At the hearing, any person interested may present statements or arguments, orally or in writing, relevant to the Proposed Rulemaking. The Division requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written comments.

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<sup>1</sup> Unless otherwise specified, all references are to sections of the California Code of Regulations, title 8.

**Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation or at 3:00 P.M., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodations to facilitate effective communication for persons with disabilities are available upon request. Please contact the Statewide Disability Accommodation Coordinator at 1-866-326-1616 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance. Accommodation requests should be made as soon as possible. Requests for an assistive-listening system or communication access real-time translation should be made no later than five (5) days before the hearing.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Rulemaking by mail or personal delivery to:

Division of Occupational Safety and Health, Legal Unit  
Pressure Vessel Fees Comments  
Attn: Denise M. Cardoso, Staff Counsel  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

Written comments also may be sent to Denise M. Cardoso via e-mail to [dcardoso@dir.ca.gov](mailto:dcardoso@dir.ca.gov). Please put the words "Pressure Vessel Fees Comment" in the subject line of your e-mail for ease of reference.

To be considered, written comments must be received by the Division at its office not later than 11:59 P.M. on January 24, 2020, or must be received by the Division at the hearing. **The official record of the rulemaking proceeding will be closed at 11:59 P.M. on January 24, 2020.** The Division will consider only comments received by that time.

The Division may thereafter adopt the Proposed Rulemaking substantially as described below or may modify it if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to the Proposed Rulemaking or who have requested notification of any proposed changes.

### AUTHORITY AND REFERENCE

Labor Code sections 59, 60.5, subdivision (c), and 7721 authorize the Division to adopt regulations governing the assessment of fees for inspections performed by Division safety engineers for shop, field, and resale inspection of tanks and boilers and for the issuance of permits for the operation of such pressurized tanks, vessels and boilers. The Proposed

Rulemaking implements, interprets and makes specific section 7721 of the Labor Code governing the assessment of such fees.

Section 344, of Title 8, California Code of Regulations

Authority cited: Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code. Reference: Sections 7650, 7721, 7725 and 7728, Labor Code.

Section 344.1, of Title 8, California Code of Regulations

Authority cited: Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code. Reference: Sections 7650, 7680, 7681, 7682, 7683, 7721 and 7728, Labor Code.

Section 344.2, of Title 8, California Code of Regulations

Authority cited: Sections 60.5, 6308, 7721 and 7728, Labor Code.

Reference: Sections 7650, 7654, 7680, 7683, 7721 and 7728, Labor Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Proposed Rulemaking permanently amends sections 344, 344.1 and 344.2 as described below, thereby codifying the emergency regulation that became effective November 15, 2018.

### **A. EXISTING LAWS RELATED TO PROPOSED RULEMAKING**

Labor Code sections 60.5 and 6308 provide that the Division is charged with the administration and enforcement of the provisions of the California Occupational Safety and Health Act, commencing with Labor Code section 6300, as well as other provisions of law affecting the health and safety of employees in the State of California. The Division is responsible for enforcing the provisions of Labor Code sections 7620 through 7771, which comprise Part 6 of Division 5 of the Labor Code and govern the use of tanks and boilers in California that are not specifically exempted by Labor Code sections 7624 and 7625.<sup>2</sup> Tank is 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.)

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<sup>2</sup> Exempted tanks are (a) those under the jurisdiction or inspection of the federal government, (b) air pressure tanks used in household domestic services, (c) tanks of 1 ½ cubic feet or less not subject to a pressure of more than 150 pounds per square inch, (d) 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, and (e) tanks not subject to an internal or external pressure or [of] more than 15 pounds per square inch, irrespective of size. (Lab. Code, § 7624.) Exempted steam boilers are (a) 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.), (b) boilers on which pressure does not exceed 15 pounds per square inch, and (c) boilers on automobiles and road motor vehicles. (Lab. Code, §7625.)

