

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS****General Industry Safety Orders
Section 5189
(Published on January 3, 2020)****[Process Safety Management of Acutely Hazardous Materials, Appendix A List of Acutely Hazardous Chemicals, Toxics and Reactives \(HORCHER\)](#)**

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **February 20, 2020** in the **Council Chambers** of the **Rancho Cordova City Hall, 2729 Prospect Park Drive, Rancho Cordova, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **January 3, 2020** and closes at 5:00 p.m. on **February 20, 2020**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards. These proposed regulations will implement, interpret, and make specific Labor Code Section 142.3.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT
OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) issued technical amendments for minor corrections to the Process Safety Management (PSM) of Highly Hazardous Chemicals standard on April 15, 2019, as 29 Code of Federal Regulations, Part 1910, Section 1910.119. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register (FR), Volume 84, No. 72, pages 15102-15104, April 15, 2019, as justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

Appendix A of California's PSM standard contains the "List of Acutely Hazardous Chemicals, Toxics and Reactives (Mandatory)." The list contains a typographical error in the Chemical Abstract Service (CAS) number for the chemical "Methyl Vinyl Ketone." The published version of the standard incorrectly lists the CAS number as "79-84-4." The correct CAS number is "78-94-4." The error first appears in the proposed rule of the standard (55 FR 29167, July 17, 1990) and is repeated in the final rule (57 FR 6407, Feb. 24, 1991). However, the FR notes that the incorrect CAS number, "79-84-4," is not a valid CAS number and does not represent a different chemical.

Upon review of the technical amendments, two additional typographical errors in California's Appendix A were discovered: The CAS number for "Osmium Tetroxide" is incorrect and the listing for the chemical, "Carbonyl Fluoride Cellulose Nitrate (concentration > 12.6% nitrogen)" is actually a combination of two chemicals, "Carbonyl Fluoride" and "Cellulose Nitrate (concentration > 12.6% nitrogen)." California proposes to correct these errors to make its Appendix A commensurate with the federal counterpart.

The proposed amendments are substantially the same as those promulgated by Federal OSHA; therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard. However, the Board is still providing a comment period and will convene a public hearing. The primary purposes of the written and oral comments at the public hearing are to:

1. Identify any clear and compelling reasons for California to deviate from the federal standard; and,
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and,

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The Board evaluated the proposed regulations pursuant to government Code section 11346.5(a)(3)(D) and has determined that the proposed rulemaking action is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

DOCUMENTS RELIED UPON

1. 84 Federal Register 15102-15104 (April 15, 2019).

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Because the proposed amendments correct typographical errors and do not impose new requirements on California businesses, no significant costs are anticipated as a result of the proposed action. The affected chemicals are not new to the "List of Acutely Hazardous Chemicals, Toxics and Reactives (Mandatory)" in Appendix A of either the federal or state PSM regulations, nor are the threshold quantities proposed for change. Correcting the CAS numbers and separating the inadvertently combined chemicals into two separate entries does not alter the requirements of the regulation, which have been in place since its promulgation in 1991.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment may affect small businesses; however, no significant economic impact is anticipated because the proposed amendments correct typographical errors and do not impose new requirements on California businesses.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

AVAILABILITY OF THE MEMORANDUM TO THE STANDARDS BOARD MEMBERS

Upon its completion, copies of the Memorandum may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulation in an underline/strikeout format and the Notice of Proposed Action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.