

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

## CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, as follows:

Subchapter 4, Construction Safety Orders (CSO).

Article 4, Sections 1529, Appendix K to 1529, 1532, 1532.1, Appendix B to 1532.1, 1532.2 and 1535;

Subchapter 7, General Industry Safety Orders (GISO).

## Section 3204

## Group 16. Control of Hazardous Substances

Article 107, Dusts, Fumes, Mists, Vapors and Gases, Section 5150;

Article 108, Confined Spaces, Section 5157;

Article 109, Hazardous Substances and Processes, Sections 5161, 5189, 5190, 5191, 5192, Appendix A to 5192, 5194, Appendices A through G of 5194, 5197, 5198, and Appendix B to 5198.

Article 110, Regulated Carcinogens, Sections 5200, 5201, 5202, Appendix A to 5202, 5206, 5207, 5208, Appendix J to 5208, 5208.1, 5209, 5210, 5211, 5212, Appendix B to 5212, 5213, 5214, 5215, 5217, Appendix A to 5217, 5218, 5219, and 5220;

Subchapter 18, Ship Building, Ship Repairing and Ship Breaking Safety Orders (SISO).

Article 4, Control of Hazardous Work, Sections 8358, Appendix K to 8358, and 8359.

Federal Final Rule, Globally Harmonized System - Update to Hazard Communication (Health)**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM  
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following non-substantive, substantive, and sufficiently-related modifications that are the result of public comments, Occupational Safety and Health Standards Board (Board) staff evaluation, and/or Board direction.

Section 1529. AsbestosAppendix K (non-mandatory).

Modifications are proposed to the original non-mandatory appendix K to delete the word "Material" and change MSDS to SDS in subsection (e) to section 3.1 of the appendix. The proposed modifications are necessary to update the terminology from MSDS to SDS to be consistent with similar changes made throughout Title 8 in this proposal.

Section 1532. Cadmium

Subsection (d)(1)(A).

Modifications are proposed to delete the word “Material.” The proposed modifications are necessary to update the terminology to be consistent with similar changes made throughout Title 8 in this proposal.

Section 5192. Hazardous Waste Operations and Emergency Response

Subsection (a)(3).

The original proposed language of the definition of Health hazard in subsection (a)(3) has been modified to remove the phrases “mixture of chemicals” and “for which there is statistically significant evidence...” from the first sentence to read: A chemical or pathogen where acute or chronic health effects may occur in exposed employees. The modification is necessary to be consistent with and as effective as the counterpart federal standard 29 CFR 1910.120.

Section 5194. Hazard Communication

Subsection (b)(3).

The original proposed language of the laboratory exemption in subsection (b)(3) has been modified to revise the reference to retaining incoming labels from subsection 5194(f)(1) to subsection 5194(f)(9). The modification is necessary because the current label requirements referenced in section 5194(f)(4) are proposed to be moved to subsection (f)(9) not (f)(1). This modification is consistent with and as effective as the counterpart federal standard 29 CFR 1910.1200.

Subsection (d)(3).

The original proposed language of the source list requirements in subsection (d)(3) has been modified to replace the phrase “treat any of the following sources...” with “consider any chemical listed on the following sources to be a hazardous chemical and shall be required to classify the listed chemical using the criteria as described in Appendix A.” The modification is necessary to be consistent with and as effective as the definition of hazardous chemical and the Appendix A classification requirement in counterpart federal standard 29 CFR 1910.1200.

Subsection (d)(3)(D).

The original proposed language of the source list requirements in subsection (d)(3)(D) has been modified to add the phrase “specifically identified and” to clarify the proposed sentence regarding substances regulated under Articles 107 and 109. The modification is necessary to clarify that this requirement only pertains to those substances specifically listed in the referenced Title 8 sections. The modification is consistent with and as effective as the counterpart federal standard 29 CFR 1910.1200.

Exception to Subsection (d)(3).

The original proposed language of the source list requirements in the exception to subsection (d)(3) has been modified to replace the phrase “is present in a physical state...” with “does not meet the criteria in Appendix A for classification.” The modification is necessary to be consistent with and as effective as the definition of hazardous chemical and the Appendix A classification requirement in counterpart federal standard 29 CFR 1910.1200.

Subsection (d)(5).

The original proposed language of the requirements of mixtures in subsection (d)(5)(B) has been modified to ensure the it is as consistent and effective as the counterpart federal language in 29 CFR 1910.1200 and that in most cases the cut-off concentrations in Appendix A are the primary concentration cut-off values.

Proposed subsection (d)(5)(B) has been reworded to clarify that the requirements of this subsection are in addition to the requirements in (d)(5)(A). Subsection (d)(5)(B) only applies when there is a hazardous chemical present in a mixture below the cut-off concentration in Appendix A, but above the threshold concentration in the California Labor Code Section 6383. Under the Appendix A procedures for classification of mixtures, a chemical that may contain up to 20 percent of a substance that causes transient target organ effects that are evaluated as category 3 (including respiratory tract irritation and narcotic effects) may not be listed. However, the Labor Code requires that hazardous substances that are present as 1 percent, or present as an impurity as 2 percent, or are a carcinogen, as 0.1 percent be disclosed on the safety data sheet. The proposed rewording eliminates the need for the previously proposed exceptions, so they are proposed to be deleted.

Subsection (f)(11).

The original proposed language of renumbered section (f)(11) retained the existing three month deadline for the update of labels on shipped containers of hazardous chemicals. It is proposed to revise the deadline to six months in order to be consistent with the federal OSHA deadline.

Section 5208.1. Non Asbestiform Tremolite, Anthophyllite, and Actinolite.

A modification is proposed to the original proposed subsection (h)(1)(C) to replace the word ‘asbestos’ with ‘non-asbestiform tremolite, anthophyllite, and actinolite.’ The proposed modification is necessary to update the terminology to be consistent with similar changes made throughout section 5208.1 in this proposal.

Section 5217. Formaldehyde.

A modification is proposed to the original subsection (n)(3)(A) to delete the word ‘Material.’ The proposed modification is necessary to update the terminology from MSDS to SDS to be consistent with similar changes made throughout Title 8 in this proposal.

SUMMARY OF AND RESPONSES TO ORAL AND WRITTEN COMMENTS

I. Written Comments

Biagio Ventura, Manager, Safety & Health, Vulcan Materials Company-West Region by letter dated October 11, 2013 with attachment of letter to DOSH advisory committee dated May 10, 2013.