The Division's Pressure Vessel Unit enforces the pressure vessel, tank and boiler safety standards through shop, field, and resale inspections, tank and boiler inspections, and the issuance of permits to operate. (Cal. Code Regs., tit. 8, §§ 344, 344.1, and 344.2.) Shop inspection is defined as "the inspection and testing of tanks or boilers, manufactured, or in the process of manufacture, repair, or alteration, in the manufacturer's shops, or at the jobsite, in accordance with the applicable rules of the respective codes under which they are manufactured." (Lab. Code, § 7725, subd. (c).) Field inspection is defined as "the inspection and testing of installed tanks or boilers or both tanks and boilers, regardless of location." (Lab. Code, § 7725, subd. (d).) Resale inspection is defined as "the inspection of boilers or tanks in the possession of a dealer or vendor at the request of a user who contemplates the purchase thereof." (Lab. Code, § 7725, subd. (e).)

No tank or boiler shall be operated 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.) Certified inspectors who are certified by the Division and employed by a county, city, insurer or employer to inspect the employer's tanks and boilers also may perform such inspections. (Lab. Code, § 7650.) The Division is responsible for issuing permits to operate tanks and boilers based on inspection reports received from qualified safety engineers and certified inspectors showing compliance with all applicable statutes and regulations. (Lab. Code, §§ 7680- 7683.)

Generally, permits for unfired L.P.G. tanks are valid for 3 years and other unfired air tanks are valid for 5 years. (Cal. Code Regs., tit. 8, § 462, subd. (a). and 470) 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. (Cal. Code Regs., tit. 8, §§ 770-771.)

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 inspections, providing consultations, conducting surveys, audits and other activities required or related to meeting national standards for safe design and construction of tanks and boilers, and for processing permit applications, and for field consultations. (Lab. Code, § 7721.) Whenever the inspection to operate a pressurized air tank, L.P.G. or boiler is performed by a certified inspector at a private, non-governmental businesses, the Division may charge a fee to review the inspection report and issue a permit to operate (Lab. Code, § 7721, subd. (b).)

Labor Code section 7721 authorizes the Division to fix collect fees for shop, field, and resale inspections, the permitting of tanks and boilers, and other services rendered. All fees promulgated under sections 7720 through 7728 must cover the Division's costs in performing its statutory duties, including administrative costs.

Effective November 15, 2018, sections 344, 344.1, and 344.2 were amended via emergency rulemaking as described below under the section titled "Proposed Amendments to Existing Regulations." The emergency regulations currently in effect made the following amendments:

1. Section 344: increased the hourly inspection rate from \$135.00 to \$150.00, and deleted subsections (a)(1), (b)(1), (b)(2) and (b)(3);
2. Section 344.1: decreased the hourly fee amount charged for field permit inspections from \$160.00 to \$150.00, deleted subsection (a)(1), separated subsection (a) into subsections (a), (b) and (c), and changed subsection (b) to subsection (d); and
3. Section 344.2: increased the permit to operate fee from \$15.00 to \$45.00, and deleted superfluous language under subsections (a), (b) and (c).

The Proposed Rulemaking would codify the emergency regulations as regular, non-emergency regulations. The Proposed Rulemaking seeks to adopt these amendments on a permanent basis.

#### PROPOSED AMENDMENTS TO EXISTING REGULATIONS PRIOR TO NOVEMBER 15, 2018 EMERGENCY REGULATIONS

#### **Section 344. Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks.**

Purpose. The purpose for the Proposed Rulemaking is to permanently increase the hourly fee under subsection (a) from \$135.00 to \$150.00. 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. Section 344 sets 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 Proposed Rulemaking makes the following changes to section 344:

*Title*. The Proposed Rulemaking would permanently amend the title of section 344 from "Shop and Resale Inspection Fee Consultation and Audit Fees, Boilers and Tanks" to "Shop, Field and Resale Inspection Program Fees" to more accurately describe the regulation's subject matter.

