

State of California  
Department of Industrial Relations  
**Division of Occupational Safety and Health**  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

**NOTICE OF ADOPTION OF EMERGENCY REGULATIONS, FINDING OF  
EMERGENCY AND INFORMATIVE DIGEST**

**Reasons for Adoption of Amendments as Emergency Regulations and Statement of  
Emergency**

The Division of Occupational Safety and Health ("the Division" or "DOSH"), in the Department of Industrial Relations, proposes to amend sections 344 and 344.1 of Title 8 of the California Code of Regulations ("8 CCR") to increase hourly inspection fees and to increase the charge for mileage associated with the scheduled inspection of air tanks, liquid petroleum gas tanks and boilers.

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.<sup>1</sup> 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, 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.

The Labor Code dictates that these regulations are to be adopted as emergency regulations. Labor Code § 7721(e) provides:

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<sup>1</sup> 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 tank 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.)

“Any fees required pursuant to this section shall be embodied in regulations which shall be adopted as emergency regulations. These emergency regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the provisions of the Administrative Procedure Act provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These regulations shall become effective immediately upon filing with the Secretary of State.”

At the direction 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 at private, non-governmental businesses than it recoups through current fees and mileage costs for permits, inspections and consultations at such private businesses.<sup>2</sup> The Unit will not be able to continue operation without a fee increase to cover its costs.

### **Finding of Emergency**

In conformance with Government Code section 11346.1(b), the Division of Occupational Safety and Health (“the Division”) finds that adoption of the proposed amendments to Title 8, California Code of Regulations, Sections 344 and 344.1, described in this Notice, in the Informative Digest and as set out in the proposed text of the regulations shown in strike out and underline format, as quickly as possible is necessary to comply with Labor Code section 7721(e) and is necessary for the immediate preservation of the public health and safety and general welfare. The inspection of air tanks, LPG tanks and boilers prior to issuing a permit to operate such equipment enables the Division to determine that such equipment complies with the standards set out in specific regulations that govern the construction, maintenance and operation of such equipment in a safe manner.

### **Purpose, Necessity and Benefits**

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 of such tanks and boilers, 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, corrosive, chemical 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

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<sup>2</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 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).

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, and through surcharges on employers deposited into the Occupational Safety Fund. (Lab. Code §§ 62.5(d), 7721, 7722, 7726 and 7728.)

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

- 1) the fees and mileage charges made to private sector businesses 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.

### **Summary of Proposed Changes**

#### **(a) Section 344 – Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks.**

Section 344 of Title 8 of the California Code of Regulations ("8 CCR" or "8 Cal. Code Regs.") currently fixes the fee for any inspection pertaining to shop, field erection and resale of all tanks or boilers at \$ 110.00 per hour. The Division has reviewed the cost of conducting these types of inspections, and has determined that the existing hourly fee of \$ 110.00 per hour is insufficient in several respects to address the Division's costs in responding to requests for inspections.

To meet the Division's increased personnel, operating, travel and other costs since the hourly inspection rate was last increased in 2000, the Division has determined it must increase the basic hourly rate to \$ 135.00 per hour. The Division responds to requests from private parties to inspect shops, tanks and boilers at the party's premises. For requests to perform inspections after 5 PM during the work week and any time on Saturday, Sunday and State holidays, the Division often must pay overtime to safety inspectors. To meet this increased cost to the Division, while accommodating the time period in which an inspection is requested or scheduled by the requesting party, the Division has determined it must charge \$ 202.50 per hour for those hours of an inspection that incur overtime charges.

Accordingly, subdivision 344(a) is being amended to increase the regular hourly fee from \$ 110.00 per hour to \$ 135.00 per hour. In addition, new wording is being added to the

subdivision to provide that an hourly fee of \$ 202.50 per hour will be charged for inspection work performed after 5 PM on a Monday through Friday and for any time on Saturday, Sunday and State holidays.

Section 344(c) sets out the amounts that the Division's inspectors may charge for mileage when the mileage to the inspection site from the assigned inspector's state office or last inspection site exceeds 50 miles roundtrip. The proposed regulations amend subdivision 344(c) to replace the mileage charge of 31 cents per mile with the current mileage rate of **55.5 cents**, which is the mileage rate the State is required to reimburse its employees for required travel. It is also consistent with the reimbursement rate allowed under federal tax rules.

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

Section 344.1 currently fixes the hourly fee charged for field permit inspections of air tanks, L.P. G. (liquid petroleum gas) tanks and boilers by qualified safety engineers employed by the Division. Based on its cost analysis, the Division has determined that the current hourly fee of \$ 135.00 per hour for these permit inspections is insufficient to cover the Unit's expenditures in performing such inspections. The Pressure Vessel Unit's operating deficit is increased by the fact that the Unit is precluded by the provisions of Government Code 6103 from charging public entities and political subdivisions for such permit inspections. Therefore the Division proposes to increase the hourly inspection fee for air tank, L.P.G and boiler inspections to \$ **160.00** per hour.