As a coalition (GHS Coalition) representing employers, distributors and manufacturers impacted by the new GHS rule, the GHS Coalition supports conformance with the new federal Hazard Communication Standard (HCS 2012). The GHS Coalition stands by their earlier comments

made during adoption of the temporary California rule, and attached a letter addressing certain compromises that they sent the Division during the advisory process.

Comment #BV1: Proposed section 5194(f)(11) should be amended to allow six months for a manufacturer, importer, distributor or employer to update a label based on new significant hazard information, rather than retain the current three month requirement as proposed. The Coalition understands the Division's primary purpose for limiting the period for updating labels to three months is to facilitate contact with the chemical manufacturer. This purpose seems disconnected from the actual obligation imposed by this subsection to update hazard information. The GHS Coalition urges six months be permitted for this purpose because the process of shipping new labels involves: hazard evaluation/determination; label design, approval and production; manufacturing process to apply the new label to product; product segregation/distribution through possibly multiple warehouses; and inventory sell through. A timeline less than six months cannot be met; this is an unacceptable disruption of commerce to meet a California-only deadline.

Response: The federal adoption of GHS has increased the information required to be made available on the label. The federal rule also extended the maximum period permitted to update labels on shipped materials to six months, based on the feasibility of changing labels. The federal record contains a number of documents supporting their action. Information provided by both this commenter and the October 14 Coalition letter summarized below, indicated that the three month time-frame currently in California regulation could be infeasible as applied to the full distribution chain. The Board believes that while, in many cases, labels can be updated within 90 days or less, in other cases, updating labels may require more time, particularly to ensure that materials stored at distributors will be updated prior to shipping. Further, since this paragraph requires the distributor to ensure that labels are updated within the appropriate timeframe, but the rest of the standard does not require the distributor to evaluate hazards and therefore determine what is on the label, distributors who receive products from both in-state and out-of-state sources may have the same product with different labels. There may be other regulatory approaches to ensure that up-to-date label information is passed along promptly to the end user, but these approaches are beyond the scope of the current rulemaking. Therefore, to be consistent with the federal rule, the Board has adopted the six month maximum period for updating labels in this current rulemaking.

Comment #BV2: In the attached May 10, 2013, letter, the coalition noted its opposition to the retention of the current HCS regulation's use of "one positive study" over weight of evidence classification as the basis of determining a chemical is hazardous. The GHS Coalition suggested alternative phrasing: "Where available studies of possible health effects of a hazardous chemical are deemed by the SDS preparer to not provide sufficient weight of evidence for classification of the chemical, the SDS preparer shall nonetheless note on the safety data sheet the identity of the chemical and the health effect for those chemicals for which there are studies conducted in accordance with established scientific principles and which report statistically significant findings regarding a potential health effect."

Response: Similar language was included in subsection (d)(2), which requires that the preparer of a safety data sheet (SDS) who determines that a chemical need not be classified to at least note the identity of the chemical and the associated health effect if there is statistically significant evidence of a hazardous effect found in at least one positive study conducted in accordance with established scientific principles.

Comment #BV3: The GHS Coalition also noted its opposition to the use of source, or floor, lists as is retained in the regulation, but alternative language was suggested: "There shall be a rebuttable presumption that chemical listing determinations by the following sources met the weight of evidence criteria established in Appendix A for classification of the health hazards upon which the source listings are based."

Response: Language requiring classification based on source, or floor, lists was incorporated into subsection (d)(3) and (d)(4), which also include exceptions requiring that if the SDS preparer determines that a listed chemical need not be classified, that the identity of the chemical and the list upon which it appears be noted on the SDS. These exceptions further require that the SDS preparer document the basis for the determination that a listed chemical need not be classified, and make that information available in accordance with Section 3204.

Comment #BV4: In the May letter, the Coalition urged that the Board conform to the federal HCS 2012 on all other matters to avoid raising issues with the "product clause" of the federal OSH Act.

Response: The California Hazard Communication Standard reflects requirements in the California Labor Code and other California law. The Board believes that this proposal is as effective as the federal standard, and is consistent with it as to not raise a "product clause" or interstate commerce issue for out of state employers. Also see the related response to comment DS#2.

The Board thanks Mr. Ventura for his comments and participation in the Board's rulemaking process.

GHS Coalition by letter dated October 14, 2013 with attachment of letter to DOSH advisory committee dated May 10, 2013. The October 14<sup>th</sup> letter was signed by the following associations and organizations: Associated General Contractors of California, Associated Roofing Contractors of the Bay Area Counties, Inc., California Chamber of Commerce, California Construction and Industrial Materials Association, California Framing Contractors Association, California Manufacturers & Technology Association, California Professional Association of Specialty Contractors, Chemical Industry Council of California, Consumer Specialty Products Association, International Fragrance Association, North America, Phylmar Regulatory Roundtable - OSH Forum, Residential Contractors Association, Styrene Information and Research Center. The May letter had the same signatories plus the following additional associations and organizations: Advanced Metal Technology Association; American Composites Manufacturers Association, SPI, California Construction and Industrial Materials Association, Western Steel Council.

The Coalition letter included the same May 10 letter addressed in comments BV#2, #3, and #4. In addition, the coalition urges the use of the six-month deadline, as discussed in comment BV#1. See the response to comments BV#1 through #4.

The Board thanks the GHS Coalition for their comments and participation in the Board's rulemaking process.

Shelly Kessler, Executive Secretary-Treasurer, San Mateo County Central Labor Council (SMCCLC), by letter dated October 14, 2013

Comment #SK1: Since employers, the state's 18 million workers, and workers' health care providers need complete and accurate information from data sheets and labels about chemical hazards, the right-to-know (RTK) is key to California's health and safety law. In that spirit, the SMLC (representing 110 unions and 70,000 workers) supports the proposed changes to the HCS. The proposed changes are "at least as effective" as federal HCS 2012, which adopted some, but not all parts of the GHS agreement. Most of the federal changes are improvements to RTK, but California's regulation does not have to mimic HCS 2012. The GHS principles are important, and the first one is relevant to the California proposals that differ from HCS 2012: the level of protection already provided should not be reduced as a result of harmonization. California's proposed changes are consistent with this principle. The RTK regulation must provide information for the public good, not allow industry to hide information or interpret scientific evidence to its own advantage. California does not need another DBCP scandal, asbestos epidemic or more asthma from cleaning products. All available information is necessary for workers and their employers to make informed decisions about purchase and use of chemicals. The SMCCLC supports such aspects of the proposal as the following:

- Use of floor lists to classify chemicals as having the relevant hazard. Without mandatory lists, "weight of evidence" can be misused, while the lists already incorporate the weight of evidence approach. Use of these lists will provide consistency between SDS, and provide reliable information.
- The "one study rule" in which one good study showing a positive hazardous effect means the chemical and its health hazard must be listed on the data sheet as the minimum alert to workers, employers and medical providers.
- Three month deadline for updates of data sheets is more than reasonable given modern technology.
- Requiring classifiers to keep written records of their procedures is important, especially to show the rationale for not classifying chemicals as health hazards.