*Subsection (a)*. The Proposed Rulemaking would permanently increase the hourly rate for services rendered by the Division under subsection (a) from \$135.00 to \$150.00 per hour. In addition, the Proposed Rulemaking would permanently delete the heightened fee for inspections requested to be conducted after 5 PM on Monday through Friday, and at any hour on Saturday, Sunday or on any State holiday because the Division anticipates that the combined proposed fee modifications to sections 344, 344.1 and 344.2 will achieve full cost recovery of the pressure vessel program. The Division included all expenditures when calculating the proposed fee modifications.

The Proposed Rulemaking also would permanently (1) delete the terms "or any part thereof" after the hourly fee amount, and insert at the end of the subsection the sentence, "Time shall be billed in quarter-hour increments, rounded up to the nearest quarter hour" for clarity; (2) insert the terms "all work

performed in connection with” before the terms “all shop, field erection and resale inspections . . .” to clarify that the fee applies to all work related to the services specified therein, including, for example, travel and research; and (3) insert the term “and” between the terms “boilers, and nuclear” for clarity.

*Subsection (a)(1).* The Proposed Rulemaking would permanently delete subsection (a)(1) because the combined proposed fee modifications to sections 344, 344.1 and 344.2 stand to achieve full cost recovery to the pressure vessel program. The proposed modified fees incorporate travel time as an expenditure.

*Subsection (b).* The Proposed Rulemaking would permanently (1) change “qualified engineers” to “a qualified safety engineer employed by the division” to ensure consistency with Labor Code, section 7650; and (2) delete the last sentence, and combine the content therein into the first sentence for brevity and clarity.

*Subsections (c), (c)(1), (c)(2), & (c)(3).* The Proposed Rulemaking would permanently delete subsections (c), (c)(1), (c)(2), and (c)(3) because the proposed fee modifications incorporate the expenses addressed therein and render these subsections unnecessary.

*Note: Authority cited.* Permanently include a reference to Labor Code section 7728 under “Note: Authority cited” because that statute vests the Division with the authority to charge a penalty for late payment of fees.

*Reference.* Permanently insert under “Reference” Labor Code sections: (1) 7650 because it defines the term “qualified safety engineer” referenced in section 344; and (2) 7725 because it defines the terms “shop inspection,” “field inspection,” and “resale inspection” referenced in section 344.

Necessity. The Division determined that the hourly inspection amount needs to be increased from \$135.00 to \$150.00 to enable the Division to meet the costs it incurs in performing the services described in Part 6, Division 5, of the Labor Code as part of the safety inspections it provides to private sector owners and operators of such equipment. (See Appendix A.) 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 pressure vessels, tanks and boilers. 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 pressure vessels, tanks and boilers and the uninterrupted commerce of businesses and government operating near such equipment.

#### Authority and Reference.

*Authority cited:* Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code.

Labor Code section 60.5, subdivision (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.

Labor Code section 6308, subdivision (a) provides that in enforcing occupational safety and health standards and orders and special orders, the Division may:

[d]eclare 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, subdivision (a) expressly provides:

The division shall fix and collect fees for the shop, 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. The division shall fix and collect the fees for the inspection of pressure vessels by a division safety engineer. The division may charge an additional fee for necessary subsequent inspections to determine if applicable safety orders have been complied with.

Labor Code section 7721, subdivision (b) provides that “[t]he division shall charge a fee for processing a permit.”

Labor Code section 7721, subdivision (c) provides that “[t]he division shall fix and collect fees for field consultations regarding pressure vessels.”

Labor Code section 7721, subdivision (d) provides that “[w]hen a person owning or having the custody, management, or operation of a pressure vessel fails to pay the fees required under this chapter within 60 days after notification, he or she shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of the fee.”

Labor Code section 7721, subdivision (e) provides that the fees authorized under Labor Code section 7721 “shall be in amounts sufficient to cover the direct and indirect costs of the division for administering” the Division’s pressure vessel program, and be embodied in regulations.

