

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 4, Article 5, Section 770
of the Boiler and Fired Pressure Vessel Safety Orders**

Boiler Inspections**SUMMARY**

In 1988, California Labor Code Section 7682 was amended to lengthen extensions granted by the Division of Occupational Safety and Health (Division) for fired boiler inspections. Prior to the amendment, existing law required the Division to inspect each installed fired boiler internally and externally at least every year, except that the Division could grant extensions for internal inspections to a maximum interval of 24 months where operating experience and design of the boiler demonstrated to the satisfaction of the Division that equivalent safety would be maintained. The Labor Code amendment allowed the Division to increase the length of time between the required internal inspections for fired boilers to 36 months. The inspection interval for other classes of boilers remained unchanged, requiring the Division to establish the inspection interval such that the safety of people working in the vicinity of the boiler was ensured.

Since 1988, the Division's Pressure Vessel Unit has received numerous requests, particularly from the petroleum refining industry, to extend the boiler internal inspection intervals to those allowed by the Labor Code. These requests have resulted in a number of variance applications that have been granted or are currently pending by the Standards Board. Over the last 15 years, the petroleum refinery industry has been implementing the latest advanced inspection and operational control technology in order to operate their facilities for longer intervals between plant shutdowns. The ability to operate their boilers at intervals of 36 months for a fired boiler and 72 months for an unfired boiler allows the refineries to align the boiler internal inspections with their facility shutdowns. The refining industry has stated that a plant shutdown costs \$1,000,000 per day for each day of non-production. Preventing facility shutdowns due to internal boiler inspections can save money for both the refinery and the citizens of California through cheaper gas prices.

Of the 436 boilers that have been granted an internal inspection interval extension, 387 are located at petroleum refineries, and 49 are located at conventional utility power plants. These types of facilities are capable of demonstrating the ability to provide the superior maintenance and operating experience necessary to provide the equivalent boiler safety required by the Labor

Code when the Division grants these extensions. These internal inspection interval extensions are not typically requested by nor granted for the smaller scale boiler operators as they have the ability to shutdown their boilers annually and do not have the means to provide the superior maintenance (i.e. water treatment, non-destructive examination) necessary to ensure equivalent safety to that provided by annual internal inspections.

The purpose of this proposed rulemaking action is to ensure consistency between Title 8, fired boiler inspection requirements, and existing Labor Code provisions. Additionally, the proposal would amend the maximum interval for internal inspections of unfired boilers that the Division may grant from 36 months to 72 months. Petroleum companies, chemical plants, public utilities or other industries would still be required to individually apply for these inspection extensions, and the Division would continue to review these applications and make the determination as to whether or not to grant such extensions. Any extension requests granted would be subject to a strict review of the facility's superior maintenance and inspection techniques. Boilers that do not meet this standard will be required to continue with annual internal inspection intervals.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This proposed rulemaking action contains minor, nonsubstantive revisions. These nonsubstantive revisions are not all discussed in this Informative Digest, however, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 770. Boilers Subject to Annual Inspection.

Section 770(a) requires all boilers, except those exempted in Section 771, to be inspected internally and externally every year, except as provided in subsection (b). Existing Section 770(b) outlines the types of boilers and conditions that would extend the annual inspection of boilers to 24 months, or 36 months for unfired boilers. It is proposed to amend these inspection interval extensions to 36 months and 72 months, respectively. It is also proposed to add clarifying language specifying that unfired boilers are typically called process steam generators. The proposed amendments are necessary to align Title 8 standards with the provisions of Labor Code Section 7682, and allow companies to operate their boilers for longer periods of time between shutdowns. The proposal will enable these companies to align their boiler internal inspections with their facility shutdowns while ensuring that equivalent workplace safety requirements are maintained.

An amendment is proposed to add new subsection (b)(4), which states that for boilers and process steam generators where metallurgical damage may occur, the Division may categorize the boiler or process steam generator as "unfired" upon acceptance of a risk engineering analysis submitted by the owner of the boiler. The risk engineering analysis shall include the design basis for categorizing the boiler as unfired, the potential consequences to the boiler and to the safety of the person(s) responsible for attending the boiler, and a discussion of protective devices and specific procedures to prevent the consequences. The proposed new subsection is necessary to provide the regulated public with a means to re-classify boilers that are subject to

metallurgical damage as “unfired,” based on the Division’s review of the engineering analysis and final determination, so that the boiler may be operated for a maximum of seventy-two (72) months between internal inspections.

DOCUMENTS RELIED UPON

- Parker’s 2003 California Labor Code Section 7682.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Cost or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. Although some state agencies may have boilers regulated by Section 770, the Division is not aware of any that would meet the specific requirements applicable to the proposed inspection interval extensions.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendments would enable affected businesses that meet the specific application requirements to align their boiler internal inspections with their facility shutdowns while ensuring that equivalent workplace safety requirements are maintained, providing potentially significant operating cost savings.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. (See also “Impact on Businesses.”)

Cost or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.” Moreover, no savings to local agencies or school districts as a result of the proposal is anticipated. Although local agencies or school districts may have boilers regulated by Section 770, the Division is not aware of any that would meet the specific requirements applicable to the proposed inspection interval extensions.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard 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 amendment will not require local agencies or school district to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program with 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 B 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 standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local government. All employers-state, local and private-will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. Internal inspection interval extensions are not typically requested by nor granted for the smaller scale boiler operators as they have the ability to shutdown their boilers annually, and do not have the means to provide the superior maintenance (i.e. water treatment, non-destructive examination) necessary to ensure equivalent safety provided by annual internal inspections.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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 actions.