Response: The Board thanks the SMCCLC for its comment.

Comment #SK2: The SMCCLC has concerns about the exceptions to subsections (d)(3) and (d)(4). The exceptions make it easier for classifiers to decide there is "no health risk" while avoiding the hazard listing of reliable and reputable sources. Likewise, the exception would allow classifiers to avoid listing a health hazard that should be classified as hazardous as a result of a positive study.

Response: Section 5194(d)(3) and (d)(4) require an SDS preparer to classify a chemical listed on one of several “source” lists, including the Director’s List, established under the California Labor Code Section 6382. The exceptions require that when an SDS preparer determines that a chemical on one of the source lists does not meet the criteria in Appendix A for classification, the SDS must still contain the identity of the chemical, and the list upon which it appears. The exception language also requires the SDS preparer to document the basis for not classifying the chemical, and make that documentation available to the Division, employees and employers. This maintains the protections that were in effect at the time of the federal adoption of the GHS, and provides disclosure and background information. The Board believes that the requirements in subsections (d)(3) and (d)(4), including the exceptions, will provide disclosure to users of the chemical, and will promote careful decisions during the process of hazard evaluation and classification. The information required by the exceptions will also provide a basis for challenging those decisions, if it is necessary. Some language in the exception to subsection (d)(3) was removed because under the GHS, classification is based on the substance’s toxicity, not on exposure risk. Therefore the proposed clause, “is present in a physical state, volume or concentration that will not cause any adverse or chronic risk to human health” has been removed in order to be at least as effective as the federal standard. Also see the response to Mr. Shiraishi where related changes to those subsections have been made. The Board also notes that these exceptions do not permit an SDS preparer to omit the identity of a chemical for which there is one positive study which demonstrates a health effect. That requirement is contained in subsection (d)(2).

Comment #SK3: The final HCS language must retain the strength of the current regulation. It should provide clear directions about where information required by the exceptions must go on the data sheet and label, and how these exceptions are to be communicated to the workers and those enforcing the regulation.

Response: The format for labels is included in Appendix C to Section 5194. Only classified effects are permitted/required to be placed on the label. In regards to the location of information on the SDS required by the exceptions to proposed section 5194(d)(3) and (d)(4), the federal standard has a similar requirement for carcinogens for which there is one positive study, but which the manufacturer or other entity determines the chemical need not be classified. Federal OSHA has not yet published guidance as to where that information must appear on the SDS. The Board anticipates that the information required by these exceptions and by section 5194(d)(2) would appear in the same location on the SDS as federal OSHA determines appropriate for carcinogens not classified. Employers are required to train employees on the new SDS and label formats, and further are required to train employees regarding the health and physical hazards of substances in their work areas.

Comment #SK4: The SMCCCLC urges the following additional changes be made as soon as the current rulemaking is done:

- Update the Director’s List and other lists referred to indirectly.
- Include additional authoritative lists, including the Proposition 65 list and the lists on the Safer Consumer Products regulation.

- Lower cut-offs for chemical disclosure on data sheets for mixtures to 0.1% for reproductive toxins, respiratory sensitizers, and mutagens.
- Have no threshold or percentage cut-off for endocrine disrupters, consistent with California green chemistry regulations.
- Require immediate updates to data sheets and labels when new information is available.

Response: The existing proposal, in adopting Appendix A for the classification of health hazards, has adopted a 0.1 percent cut-off value for reproductive toxicants (including chemicals with effects on lactation), and has adopted a 0.1 percent for respiratory sensitizers that are in a solid or liquid state, a 0.1 cut-off for category 1A respiratory sensitizers in a gaseous state, and 0.2 cut-off for category 2A respiratory sensitizers in a gaseous state. Although endocrine disruption is not a hazard class under GHS, many reproductive toxicants and chemicals having an effect on lactation are considered endocrine disrupters.

The Board has received several comments regarding adding source lists, either directly to Section 5194 or to the Director's List. The lists that contribute to the Director's list are included in the California Labor Code, which can only be amended by the Legislature. The Director of the Department of Industrial Relations, in conjunction with the Division of Occupational Safety and Health has authority to amend the Director's list, after a hearing by the Board. While additional source lists could be added to subsection (d)(3) the addition of each proposed list requires full consideration and comment, and is beyond the scope of this rulemaking. Therefore, the Board declines to add source lists, change cut-off values for mixtures in Appendix A, or make further changes in Section 5194 at this time.

The Board thanks SMCCLC and Ms. Kessler for the comments and participation in the Board's rulemaking process.

Mary Hale, MSN, NP, COHN-S, President of the California State Association of Occupational Health Nurses (CSAOHN) by letter dated October 15, 2013

Comment #MH1: CSAOHN agrees with the proposal to maintain use of the Director's List and other lists as currently required by California HCS. These lists are a reliable safety net ensuring communication of hazards to workers, employers and medical personnel. CSAOHN also agrees with the inclusion of the proposed language that adds evidence of statistically significant health effects and evidence based on at least one positive study conducted in accordance with established scientific principles. In regard to mixtures, health effects, not cut-off percentages should be utilized. Potent chemicals can have serious health effects at extremely low levels below those specified by the federal HCS 2012. Methods of detection and measurement have vastly improved, so the federal standard is not keeping up with current technology.

Response: Appendix A to Section 5194, as adopted by federal OSHA and as proposed to be adopted by the Board, includes cut-off concentrations for hazardous chemicals in mixtures. In most cases, they are the same, or lower, than the previous requirements. See response to comment #SK4 for more information for the thresholds concentrations for certain classifications of chemicals. In the case of category 3 respiratory irritants and neurotoxins, Appendix A permits

cut-off concentrations that may be as high as 20 percent. For this reason, the Board has proposed to retain the threshold concentrations listed in the Labor Code in subsection (d)(5)(B).