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

Labor Code 7728 provides:

Whenever an owner or user of any apparatus or equipment fails to pay the fees required under this chapter within 60 days after notification, said owner or user shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of such fee. For the purposes of this section, the date of the invoice shall be considered the date of notification.

*Reference:* Sections 7650, 7721, 7725 and 7728, Labor Code.

Labor Code section 7650 states that required inspections “shall be made either by qualified safety engineers employed by the division or by certified inspectors; provided, however, that shop inspections shall be made by the division, acting through its qualified safety engineers when request therefor is made by any manufacturer of tanks or boilers.” Subdivision (b) of section 7650 defines a “qualified safety engineer” as “one who is qualified to make inspections or examinations of boilers or tanks according to the rules under which the vessel is constructed” and provides that “[s]uch qualification is to be determined by a written examination prescribed by the division.”

Labor Code section 7725, subdivision (a) defines “small tank” to mean “any tank 1,200 gallons water capacity or less”; subdivision (b) defines “large tank” to mean “any tank of more than 1,200 gallons water capacity”; subdivision (c) defines “shop inspection” to mean “the inspection and testing of tanks or boilers, manufactured, or in the process of manufacture, repair, or alteration, in the manufacturer’s shops, or at the jobsite, in accordance with the applicable rules of the respective codes under which they are manufactured”; subdivision (d) defines “field inspection” to mean “the inspection and testing of installed tanks or boilers or both tanks and boilers, regardless of location;” subdivision (e) defines “resale inspection” to mean “the inspection of boilers or tanks in the possession of a dealer or vendor at the request of a user who contemplates the purchase thereof.”

As explained above, Labor Code sections 7721 and 7728 enumerate the various fees the division may fix and collect related to its inspection of pressure vessels, tanks and boilers. Section 344, 344.1 and 344.2 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.) Tank, and Boiler Inspection Fees.**

Purpose. The purpose of the Proposed Rulemaking is to permanently decrease the hourly fee under subsection (a) from \$160.00 to \$150.00. 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 Proposed Rulemaking makes the following changes to section 344.1:

*Title.* The Proposed Rulemaking would permanently amend the title of section 344.1 from “Air Tank, Liquefied Petroleum Gas (L.P.G.), and Boiler Inspection Fees” to “Air Tank, Liquefied Petroleum Gas



(L.P.G.) Tank, and Boiler Permit Inspection Program Fees” to more accurately describe the regulation’s subject matter.

*Subsection (a).* The Proposed Rulemaking would permanently decrease the hourly rate for services rendered by the Division under subsection (a) from \$160.00 to \$150.00 per hour. The proposed decrease would make the hourly fee under section 344.1 consistent with the proposed hourly fee under section 344.

In addition, the Proposed Rulemaking would permanently (1) break subsection (a) into three subsections titled (a), (b), and (c); (2) delete the reference to travel time because anticipated travel expenditures were calculated into the proposed fee modifications; (3) replace the text reading, “for field permit inspection of air tanks, L.P.G. tanks, and boilers by qualified safety engineers employed by the division” with the following text, “for all field, resale and alteration permit inspections of air tanks, liquefied petroleum gas (L.P.G.) tanks, and boilers performed by a qualified safety engineers employed by the division” for clarity; (4) insert the terms “all work performed in connection with all” before the terms “field, resale and alteration permit inspection . . .” to clarify that the fee applies to all work related to the services specified therein, including, for example, travel and research; and (5) delete the terms “or any part thereof” after the hourly fee amount, and insert at the end of the subsection the sentence, “Time shall be billed in quarter-hour increments, rounded up to the nearest quarter hour” for clarity.

*New subsection (b).* The Proposed Rulemaking would permanently (1) insert the \$150 proposed fee amount and rephrase the sentence structure for clarity; (2) replace the term “subsequent” with “all follow-up” for clarity and consistency with new subsection (c); (3) delete the term “consultation” and specify the stated fee only applies to follow-up inspections where safety requirements have not been complied with within 15 days of the date shown on the preliminary order; (4) insert the terms “all work performed in connection with” before “all follow-up inspections” to clarify that the fee applies to all work related to the services specified therein, including, for example, travel and research; and (5) insert at the end of the subsection the sentence, “Time shall be billed in quarter-hour increments, rounded up to the nearest quarter hour” for clarity.

