

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **December 16, 2004**, at 10:00 a.m.
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **December 16, 2004**, following the Public Meeting
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes noticed below to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **December 16, 2004**, following the Public Hearing
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

STEVEN L. RANK, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **December 16, 2004**.

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 104
Section 5144
Controlled Negative Pressure (CNP) REDON Fit Testing Procedures

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 104
Section 5144
Fit-Testing for M. Tuberculosis

A description of the proposed changes are as follows:

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 104
Section 5144
Controlled Negative Pressure (CNP) REDON Fit Testing Procedures

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 standards at least as effective as federal standards addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated standards addressing protocols for fit testing respirators on August 4, 2004, as 29 Code of Federal Regulations, Section 1910.134. The Board is relying on the explanation of the provisions of the federal standard in Federal Register, Volume 69, No. 149, pages 46986 to 46994, August 4, 2004, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt a standard that is the same as the federal standard except for editorial and format differences.

The OSHA final rule approves an additional quantitative fit testing protocol, the controlled negative pressure (CNP) REDON fit testing protocol, for inclusion in Appendix A of its Respiratory Protection Standard. The federal amendment affects, in addition to general industry, OSHA respiratory protection standards for shipyard employment and construction. OSHA adopted this fit testing protocol under the provisions contained in the federal Respiratory Protection Standard. The State respirator standard, Section 5144 of the General Industry Safety Orders, is substantially the same as its federal counterpart, and applies to all industries in California.

The proposed standard is substantially the same as the final rule 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 a standard substantially the same as a federal standard; however, the Board is still providing a comment period and will convene a public hearing. The reasons for 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; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standard may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

COST ESTIMATES OF PROPOSED ACTION

The CNP REDON protocol offers employers an additional option to fit test their employees for respirator use. In the federal preamble, OSHA concludes that the rulemaking action imposes no additional costs on employers.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard 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 the proposed standard 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.)

This 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) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers 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 the 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.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board 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.

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 107
Section 5144
Fit-Testing for M. Tuberculosis

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Effective October 18, 2004, employers who provide respirators for protection against M. Tuberculosis are required to comply with section 5144. Until that time, employers have been required to comply with section 5147. Section 5144 differs from section 5147 in that it has more specific requirements for the written program, program administration, respirator selection, medical evaluation, fit-testing, use, training and record-keeping. Specifically, in regards to this proposal, section 5144 requires that employees be medically evaluated using the questionnaire in Appendix C, or equivalent.

The effect of the proposal would be to add an exception to subsection 5144(e)(2), to permit employers to rely on medical evaluations that were performed prior to October 18, 2004, using other evaluating questionnaires or examinations. This exception applies only to the use of filtering face-piece respirators to protect against exposure to M. Tuberculosis. Medical professionals in healthcare and other settings currently use alternative questionnaires and examinations (Document 1). Generally, such questionnaires provide equivalent or more extensive health assessment to that intended by Appendix C. Medical professionals have advised the Division (Document 2) that the standard procedures used by healthcare professionals in evaluating employees for their ability to use filtering facepiece respirators for protection against M. Tuberculosis will provide equivalent protection to that afforded by using the Appendix C questionnaire in this context. Further, the risk of any potential negative consequences to an employee from failure to be evaluated specifically using the questionnaire in Appendix C, is significantly outweighed by the risk of infection from M. Tuberculosis if appropriate respiratory protection is not used.

EMERGENCY REGULATIONS

This proposal is intended to permanently codify the emergency standard approved by the Office of Administrative Law (OAL) and was filed with the Secretary of State on October 7, 2004.

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 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.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact 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."

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 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the standard 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 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) 189 Cal.App.3d 1478.)

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

EFFECT ON SMALL BUSINESSES

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

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.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board 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.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than December 10, 2004. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on December 16, 2004 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umamoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

STEVEN L. RANK, Chairman

TITLE 8

GENERAL SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 4, ARTICLE 107

SECTION 5144

CONTROLLED NEGATIVE PRESSURE (CNP)
REDON FIT TESTING PROCEDURES

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 7, ARTICLE 107

SECTION 5144

FIT-TESTING FOR M. TUBERCULOSIS

NOTICE OF ADOPTION OF REGULATIONS
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS
BY THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. Title 8, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 10, Section 3381, Head Protection.

Heard at the July 15, 2004, Public Hearing; adopted on August 19, 2004; filed with the Secretary of State on September 30, 2004; and became effective on October 30, 2004.

2. Title 8, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 107, Section 5155, Methyl Hydrazine.

Heard at the July 15, 2004, Public Hearing; adopted on August 19, 2004; filed with the Secretary of State on October 1, 2004; and became effective on October 31, 2004.

3. Title 8, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 3, New Section 3241.1, Working Warehouses.

Heard at the December 18, 2003 and June 17, 2004, Public Hearings; adopted on August 19, 2004; filed with the Secretary of State on October 1, 2004; and became effective on October 31, 2004.

4. Title 8, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 107, Section 5155, Airborne Contaminants.

Heard at the December 18, 2003 and June 17, 2004, Public Hearings; adopted on August 19, 20, 2004; filed with the Secretary of State on October 4, 2004; and became effective on November 3, 2004.

A copy of these standards are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: <http://www.dir.ca.gov/oshb> and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: oshsb@dir.ca.gov.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Keith Umemoto, Executive Officer