Comment #MH2: CSAOHN is concerned that federal HCS 2012 allows data sheet preparers broader discretion in classifying chemicals than the current California regulation; therefore CSAOHN supports a requirement that those who classify keep written records of their decisions. CSAOHN applauds the Division's efforts to ensure that California's existing HCS is not undermined in the process of global harmonization. Protection will not be reduced," is the key guiding principle for this process.

Response: See comment #SK2.

The Board thanks CSAOHN and Ms. Hale for the comments and participation in the Board's rulemaking process.

Peg Seminario, Director, Safety and Health Department, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) by letter dated October 16, 2013, with attachment of letter dated April 8, 2013.

Comment #PS1: With a long history of advocating the workers RTK, the AFL-CIO is supportive of the global harmonization process and federal OSHA's adoption of the GHS, as in our view, for most chemicals and hazards it provides improved, and more understandable hazard and warning information to workers. The AFL-CIO has sought to ensure that states--like California that operate state OSHA plan--provide protections that go beyond those required by federal OSHA, as long as these protections conform with OSHA Act Section 18 requirements. For example, the AFL-CIO joined the California Labor Federation to support the incorporation of Prop 65 requirements into the state's HCS.

The California proposal would adopt the federal GHS hazard classification system while maintaining certain important requirements that have been part of California labor code for decades. This is consistent with the first principle of GHS harmonization, that: "the level of protection offered to workers, consumers, the general public and the environment should not be reduced as a result of harmonizing the classification and labeling systems." The California proposal is also "at least as effective as" federal GHS 2012. Specifically, the AFL-CIO supports such parts of the proposal as maintaining requirements that:

- Chemicals on reference floor lists (Director's List, IARC, NTP, TLVs, and HESIS Alerts) must be classified according to their relevant hazards.
- Statistically significant evidence from one positive study triggers identification of the chemical and its hazard on the SDS.
- When new information becomes available, SDS must be updated within three months.
- Classifiers of chemicals document hazard determination procedures in writing.

Response: The Board thanks the AFL-CIO for its comment.

Comment #PS2: The AFL-CIO has concerns that the exceptions in sections 5194(d)(3) and (4) allow those classifying chemical hazards to override the presumption that a chemical on a reference source list is hazardous. While information on the chemical and its inclusion on reference lists would have to be listed on the SDS, it would not be the basis of classification or warning. Thus classifiers who disagree with the determinations of authoritative bodies could disregard these determinations and thereby limit the ability of workers and their employers to receive clear, consistent hazard information on these chemicals.

Nothing in GHS prohibits going beyond GHS hazard classification requirements to provide additional hazard information. It is appropriate to rely on authoritative bodies with chemical evaluation expertise. The AFL-CIO suggests the elimination of the section 5194(d)(3) and (4) exceptions and establishment of a non-rebuttable presumption that inclusion on cited reference lists meets the classification requirements for the relevant hazards. If the exceptions are not eliminated, the rule should provide greater specificity about the kind of hazard information that must be provided for these chemicals, and it should specify where the information required by the exceptions is to be placed on the data sheets and labels and how this information is to be communicated to workers.

Response: See response to comments #SK2 and #SK3.

Comment #PS3: The AFL-CIO also questions the clarity of section 5194(d)(5) regarding mixtures. Subsection (d)(5)(B) could be read as an alternative to (d)(5)(A) and in some cases provide less protection than federal HCS 2012. For example, Appendix A sets a 0.1% threshold concentration for some sensitizers, mutagens and reproductive toxins but section (d)(5)(B) could be read to require only the listing and classification of such chemicals when present in concentrations of 1% or greater. The AFL-CIO recommends the standard be clarified so that the provisions of subsection (d)(5)(B) apply where they would provide coverage of chemicals that goes beyond that provided by subsection (d)(5)(A).

Response: Section 5194(d)(5)(B) has been reworded to clarify that it is an additional, not an alternative requirement to subsection (d)(5)(A). For more information, see response to comment #MH1.

Comment #PS4: The AFL-CIO letter of April 8, 2013, supported including chemicals for which there is one positive study, and the use of reference source lists. The AFL-CIO also stated that the GHS does not preclude additional testing of chemicals, and that California, as a GHS-defined Competent Authority, could add testing requirements to subsection (d)(2) and remain consistent with GHS and at least as effective as federal HCS 2012. However, the nature of any additional required testing would have to be explicitly stated in the regulation. The April letter concluded by urging California to promulgate language that goes beyond federal HCS 2012 so that existing worker protections are not weakened.

Response: Regarding the requirements to disclose one positive study, see response to comment #BV2. In this proposal, the Board has stated that toxicological and epidemiological testing is not required. A manufacturer, importer or employer classifying chemicals may determine that testing

is required to classify chemicals, particularly in regards to determining the contents of mixtures or to determine physical parameters such as flashpoints in accordance with Appendix B. The Board agrees that regulations requiring testing to determine health effects are beyond the scope of this rulemaking.

The Board thanks the AFL-CIO and Ms. Seminario for the comments and participation in the Board's rulemaking process.

Kathryn Alcántar, Campaign Director, Californians for a Healthy & Green Economy (CHANGE), by letter dated October 16, 2013.

Comment #KA1: CHANGE (a state-wide coalition of environmental groups, health organizations, labor advocates, community groups, parent organizations, faith groups and others) strongly supports California's right to enact more protective regulations for its workers than federal HCS 2012. Occupational health policy precedent is that federal rules serve as a floor specifying minimum requirements, with states free to adopt greater protections. CHANGE supports

- Retaining source lists as described in section 5194(d)(3) and (4).
- Reinsertion of "one (positive) study" into the definition of "Health Hazard" at section 5194(c). Without this requirement, workers will be exposed to hazardous chemicals without even knowing it. Allowing, as does HCS 2012, classifiers to not classify a chemical as hazardous based upon one positive study is a clear step backward for worker protection.
- Retaining the requirement to revise labels within three months when a manufacturer becomes aware of information not currently reflected on a label. CHANGE is unaware of any evidence supporting the necessity of extending the time limit from three to six months.
- Requiring written records by classifiers that are available to workers.
- Lowering the threshold concentration for substances in mixtures for defining, classifying, and reporting health hazards to .01% for most chemical hazards and .001% for carcinogens, mutagens, respiratory sensitizers, reproductive/developmental toxins and endocrine disrupters and lower levels when weight of evidence warrants it. Technological advances allow detection at these low levels. Synthetic estrogen Bisphenol A is an example of a chemical hazardous at concentrations much lower than 0.1%.
- Adding the Proposition 65 List to the Director's List of Hazardous Substances to provide an authoritative source to identify reproductive and developmental toxicants.
- Adding authoritative body lists from California's Safer Consumer Products regulations.