*New subsection (c).* The Proposed Rulemaking would permanently remove the capitalization from words for consistency with the balance of the regulations, and insert the terms “is” and “of such compliance” for clarity.

*Subsection (a)(1).* The Proposed Rulemaking would permanently delete subsection (a)(1) because the combined proposed fee modifications to sections 344 to 344.2 stand to achieve full cost recovery to the program. The proposed modified fees incorporate travel time as an expenditure.

*Subsection (b).* The Proposed Rulemaking would permanently renumber subsection (b) to new subsection (d) and rephrase the sentence structure for clarity and consistency with the balance of the regulation.

*Note: Authority cited.* Permanently insert under “Note: Authority cited” section 7728 because it vests the Division with the authority to charge a penalty for late payment.

*Reference.* Permanently insert under “Reference” Labor Code sections: (1) 7650 because it defines the term “qualified safety engineer” referenced in section 344.1; (2) 7680 because it sets forth the permit mandate referenced in section 344.1; (3) 7681 because it sets forth the permit inspection of tanks mandate referenced in section 344.1; (4) 7682 because it sets forth the permit inspection of boilers mandate referenced in section 344.1; and (5) 7683 because it sets forth the permit requirements and specifications referenced in section 344.1.

*Necessity.* The Division anticipates that the combined proposed fee modifications to sections 344, 344.1 and 344.2 stand to achieve full cost recovery to the pressure vessel program as set forth in Appendix A. Further, the proposed decrease is necessary to make the hourly fee under section 344.1 consistent with the proposed hourly fee under section 344 for ease of administration

#### Authority and Reference.

*Authority cited:* Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code.

*Reference:* Sections 7650, 7680, 7681, 7682, 7683, 7721 and 7728, Labor Code.

The reasons explained above under the Authority and Reference for section 344 with respect to Labor Code, sections 60.5, 6308, 7650, 7721, 7722, and 7728 apply equally to section 344.1.

Labor Code section 7680 states “[n]o tank or boiler shall be operated unless a permit for its operation has been issued by or in behalf of the division.”

Labor Code section 7681, subdivision (a) requires the Division to “inspect or cause to be inspected each installed tank at least every five years” except for those tanks expressly exempted under subdivision (b). Subdivision (b) exempts from inspection:

Any air pressure tank which contains 25 cubic feet or less and is not subject to pressure of more than 150 pounds per square inch and any liquefied petroleum gas tank used for storage, except a tank used for dispensing purposes as part of a dispensing unit, which contains 575 gallons or less shall be inspected or caused to be inspected by the division when the tank is initially placed into service if the tank is constructed, inspected and stamped in compliance with the American Society of Mechanical Engineers (ASME) Code, or the design, material, and construction of the tank is approved by the division as equivalent to the ASME Code.

Labor Code section 7682 requires the Division to “inspect or cause to be inspected each installed fired boiler internally and externally at least every year” but allows the Division to “grant extensions to permit the interval between internal inspections to be increased to a maximum interval of 36 months where operating experience and design of the boiler has demonstrated to the satisfaction of the division that equivalent safety will be maintained.” For other classes of boilers, section 7682 requires the Division to “establish internal inspection intervals which will ensure the safety of people working in the vicinity of the boiler,” while considering factors such as the design and construction of the boilers and the conditions under which they operate. Section 7682 also requires external inspections of all boilers at the time of the internal inspection and at any other intervals deemed necessary by the Division.

Labor Code section 7683, subdivision (a) provides that if a tank or boiler is found to be in a safe condition of operation, the Division shall issue a permit for its operation.

