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P. O. Box 420603
San Francisco, CA 94142-0603**FINAL STATEMENT OF REASONS****Subject: INSPECTION AND PERMIT FEES, PRESSURE VESSELS, TANKS & BOILERS****TITLE 8, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 344 AND 344.1****UPDATED INFORMATIVE DIGEST**

Effective March 18, 2013, the Division of Occupational Safety and Health ("Division"), in the Department of Industrial Relations, adopted emergency regulations as specified by Labor Code section 7721(e), that amended sections 344 and 344.1 of Title 8 of the California Code of Regulations ("Title 8" or "8 CCR"), to increase the fees charged by the Division for inspections and mileage reimbursement when its inspectors perform permit and shop safety inspections at the request of the owner or operator of various pressurized tanks and boilers. (See, OAL File No.: 2013-0314-02-EFP.)

Section 344 (Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks) was amended 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. In addition, the expense for mileage to be added to the hourly inspection fee was increased from 31 cents to 55.5 cents per mile under regulation 344.

Section 344.1 (Air Tank, Liquefied Petroleum Gas [L.P.G.], and Boiler Inspection Fees) was amended 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.

The inspections required to obtain the appropriate permit to operate a particular pressure vessel, LPG tank or boiler may be performed by a Division inspector, or by a certified inspector employed by a county, city, an insurer or continuously employed by an employer for the purpose of inspecting only tanks and boilers under the employer's jurisdiction (Lab. Code section 7650; 8 Cal. Code Regs. 779.) The regulations being permanently amended in this rulemaking, sections 344 and 344.1, set out fee amounts and mileage charges used by the Division for inspections conducted by its qualified safety engineers.

The Division subsequently initiated regular rulemaking to make these amendments permanent on September 13, 2013. (See, OAL File No.: Z-2013-0905-02.)

Effective September 16, 2013, the amendments to sections 344 and 344.1 were re-adopted on an emergency basis to permit the Division to complete this rulemaking process. (See, OAL File No.: 2013-0913-03EE.)

As announced in the Notice of Rulemaking sent by mail and email to interested parties known to the Division and as published in the California Notice Register on September 13th, a public hearing was held on November 7, 2013, to receive comments on the proposed changes. No persons appeared at the public hearing to make comments. The Division did not receive any comments from the public between September 13th and November 7th, the noticed public comment period that preceded the public hearing. No comments were received after November 7th. The Division received no public comments regarding significant adverse economic impact of the proposed permanent regulations.

No changes to the text of sections 344 or 344.1 of Title 8, as amended effective March 18, 2013, including the authority and reference sections cited, have been made by the Division during this rulemaking.

No changes to the text, authority or reference for sections 344 and 344.1 of Title 8 are proposed at this time. 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, 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 which was created to be used for the administration of the division pressure vessel safety program.

Reference cited: 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”, for those inspections performed by certified inspectors employed by local government, an insurer or continuously employed by an employer to inspect the employers equipment only. (Lab. Code section 7650(a); 8 Cal. Code Regs. 779.) 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...” Labor Code section 7728, enacted in 1965, provides, in pertinent part, “Whenever an owner or user of any apparatus or equipment fails to pay the fees required...within 60 days after notification, said owner or user shall pay, in addition to the fees required...a penalty fee equal to 100 percent of such fee.”

There have been no changes to applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Rulemaking.

SUMMARY OF COMMENTS RECEIVED: None were received.

MODIFIED TEXT: No text in the proposed permanent regulatory text of section 344 and 344.1 has been modified since it became effective on an emergency basis on March 18, 2013.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The entire rulemaking file, including the proposed permanent regulatory text, the Notice of Rulemaking, Initial Statement of Reasons, the documents relied on set out in the Division’s Initial Statement of Reasons, the initial emergency rulemaking file (OAL File No.: 2013-0314-02-EFP) and the re-adoption of emergency regulations file (OAL File No.: 2013-0913-03EE) have been available for inspection and copying at the Division’s Legal Unit office, 1515 Clay Street, Ste. 1901, Oakland, CA 94612, throughout the rulemaking process.

ALTERNATIVES DETERMINATION

The Division has determined that no alternative would be more effective in carrying out the purpose for which sections 344 and 344.1 of Title 8 CCR are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. No other alternatives were proposed.

LOCAL MANDATE DETERMINATION

The proposed permanent amendments to sections 344 and 344.1 of Title 8 CCR do not impose any local mandate on local government or school districts.

FISCAL IMPACT DETERMINATION

The proposed permanent amendments to sections 344 and 344.1 of Title 8 CCR do not impose any costs or savings on local government, school districts or state government because they are exempt from paying fees for inspections conducted by the Division. (See, Government Code section 6103.)

The proposed permanent amendments to sections 344 and 344.1 of Title 8 CCR do not impose costs involving the use of or savings in federal funds provided to the Division of Occupational Safety and Health.

ADDITIONAL STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Division incorporates by reference here, in their entirety, the statements of impact and benefits provided in the Economic Impact Analysis set out in the Initial Statement of Reasons. An additional benefit from the proposed permanent amendments to regulations 344 and 344.1 of Title 8 affects the state's environment. The Division's safety inspection and permit program for pressurized tanks, LPG tanks and boilers also protects the environment in California by reducing the likelihood and incidence of unexpected and uncontrolled explosions of such tanks and boilers that could result in the release of toxic or harmful chemicals into the environment.