

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 108, Section 5158
of the General Industry Safety Orders

Other Confined Space Operations**SUMMARY**

Section 5158(e)(1)(D)1 contains a reference to Section 5144(e). At the time that reference was included in Section 5158(e)(1)(D)1, Section 5144(e) concerned air quality. In a rulemaking undertaken in 1998, the provisions of Section 5144(e) were modified and moved to Section 5144(i). However, the reference in Section 5158(e)(1)(D)1 to Section 5144(e) was not modified accordingly. The purpose of this rulemaking is to correct that discrepancy. This rulemaking was initiated by an e-mail received on June 3, 2009 from Mariano Kramer of the Division of Occupational Safety and Health.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 5158. Other Confined Space Operations.**

This provision of the General Industry Safety Orders concerns breathing hazards regarding the industries and operations specified in Section 5156(b)(2)—such industries and operations as certain construction, agricultural, marine terminal, grain handling, telecommunications, natural gas utility and electric utility operations. Section 5158(e) concerns confined space operations, and Section 5158(e)(1)(D)1 states in part that the standby employee must have “an independent source of breathing air which conforms with Section 5144(e), available for immediate use.” Currently, Section 5144(e) has nothing to do with air quality (it did prior to the 1998 rulemaking referred to above); instead, it pertains to medical evaluations. The air quality provisions that Section 5158(e)(1)(D)1 intends to refer to are now found in Section 5144(i). This proposal would amend Section 5158(e)(1)(D)1 by replacing the existing Section 5144(e) reference with a Section 5144(i) reference. The purpose and necessity of this proposal is to ensure that Section 5158(e)(1)(D)1 contains the intended cross reference rather than a cross reference that has no relation to the purpose or wording of Section 5158(e)(1)(D)1.

DOCUMENT RELIED UPON

E-mail from Mariano Kramer, Division of Occupational Safety and Health to Mike Manieri, Occupational Safety and Health Standards Board, dated June 3, 2009.

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.

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

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

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 a 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.

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.

Costs 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.”

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required 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 districts 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 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 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 regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation 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) 189 Cal.App.3d 1478.)

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

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this regulation 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 action.