Permits for tanks not specified in subdivision (b) of section 7681 expire after five years unless otherwise exempted. (Lab. Code, § 7683, subd. (b).)

Permits for tanks specified in subdivision (b) of Section 7681 remain in effect as long as the tank is in compliance with the law; however, a “new inspection and permit for operation shall be required whenever there is a change in ownership and permanent location of the tank or there is an alteration or change in the tank which affects the tank’s safety.” (Lab. Code, § 7683, subd. (c).)

Permits for boilers shall remain in effect for a period not longer than one year. (Lab. Code, § 7683, subd. (d).)

### **Section 344.2. Boiler, Tank and Resale Inspection Reports and Permits to Operate.**

Purpose. The purpose for the Proposed Rulemaking is to permanently increase the permit fee under subsection (b) from \$15.00 to \$45.00. Section 344.2 applies to the permitting fee charged by the Division to cover the cost of processing each permit to operate, and penalties for late payment.

The Proposed Rulemaking makes the following changes to section 344.2:

*Title.* The Proposed Rulemaking would permanently amend the title from “Boiler, Tank and Resale Inspection Reports, and Permits to Operate” to “Air Tank, Liquefied Petroleum Gas (L.P.G.) Tank, and Boiler Permit to Operate Program Fees” to more accurately describe the regulation’s subject matter.

*Subsection (a).* The Proposed Rulemaking would permanently delete the text appearing after the term “division” under subsection (a) to clarify that permits to operate must be issued by or in behalf of the Division pursuant to Labor Code section 7680.

*Subsection (b).* The Proposed Rulemaking would permanently increase the permit fee under subsection (b) from \$15.00 to \$45.00. In addition, the Proposed Rulemaking would rephrase the sentence structure for brevity and clarity.

*Subsection (c).* The Proposed Rulemaking would permanently rephrase the sentence structure for clarity, and replace the term “L.P.G.” with “liquefied petroleum gas (L.P.G.).”

*Note: Authority cited.* Permanently insert under “Note: Authority cited” Labor Code sections: (1) 60.5 because it vests the Division with the authority to implement, interpret and makes specific sections 7680 et seq. relating to the permitting of tanks and boilers; and (2) 7728 because it vests the Division with the authority to charge a penalty for late payment.

*Reference.* Permanently insert under “Reference” Labor Code sections (1) 7683 because it sets forth the permit requirements and specifications referenced in section 344.2; and (2) 7728 because it sets forth the late payment penalty mandate referenced in section 344.2.

Necessity. The Division determined that it must permanently increase its permit fee under subsection (b) from \$15.00 to \$45.00 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. (See Appendix A.) As discussed above, the proposed amendment is necessary to allow the Division to adequately fund its Pressure Vessel Unit's operations and meet its objective of ensuring occupational and public safety.

Authority and Reference.

*Authority cited:* Sections 60.5, 6308, 7721 and 7728, Labor Code.

*Reference:* Sections 7650, 7654, 7680, 7683, 7721 and 7728, Labor Code.

The reasons explained above under the Authority and Reference for section 344 and 344.1 with respect to Labor Code, section 60.5, 6308, 7650, 7680, 7683, 7721, and 7728 apply equally to section 344.2.

Labor Code section 7654 requires certified inspector to (1) forward a report of his or her inspection, on prescribed forms, to the Division within twenty-one (21) days after each routine inspection; and (2) report to the Division within twenty-four (24) hours, by telegraph or telephone, serious conditions that would jeopardize the life, limb, or safety of employees discovered during his or her inspection.

B. SUBSTANTIAL DIFFERENCE FROM EXISTING, COMPARABLE FEDERAL REGULATION OR STATUTE

None. The Division has determined that there are no applicable governing federal regulations or statutes.

C. POLICY STATEMENT OVERVIEW

The inspection of pressure vessels, tanks and boilers is necessary to (1) protect the lives, health and safety of the public and of employees working in the vicinity of such equipment; (2) avoid business disruption from any equipment-related explosions; and (3) protect the environment from contamination that could result from uncontrolled emissions or spills of the materials, gases and substances stored in such pressure vessel, tanks and boilers.