Response: In order to maintain consistency with federal OSHA's regulation, the Board has adopted the federal classification system in Appendix A, and therefore has adopted the federal definition of health hazard. However, the Board has included a requirement that the SDS include the identity and health effect of every chemical that the SDS preparer determines does not meet the criteria for classification, if there is statistically significant evidence of a hazardous effect,

and the evidence is based on at least one positive study conducted in accordance with established scientific principles.

The Board agrees that information that contributes to the classification process should be available to employees, employers, and the Division. For that reason, the exceptions to subsection (d)(3) and (d)(4) contain that requirement where chemicals on referenced lists are not classified. Further, the Board proposes to retain existing requirements in subsection (d)(6) that manufacturers, importers and employers who classify chemicals to describe in writing the procedures they use to classify chemicals, and to make those procedures available to employees, their representatives, the Director and NIOSH. Also see response to comments #SK2 and #SK3.

Regarding the maximum time period permitted to update labels, see response to comment #BV1.

The Board has received several comments regarding adding source lists, either directly to Section 5194 or to the Director's List. The lists that contribute to the Director's list are included in the California Labor Code, which can only be amended by the Legislature. The Board declines to add source lists, change cut-off values for mixtures in Appendix A, or make further changes in Section 5194 at this time, due to the initial scope of the rulemaking, the need to meet federal and Labor Code mandates and the complexity of integrating the federal hazcom standard, the existing California standard, the California Labor Code, and other California laws.

The Board thanks CHANGE and Ms. Alcántar for the comments and participation in the Board's rulemaking process.

Catherine A. Porter, JD, Policy Director, California Healthy Nail Salon Collaborative (Collaborative), by letter dated October 16, 2013.

Comment #CAP1: Composed of some 40 public health and environmental organizations, salon workers and owners, and fiscally sponsored by Asian Health Services in Oakland, the Collaborative supports proposed changes to make California HCS consistent with federal HCS 2012 and the GHS. However, the Collaborative opposes those aspects of the proposal that undermine safety and health protections for California workers; the Collaborative does not support "harmonization" at the expense of "protection." Nail salon workers are predominantly low wage women of color who face many obstacles to accessing information on the occupational hazards they face. In the last decade, the number of nail technicians has more than tripled. In California, 80% of nail salon workers are Vietnamese. Salon workers handle solvents, glues, polishes, dyes and other beauty care products known or suspected to cause cancer, allergies, respirator, neurological and reproductive harm. Acute health symptoms such as headaches, dizziness, rashes and breathing difficulties are frequently reported. 89% of the 10,000 chemicals used in beauty products have yet to be independently tested for safety and impact on human health. This vacuum in regulatory protection disincentivizes manufacturers from taking responsibility for the safety of the chemicals used in salon products. Instead, the burden of chemical toxicity falls upon salon workers, owners and consumers, and often translates into poor health outcomes. The Collaborative supports California's adoption of a GHS regulation that retains the more protective elements of California's hazard communication System.

Response: The Board thanks the Collaborative for its comment.

Comment #CAP2: The Collaborative supports keeping source lists in Section 5194(d)(3) and (4). Reliance on the lists of authoritative bodies like NTP, IARC and Proposition 65 leads to greater consistency and clarity in communicating the hazards of chemicals, resulting in less confusion for employers and workers. Eliminating reliance on these lists would open the door to cherry picking evidence and potential harm being down-played. Manufacturers choosing to be forthcoming about these hazards would be at a competitive disadvantage. The Collaborative opposes the exceptions to Section 5194(d)(3) and (4) which would allow manufacturers to make a determination of "no health risk" without input or oversight. Classifying chemicals appropriately is critical for workers to receive information enabling them to protect themselves from chemical hazard.

Response: See response to comment #SK2.

Comment #CAP3: The Collaborative supports requiring information on Safety Data Sheets based on "one positive study" and other statistically significant evidence pursuant to section 5194(d)(2)(B). When it comes to protecting the health of workers, any erring should be on the side of precaution and more—not less—information, a principle that sits at the heart of right-to-know laws and the Hazard Communication Standard in California. The Collaborative opposes eliminating "one (positive) study" from the definition of "Health Hazard" at sec. 5194(c). This represents a clear step backward for worker protection and from the current standard. Though the exception requires listing on the SDS, there is no requirement to list the ingredient in section 2 where employers and employees would mostly likely see and consider it.

Response: See response to comment #BV2 and comment #SK3.

Comment #CAP4: The Collaborative supports retaining the requirement to revise labels within 3 months when the manufacturer, or other entity becomes aware of significant new information. Since the time limit for revising SDSs continues to be 3 months, keeping the 3 month time limit for labels supports greater consistency in communications regarding occupational hazards. Additionally, we are unaware of any evidence supporting the necessity of extending the time limit. California should not follow suit with federal OSHA on this issue; should not go backwards in its protections for workers; and should not sacrifice the health of workers for the sole sake of adopting standards that are identical to those of the federal government.

Response: See response to comment #BV1.

Comment #CAP5: The Collaborative supports requiring written records by classifiers so as to be able to determine the manufacturers' rationales for classifications.

Response: The Board has retained subsection (d)(6), which requires entities classifying chemicals to maintain written procedures. Further, if a manufacturer, importer, or employer

classifying chemicals determines not to classify a chemical on the referenced source lists in subsection (d)(3) or (d)(4), the classifier must record the basis for that determination.

Comment #CAP6: The Collaborative supports lowering the concentration levels of substances in mixtures for purposes of defining, classifying, and reporting. Dangerous health effects are posed at very low levels for many chemicals like carcinogens and endocrine disruptors such as bisphenol A (BPA) which was once thought harmless but now known to have adverse effects in the parts-per-trillion range. A threshold of even 0.1% for BPA as a health hazard would fail to be protective by several orders of magnitude. The Collaborative recommends lowering concentrations to .01% for most chemical hazards, .001% for carcinogens and endocrine disruptor and lower where weight of evidence warrants.