**Authority and Reference**

Authority cited: Labor Code sections 60.5, 6308 and 7721. Reference: Labor Code section 7721.

**Informative Digest**

The Division of Occupational Safety and Health ("Division" or "DOSH"), within the Department of Industrial Relations, 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, as well as all other parts of Division 5 that previously were the responsibility of the Division of Industrial Safety. (Lab. Code §§ 60.5 and 6308.) The laws governing the use of pressure vessels, other pressurized tanks and boilers commence at section 7620, Part 6 of Division 5 of the Labor Code.

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.) Qualified safety engineers who are certified by the Division and employed by a county, city, insurer or employer to inspect the employer's tanks and boilers may also perform inspections. (Lab. Code § 7650.)

Only 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 regulations. (Lab. Code § § 7681, 7682 and 7683.)

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 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 private sector certified inspection, the Division may charge only \$ 15.00 to review the inspection report and issue a permit to operate. (Lab. Code § 7721.)

#### Section 344.

Currently section 344(a) of Title 8 of the California Code of Regulations provides that the Division may charge a fee of \$ 110.00 per hour, or any part of an hour, including travel time as specified, based on quarter hour intervals, with a minimum charge of one-half hour, for all shop inspections, field erection and resale inspections of all tanks, boilers, parts of tanks and boilers, nuclear components and for consultation, surveys, audits, manual review and other activities required or related to the ASME code or other national standards concerning the design or construction of boilers or pressure vessels or for evaluating fabricator's plant facilities when these services are requested by entities desiring these services.

The Division proposes to amend section 344 to increase the hourly inspection rate to **\$ 135.00** per hour. In addition, the Division proposes to add language to allow the Division to charge, 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, the hourly inspection rate of **\$ 202.50** per hour.

The Division also proposes to amend section 344(c) to increase the rate of reimbursement from 31 cents per mile to **55.5** cents per mile for inspection related travel.

The purpose of the proposed fee increase is to enable the Division to cover all of its actual costs in performing the inspections referenced in regulation 344. The purpose of the higher hourly inspection rate for inspections conducted after 5 PM on Monday through Friday or at any time on a Saturday, Sunday and State holiday, is to cover all of the Division's personnel costs of providing inspection services at such hours since often the Division will be required to pay time and one-half to the safety inspector. The purpose of the increase in the mileage reimbursement rate proposed in section 344(c)(1) is to ensure the mileage fee covers the Division's costs for

reimbursing the Division inspector for mileage expenses incurred while on state business conducting such inspections or otherwise cover car expenses paid by the Division.

Section 344.1

Section 344.1(c) of Title 8 of the California Code of Regulations currently allows the Division to charge an hourly fee of \$ 130.00 per hour or any part thereof, including travel time as set forth in subdivision (a)(1), for field permit inspections of air tanks, liquefied petroleum gas (L.P.G.) tanks and boilers by qualified safety engineers employed by the Division. Subdivision 344.1(a)(1) provides that travel time shall include the travel time from the Division's local office or the site of previous inspection, whichever is less, to the inspection site and travel time from the inspection site to the Division's local office or the site of the following inspection, whichever is less. The subdivision also prohibits the Division from charging more than one employer for the same period of travel.

The Division proposes to amend section 344.1 to increase the hourly fee to **\$ 160.00** per hour or any part thereof, including travel time.

The purpose of the increased hourly inspection fee for the inspection of air tanks, liquefied petroleum gas and boilers is to enable the Division to cover all of its costs in performing the inspection services addressed by regulation 344.1.

The Division is required by state fiscal policy and law to charge sufficient hourly inspection fees and mileage reimbursement amounts to cover the Division's actual costs for performing the mandates of the Pressure Vessel Unit. These charges cover the Division's costs for qualified safety inspectors, supervisory and support staff, operating expenses, travel charges, and direct and indirect administrative charges, in performing the mandated inspections, consultations, and audits, and for maintaining the permit system.

The Division has been advised by the Department of Industrial Relations that the projected inspection fee and permit revenues to be collected in the 2012/2013 fiscal year, based on the existing hourly inspection fees of \$ 110 and \$ 130, respectively, and the \$ 15 permit fee allowed under Labor Code section 7721 for pressure vessels and boilers that are inspected by qualified safety inspectors employed by a county, city, an insurance company or specified employers, are projected to fall short of the Division's actual costs for administering the pressure vessel inspection and permit services it performs under the Labor Code. Approximately 40% of the pressure vessels and boilers 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 or the employer that is using the equipment, as allowed under the Labor Code. The remainder of permit inspections is performed at 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 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. Accordingly, 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.

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 the pressure vessel or boiler. In addition, should a vessel or boiler explode, there would be related economic losses due to business interruption.