The broad objective of the Proposed Rulemaking is to correct the Pressure Vessel Account's deficit by increasing most pressure vessel-related inspection and permitting fees. At the direction of the Department of Industrial Relations, the Division has evaluated the costs associated with administering its Pressure Vessel Unit, and determined that the Unit is expending significantly more money issuing permits, performing inspections, and providing related services at private, non-governmental businesses than it recoups through the current fees it charges those businesses for permits, inspections, and consultation.<sup>3</sup> The Proposed Rulemaking would allow the Division

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<sup>3</sup> 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

to cover the actual costs in having its qualified safety engineers provide on-site inspection services for the private sector owners/operators using pressure vessels, tanks and boilers in California which must be inspected prior to the issuance of a permit to operate. Without the Proposed Rulemaking, the Division cannot adequately fund its Pressure Vessel Unit's operations and cannot meet its objective of ensuring occupational and public safety.

D. DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

After conducting an evaluation for any regulations in this area, the Division has concluded that these are the only regulations concerning pressure vessel fees. The Proposed Rulemaking is neither inconsistent nor incompatible with existing state regulations.

OTHER APPLICABLE MATTERS PRESCRIBED BY STATUTE:

None. The Division has determined that there are no other matters prescribed by statute applicable to the Division or to the regulations subject to the Proposed Rulemaking.

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:

None. The Proposed Rulemaking does not impose a mandate on local agencies or school districts. The Division has determined that the Proposed Rulemaking does not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the Proposed Rulemaking will not require local agencies or school districts to incur additional costs in complying with the proposal. The Division cannot charge local agencies and school districts fees for inspections and permits of tanks and boilers because there is no express statutory authority allowing the Division to do so. (Gov. Code, § 6103.)

Further, the Proposed Rulemaking does not constitute a "new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution." The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46.) The Proposed Rulemaking does not require any local agency to carry out the governmental function of providing services to the public.

FISCAL IMPACT STATEMENT: STATE AND LOCAL AGENCIES, SCHOOL DISTRICTS AND FEDERAL FUNDING:

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city, county, district or other political subdivision. 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 section 62.5, subdivision (d).

Cost or savings to any state agency: The Proposed Rulemaking will result in the estimated added revenues to the Division of approximately \$964,000.00 annually through fees collected from private businesses for the inspection of tanks and boilers. (See attached, Appendix A.) The Proposed Rulemaking will not result in costs to state agencies that require inspections and permits for pressurized tanks and boilers under the Labor Code, because there is no express statutory authority to charge state agencies such permit fees and therefore state agencies are statutorily exempt from such fees. (Gov. Code, § 6103.)

Cost to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq: None. The Proposed Rulemaking will not result in costs to local agencies and school districts that require inspections and permits for pressurized tanks and boilers under the Labor Code, because there is no express statutory authority to charge public agencies such permit fees, and therefore local agencies and school districts are statutorily exempt from such fees. (Gov. Code, § 6103.)

Other nondiscretionary costs or savings imposed on local agencies: None. The Proposed Rulemaking does not impose non-discretionary costs on local agencies.

Cost or savings in federal funding to the state: The Proposed Rulemaking will create neither costs nor savings in federal funding to the State.

FISCAL IMPACT STATEMENT: BUSINESS:

Although the Proposed Rulemaking will affect businesses statewide, including small businesses, the Division concludes that the adverse economic impact including the ability of California business to compete with business in other states, will not be significant.

DECLARATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT:

The Division has made an initial determination that the Proposed Rulemaking will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states. The Division relied on the figures in Appendix A in reaching its initial determination.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

Private Person Impact: The Division is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the Proposed Rulemaking. Indeed, a private person who does not own or operate a boiler, tank or pressure vessel subject to the Pressure Vessel Safety Orders would not experience a direct cost impact as a result of the Proposed Rulemaking.