Response: See response to comment #SK4. The Board believes that any further reduction in cut-off values would need to be addressed through future rulemaking.

Comment #CAP7: The Collaborative supports adding the Proposition 65 List to the Directors List of Hazardous Substances to provide an authoritative source for identifying reproductive and developmental toxicants.

Response: The lists contributing to the Directors List are established in Labor Code Section 6382, and therefore this change is beyond the scope of this rulemaking.

Comment #CAP8: The Coalition supports improving and ensuring language access such as making mandatory the federal HCS 2012 optional use of pictograms in addition to verbiage. In situations like nail salon work where 80% of the recipient populations speak a foreign language (Vietnamese), translation of professional product SDS should be required of the manufacturer.

Response: The Board agrees that language access is an important component of hazard communication and notes that in 2004 it adopted amendments to Section 5194 to improve language access. The requirement that MSDS be in English was modified to explicitly permit the employer to maintain copies of MSDS in additional languages. The word “effective” was added to the training requirement to ensure that required information was actually received by the employees, and this was stated as intending to include that training be in an appropriate language. The Board also notes that the HCS pictograms are required on the SDS by Appendix D, and on the labels by Appendix C, based on the classification of the chemical. Further requirements to improve language access in hazard communication will require additional consideration to determine which actions would be effective and feasible and are beyond the scope of the current rulemaking.

The Board thanks the Collaborative and Ms. Porter for the comments and participation in the Board’s rulemaking process.

Anne Katten, MPH, Pesticide and Work Safety Project, California Rural Legal Assistance Foundation (CRLAF), by letter dated October 16, 2013, with attachment of letter dated April 8, 2013.

Comment #AK1: CRLAF supports the proposed revisions to the California HCS but is concerned about the exceptions included in the proposal and hopes these can be eliminated or refined. CRLAF's advocacy for farmworkers and the rural poor has provided a firsthand view of the importance of ready access to Safety Data Sheets and how vital comprehensive chemical hazard information is for workers, their representatives, employers and health care providers. These regulations as proposed are at least as effective as federal HCS 2012, and, as noted in the ISOR, were drafted with the intent of "retaining more protective provisions." The first principle of GHS reinforces the idea that the level of protection provided should not be reduced by adoption of GHS.

CRLAF supports the retention of floor lists to classify chemicals accurately and consistently. Using lists vetted by independent scientists via formal processes makes it easier for all and ensures accuracy in classifying hazards. The CRLAF opposes the exceptions of Section 5194(d)(3) and (4) which may reduce protection by giving manufacturers too much discretion, leading to omission of important health hazard information. These exceptions are unnecessary, as European GHS regulations retain reliance on source list without such exceptions. If retained, the exceptions must specify listing the ingredients not classified on the SDS as well as the source list or positive study referencing the chemical. At a minimum the section should be amended for clarity and consistency to specify where on the SDS such listings should be located. Also, a requirement should be added for the SDS to include information on how to request documentation from the manufacturer regarding the basis of the no health risk determination.

Response: See response to comment #SK2. The Board notes that Appendix D, which establishes requirements for SDS includes contact information for the SDS preparer.

Comment #AK2: CRLAF supports requiring listing chemical ingredients when identified by one robust positive study. CRLAF opposes revision of the definition of *health hazard* in Section 5194(c) deleting language about single positive studies.

Response: Although the "one positive study" has been removed from the definition of *health hazard*, there is a requirement that an SDS list the identity of a chemical even though the SDS preparer has determined does not meet criteria for classification if there is statistically significant evidence of a health effect based on one study conducted in accordance with established scientific principles. The SDS must also include the associated health effect. This requirement retains the protection provided in the existing California standard.

Comment #AK3: The CRLAF supports retaining the three month deadline for updating SDS and requiring documentation of classification procedures.

Response: The proposal includes retaining the three month deadline for updating SDS and includes a requirement to document classification procedures.

Comment #AK4: California has a long distinguished history leading the way among governments to provide information about chemicals at work. California needs a HCS rule that

provides information for the public good, not one allowing the chemical industry to interpret scientific evidence to its own advantage, as has happened in the past, such as with the DBCP scandal, the asbestos epidemic and cases of asthma caused by cleaning products. Chemical users need all available information about chemicals to make informed decisions about purchases and how to minimize exposure during use.

While CRLAF urges adoption of this proposed regulation after considering amending or deleting the exceptions, CRLAF feels more needs to be done to protect California workers and inform employers about chemical hazards and to catch up with scientific and practical changes since the last revision of this standard in the 1990s. As soon as this rule-making process is concluded, we urge consideration of additional changes, including:

- An updated Director's List, and additional authoritative lists including the Prop 65 list and those on the Safer Consumer Products Regulations;
- Lower mixture cutoffs to 0.1 percent for reproductive toxins, respiratory sensitizers, and mutagens with no cutoffs for endocrine disruptors as they have U-shaped dose response curves;
- Immediate updates to data sheets and labels when new information is available.

In an attached letter dated April 8, 2013, CRLAF supported development of a requirement for testing when necessary to fill in "data gaps." The CRLAF notes that the GHS Sections 1.4.6.3 and 1.4.7.2.1 specifically allow competent authorities to require additional or updated information to supplement data from available sources.

Response: As noted by the commenter, these changes are beyond the scope of the current rulemaking. The Board notes that Appendix A includes lower thresholds for certain health hazards. Those changes are summarized in response to comment #SK4. For additional discussion of testing see response to comment #PS4. The Board declines to add source lists, require testing of chemicals, or make the further changes suggested by the commenter in Section 5194 at this time, due to the need to meet federal and Labor Code mandates, and the complexity of integrating the federal hazcom standard, the existing California standard, the California Labor Code, and other California laws.

The Board thanks CRLAF and Ms. Katten for the comments and participation in the Board's rulemaking process.

Fred Pecker, Secretary, Northern California District Council, International Longshore and Warehouse Union (ILWU) by letter received via email October 16, 2013.

Comment #FP1: California's 18 million workers, healthcare providers and employers rely on data sheets and product labels, making the right to know (RTK) a key part of California's health and safety law. ILWU urges the Board to maintain and improve the current protections for workers in the current HCS Title 8 standard, including providing clear direction about where information required under the exceptions must go on the data sheet and label and how such information is to be communicated to workers.