The benefits that will result from the Division's proposed amendments to increase the hourly inspection fees under regulations 344 and 344.1, explained above, and the mileage reimbursement rate are:

- The Division will be able to cover the Division's actual costs in having qualified safety engineers provide on-site inspection services for the private sector owners/operators using pressure vessels and boilers in California which must be inspected prior to the issuance of a permit to operate.
- Inspection of pressure vessels, tanks and boilers, as required by Labor Code sections 7620 *et seq*, is necessary to protect the lives, health and safety of the public and of employees working in the vicinity of such equipment, as well as to avoid business disruption from such explosions, and is also necessary to protect the environment from contamination that could result from uncontrolled emissions or spills of the materials, gases and substances stored in such tanks and boilers.

Technical studies or reports:

The Division relies on no technical studies or reports other than the cost and expense calculations provided in support of the proposed rulemaking, attached as Appendix A.

### Reasonable Alternatives Considered by the Division

The Division has considered initiating a statutory change to increase the existing permit inspection fee in Labor Code section 7721(b). 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."

This section 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 for pressure vessels and boilers 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 amended 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.

### Determination of Reimbursable Mandate

The Division has determined the proposed amendments to sections 344 and 344.1 do not impose a mandate on local agencies or school districts requiring reimbursement by the State pursuant to Part 7 (commencing with Section 7500) of Division 4 of the Government Code because the proposed regulations do 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." Public entities that require permits and inspections of pressure vessels and boilers are statutorily exempt from being charged fees by the Division for these purposes since there is no express statutory provision allowing it to do so. (Gov. Code § 6103.).

The California Supreme Court has determined that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out a 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.)

Moreover, the Division receives an appropriation from the Occupational Safety and Health Fund to cover the costs of the inspection and permit program for public agencies, which are not otherwise assessed permit or inspection fees by the Division. Those program costs previously were paid for by the state's General Fund.

#### Costs or Savings to Local Agencies or School Districts

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Reimbursable Mandate".

#### Costs or Savings to State Agencies

The Division has determined that the proposed amendments to regulations 344 and 344.1 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 that provides for charging state agencies such permit fees and therefore state agencies are statutorily exempt from such fees (Gov. Code § 6103.). An annual appropriation from the Occupational Safety and Health Fund is made to the Division to cover the cost of the inspection of tanks and boilers operated by state agencies. Those program costs previously were paid for by the state's General Fund.

#### Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The proposed amendments to regulations 344 and 344.1 do not impose non-discretionary costs on local agencies.

#### Costs or Savings in Federal Funding to the State

The proposed amendments will not result in costs or savings in federal funding to the State.

#### Plain English Requirements Concerning Small Businesses

The Division has determined the proposed regulations may affect small businesses. However, the express terms of the proposed regulations are drafted in plain English, as required by Government Code section 11346.2(a)(1), since the proposed amendments consist primarily of changing numbers (for the fee amounts and mileage charge) rather than text. The Informative Digest for the proposed amendments includes a plain-English policy statement overview.

The proposed amendment to regulation 344(a) will increase the hourly inspection fee for shop inspections performed during normal business hours over the regular work week from \$ 110.00 to \$ **135.00**, a 23% increase. The hourly fee for these inspections has not been increased since 2000. The increase of \$ 25 in the hourly fee represents an increase of \$ 2.08 per hour per year in

the hourly fee rate since the last fee increase. The Division performed shop inspections at 40 separate locations involving approximately 6214 hours of inspection time in fiscal year 2011/2012. Using the total number of inspection hours for the shop inspections in 2011/2012, the increase of \$ 25 per hour for shop inspection, audit and consultation time will result in an average increase of \$ 3884 per shop inspection, assuming that all shop inspections require the same amount of time.

The proposed amendment to regulation 344(a), for a higher hourly inspection fee of \$ **202.50** for inspections performed after 5 PM Monday through Friday, or at any hour on Saturday, Sunday or State holidays, represents time and a half of the hourly rate of \$ 135.00. The owner/operator of a pressure vessel or boiler is able to schedule the time of the inspection, therefore can either avoid the higher hourly rate or to decide pay the higher rate for the convenience of having the inspection performed at hours and on days that are preferable to the requesting owner/operator.

The proposed amendment to regulation 344.1 will increase the hourly inspection fee for air tanks, liquefied petroleum gas tanks and boiler inspections to \$ **160.00** from \$ 135.00. Each inspection is one hour. The increase is 18.5%, however, this fee was last increased in 2000. The \$ 25/hour increase from the existing fee is effectively an increase of \$ 2.02/hr. per year since the last increase. Approximately 75% of the permits subject to this increase are valid for 5 years so the effective impact of the \$ 25.00 increase on businesses needing such permits would be \$ 5.00 per year since the last fee increase.

Types of businesses affected: Any business in any industry required to use pressurized tanks, vessels or boilers. Unchanged from the current regulations.

Projected reporting, recordkeeping and other compliance requirements: None. Unchanged from the current regulations.

Creation or elimination of jobs: None expected.

Creation or elimination of existing businesses: None expected.

Impact of fee increase on ability of affected businesses to compete with businesses in other states: None expected.

Impact of expansion of businesses in California: None expected.