Business Impact: The Division has determined that the Proposed Rulemaking will not have a significant statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

The Proposed Rulemaking will affect the 26,674 owners and operators of pressure vessels, tanks and boilers in California; 86% which are small businesses. Specifically, the Proposed Rulemaking will only affect owners and operators of non-exempt pressure vessels, tanks and boilers by (1) increasing the hourly rate for all services under section 344 by about 11%

(\$135/\$150); (2) decreasing the hourly rate for all services under section 344.1 by about 6% (\$160/\$150); and (3) tripling the permit fee under 344.2 from \$15.00 to \$45.00. The Division anticipates that the Proposed Rulemaking will result in an estimated cost increase of \$829,000 for small businesses, and \$135,000 for other businesses. (See Appendix A.)

The Proposed Rulemaking applies to all non-exempt businesses operating pressure vessels, tanks and boilers in this state, and thus, is neutral in its treatment of California businesses compared to businesses from other states. The Proposed Rulemaking does not require the purchase of new equipment or training or technology, so it will not involve “initial costs” as that term is commonly understood.

#### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

The Division does not anticipate the Proposed Rulemaking will result in the creation or elimination of any jobs in the State of California. The Proposed Rulemaking will not affect the creation of new businesses or the elimination of existing business within the State of California, and will not affect the expansion of businesses currently doing business within the state.

The Proposed Rulemaking, by funding the regulation of pressure vessels, tanks and boilers to ensure their safe operation, will (1) protect the lives, health and safety of the public and of employees working in the vicinity of pressure vessels, tanks, and boilers; (2) protect businesses and local governments from economic disruption and 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 pressure vessels, tanks and boilers; and (3) protect the environment from contamination that could result from uncontrolled emissions or spills of the materials, gases and substances stored in pressure vessels, tanks and boilers.

#### BUSINESS REPORT FINDING:

None. The Proposed Rulemaking does not require any person or business to submit a report.

#### HOUSING COSTS:

The Division has made an initial determination that the Proposed Rulemaking will not have a significant effect on housing costs.

#### CONSIDERATION OF ALTERNATIVES:

The Division must determine that no reasonable alternative considered by it, or that has been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons 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.

#### CONTACT PERSONS:

Non-substantive inquiries concerning this action, such as requests for copies of the text of the proposed amendments, and the location of public records, may be directed to Pamela Claros at (510) 286-7348 or [pclaros@dir.ca.gov](mailto:pclaros@dir.ca.gov). Inquiries regarding the substance of the proposed amendments may be directed to Denise M. Cardoso (primary contact) or Chris Grossgart (back-up contact) at (510) 286-7348 or at [cgrossgart@dir.ca.gov](mailto:cgrossgart@dir.ca.gov).

#### DEADLINE TO SUBMIT WRITTEN COMMENT:

11:59 P.M. on January 24, 2020, or must be received by the Division at the hearing. The official record of the rulemaking proceeding will be closed at 11:59 P.M. on January 24, 2020. The Division will consider only comments received by that time.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION / INTERNET ACCESS:

An Initial Statement of Reasons, the text of the Proposed Rulemaking, and other information upon which the Proposed Rulemaking is based, have been prepared and are available from the contact persons named in this Notice. The Division will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at 1515 Clay Street, Suite 1901, Oakland, CA 94612. The Initial Statement of Reasons, this Notice of Proposed Rulemaking, and text of the Proposed Regulation also may be accessed through the agency's Internet website at <https://www.dir.ca.gov/dosh/doshreg/Pressure-Vessel-Fees/>

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After holding the hearing and considering all timely and relevant comments received, the Division may adopt the proposals substantially as described in this Notice. If the Division makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before adopting the amendments as revised. Any such modifications also will be posted on the Division's website.

Please send requests for copies of any modified amendments to the attention of Pamela Claros at the above telephone number or e-mail address. The Division will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Pamela Claros at the above-referenced telephone number or e-mail address.