Response: See response to comments #SK2 and #SK3.

The Board thanks the ILWU and Mr. Pecker for the comments and participation in the Board's rulemaking process.

Julia Quint, PhD, San Francisco Physicians for Social Responsibility (SFPSR) by letter dated October 16, 2013, with attachment of other letters dated April 9, 2013, (amended April 15, 2013) and May 10, 2013.

Comment #JQ1: A director of SFPSR, a retired CDPH research scientist/toxicologist, and former Chief of HESIS, Dr. Quint has evaluated health hazards of workplace chemicals for more than 30 years. SFPSR commends the Board for updating HCS to incorporate important elements of the GHS, including some of the protections in the current CA HCS while still as effective as federal HCS 2012.

SFPSR supports the use of specified authoritative source lists in Section 5194(d)(3) and (4). In the October letter (with additional information discussion in the two earlier letters), SFPSR lists nine advantageous reasons for retaining the source list requirement including: broader, more timely classification; use of expert judgment in weight of evidence determinations; greater transparency; consistency and scientific soundness (peer review) of classifications; simpler, less costly, and more efficient compliance; appropriate classification/communication of hazards with more protective Cal/OSHA PELs or HESIS hazard alerts; and consistency with other CA regulations utilizing source lists such as the Safe Cosmetics, Green Chemistry and Safer Consumer Products regulations.

However, SFPSR opposes the Exception language in Section 5194(d)(3). Section 6382 of the CA Labor Code makes the Director of the DIR responsible for making the same type of determination as classifiers. The Labor Code also specifies a process for adoption, amendment or repeal of chemicals on or proposed for the Director's List; the process provides for classifier involvement. The Exception language gives classifiers with unknown qualifications the authority to make independent and non-transparent determinations regarding the health hazard potential of chemicals. The Exception negates the positive impacts of requiring use of the source lists. If the exception is to be retained, SFPSR supports the proposed requirement for written documentation of classification determinations *provided* the requirement is moved from Section 5194(d)(3)(D.1) to (d)(3) so it applies to all hazardous chemical classifications not derived from source lists. While important, the proposed requirement in Section 5194(d)(3)(D.1) to document decisions not to classify does not nullify the potential for serious worker health consequences resulting from the failure to first classify and then communicate a hazardous chemical's health effects. The listed chemical will still not be classified, so the hazards will not be communicated in hazard statements, etc. to workers and employers.

Response: See response to comments #SK2 and #SK3. The requirement to document the basis for not classifying a chemical on a referenced list applies to all lists incorporated into subsection (d)(3).

Comment #JQ2: SFPSR supports retaining the three-month time frame to update labels. Manufacturers have been complying with the three month time frame and there has been no compelling reason presented to extend the time to six months.

Response: See response to comment #BV1.

Comment #JQ3: SFPSR opposes the Exception language in Section 5194(d)(4). This Exception also negates the positive impacts of requiring use of the source lists. Without specific application guidance for Appendix A's complex carcinogen classification criteria, disparate and mis-classifications appear highly likely. 29 CFR 1990.143 (*Identification, Classification and Regulation of Carcinogens*) has specific guidance that would help ensure consistent carcinogen classification using Appendix A criteria. As stated in regard to the Exception for (d)(3), since the chemical will not be classified as a carcinogen, the documentation requirements will not result in communication of potential cancer risks to workers and employers.

Response: Subsection (d)(4) requires classification of a chemical as a carcinogen if the National Toxicology Program (NTP) or the International Agency for Research on Cancer (IARC) has recognized it as meeting certain categories. The exception is intended to be consistent with federal OSHA requirements placing the responsibility for classification on the manufacturer, importer, or employer classifying chemicals. The exception requires a classifier who determines NOT to classify a carcinogen recognized by one of these authoritative bodies to list the chemical on the SDS and record the list on which it appears. It further requires the classifier to document the basis for not classifying a chemical that appears on one of these lists.

This provision maintains the protections that were in effect at the time of the federal adoption of the GHS, and provides disclosure and background information. The Board believes that the requirements in subsections (d)(4), including the exception, will provide disclosure to users of the chemical, and will promote careful decisions during the process of hazard evaluation and classification. The information required by the exceptions will also provide a basis for challenging those decisions, if it is necessary.

Comment #JQ4: SFPSR opposes the deletion of "one positive study" from the definition of "health hazard" as a basis for classification. One positive study conducted in accordance with established scientific principles is consistent with 29 CFR 1990.143-145 and EPA's hazard identification guidelines for developmental, neuro- and reproductive toxicants, and carcinogens; it is also consistent with IARC's carcinogen classification guidelines. One positive study has resulted in identification of cancer and non-cancer health hazards by such authoritative bodies as NIOSH, Cal/EPA OEHHA, and US EPA for these eleven chemicals: epoxybutane, toluene, propylene oxide, diesel exhaust, methylene chloride, toluene diisocyanate, hexamethylene diisocyanate, hydrogen cyanide, diethanolamine, ethylene oxide, and naphthalene. Recently, a single study of diacetyl would have required classification as a specific organ toxicant, but the manufacturer failed to identify diacetyl as a lung hazard on its MSDS. Historically, one positive study does not lead to false-positive chemical classifications: Of 955 IARC carcinogens, only seven have been downgraded to a lower carcinogen classification. Similarly, of 900 Proposition 65 listed substances, only seven have been delisted. Toxicological information for most

chemicals is limited. A robust scientific study demonstrating evidence of an adverse health effect is difficult to achieve, unlikely to be repeated, but essential for protecting workers from occupational illnesses and diseases.

Response: The Board agrees that California's history with hazardous chemicals, such as the DBCP experience, supports requiring disclosure of chemicals when evidence of a health effect is first reliably demonstrated. Although the "one positive study" requirement has been removed from the definition of health hazard in order to be consistent with the federal rule, under subsection (d)(2), a chemical that the classifier determines need not be classified, but for which there is one positive study, must be listed on the SDS, along with the associated health effect. This maintains the protection that exists in the pre-GHS standard.

Comment #IQ5: SFPSR urges the Board to approve the proposal to update the HCS to incorporate GHS classification and labeling in federal HCS 2012 and to retain current CA HCS provisions ensuring greater protections for workers. In 1979, California established the Hazard Substances Information and Training Act following the DBCP incident to provide access to information for workers and employers. California has continued to provide leadership in toxic chemical regulation over the years though PELs based on quantitative risk assessments based on chronic toxicity, early identification of chemical hazards like 1-bromopropane and the development of a comprehensive standard on diacetyl. Difference from a federal standard is not new or different for California, but routine.

Following approval of the proposal, SFPSR recommends updating source lists, as follows:

- Include HESIS Hazard Alerts and other required information in the Director's List.
- Add the Proposition 65 List to the Director's List as an authoritative source for identifying reproductive and developmental toxicants.
- Add the health bases of Cal/OSHA PELs and ACGIH TLVs to aid classification.
- Add "DSEN" and "RSEN" to chemicals on the Cal/OSHA PEL and ACGIH lists to aid classifying dermal and respiratory sensitizers.

In its April, 2013, letter, SFPSR noted that unique California HCS provisions ensure greater protections for California workers, and should not impact interstate commerce. On retaining source lists, SFPSR noted that in the European Union, whose GHS classification system does not rely on source lists, in only 80 of 2020 instances did manufacturers correctly classify sulfuric acid as a Group I IARC carcinogen even though the chemical has been listed as such by IARC for twenty years. In this letter, SFPSR discusses in detail federal OSHA 29 CFR 1910.143 and EPA risk assessment classification guidelines that are referenced in the October, 2013, letter. SFPSR also suggested that warnings be required on SDS and labels for all chemicals classified as hazardous, including Class 2 carcinogens, present at concentrations of 0.1% and greater.

In its May, 2013, letter, SFPSR, in addition to elaborating on many points made in the October letter, states that the assumption in federal HCS 2012 that Appendix A chronic toxicity criteria will lead to common, or "harmonized" classifications is not substantiated by chemical hazard identification experience to date. Often, qualified experienced toxicologists disagree, with interpretations tending to depend upon goals and purposes of their affiliated organizations. This

emphasizes the importance of utilizing established guidance and transparent peer review and public processes for classification of chemical hazards such as those utilized by many of the source list organizations. In the European Union, many of the most hazardous chemicals are required to be classified by the European Chemicals Agency, which determines harmonized classification rather than by manufacturer self-classification based upon GHS criteria. Specific language is suggested for amending Section 5194(d)(2), (3) and (4) and suggestions are made for amending Appendix A.

Response: As noted by the commenter, these suggestions are beyond the scope of the current rulemaking. See also response to comment #SK4.

The Board thanks SF PSR and Dr. Quint for the comments and participation in the Board's rulemaking process.

Patrice Sutton, MPH, Director, Community Outreach and Translation, University of California, San Francisco, Program on Reproductive Health and the Environment (UCSF/PRHE), by letter dated October 16, 2013.

Comment #PSutton1: UCSF/PRHE commends Cal/OSHA and the Board for efforts to ensure California RTK and retain critical protections for workplace chemical exposures. UCSF/PRHE purpose is to create a healthier environment for human reproduction and development, emphasizing preconception and prenatal exposure to chemicals. Improved policy is needed for preventing workplace exposures to toxic chemicals, as was recently noted in a joint statement of several leading medical associations in the reproductive specialty fields. This statement emphasized that during sensitive windows of development, the human reproductive system is especially vulnerable to harm from chemicals. UCSF/PRHE published a brochure, "Work Matters" that emphasizes that workers, medical providers and employers need to know about the hazardous chemicals in their work environment in order for them to take steps to minimize exposure. Safety data sheets and labels are relied upon by all three parties to make important decisions, so effective Cal/OSHA policy is essential.

In that spirit, UCSF/PRHE supports the proposed changes--which are at least as effective as federal HCS 2012. UCSF/PRHE supports:

- Mandatory floor lists for classification, without which "weight of evidence" can be misused. Without floor lists chemical producers might weigh information in their own favor, leaving the rest of us dangling in the dark—public health is at stake.
- The "one study" rule requiring listing of a chemical if one positive study shows a hazardous effect. UCSF/PRHE has developed the Navigation Guide method to systematically, transparently develop strength of evidence chemical assessments. "Sufficient evidence" for non-human effects requires either multiple positive results or a single appropriate study in a single species
- Three month deadline for updating safety data sheets.
- A documentation requirement for classifiers with written records accessible to all.

Response: The Board thanks UCSF/PRHE for its comment. These provisions, as noted, are incorporated into the proposal.

Comment #PSutton 2: RTK has a distinguished history in California. UCSF/PRHE wants to harmonize up to the world's best rights and information, not down to the lowest common denominator. The California HCS must be for public good; thus all available information is needed about chemicals to avoid another DBCP scandal. The California HCS needs floor lists to ensure accuracy and consistency in classifying chemical.

These principles are connected to serious questions and concerns about the exceptions in subsections (d)(3) and (4). These appear to make it easier for chemical classifiers to decide there is no health risk by avoiding using the lists from reputable and reliable sources or by discounting a valid single positive study. The Board must ensure the final language retains the strengths of the current regulation while providing clear directions about where information required by the exceptions must go on the data sheets and labels.

Response: See response to comment #SK2.

Comment #PSutton 3: UCSF/PRHE urges the Board to improve and update California HCS to increase the protection provided by the regulation as soon as this rule-making process is completed. Items that need attention include:

- Update the Director's list and others referred to (e.g., for lab workers).
- Add additional lists such as Prop 65 and those included in the Safer Consumer Products Regulations.
- Lower SDS disclosure cutoffs to 0.1% for reproductive toxins, respiratory sensitizers and mutagens. As mentioned above, timing of exposure matters greatly for reproductive health.
- Eliminate thresholds for listing of endocrine disrupters.
- Timely updates of data sheets and labels when new information is available.

Response: See response to comment #SK4.

The Board thanks UCSF/PRHE and Ms. Sutton for the comments and participation in the Board's rulemaking process.

Neal Sweeney, PhD, President, United Autoworkers Local 5810 (UAW 5810), by letter faxed on October 16, 2013.

Comment #NS1: UAW 5810, representing over 6000 postdoctoral researchers at the University of California, supports the proposed final HCS rule. The need for accurate chemical information on hazardous chemicals has never been greater for workers, employers and health care providers. The proposed language is at least as effective as the federal HCS 2012, and UAW 5810 urges its adoption, including referencing of hazardous chemical lists and the retention of the "one study" rule. The latter allows workers and downstream employers to adequately weigh the risks and

benefits of a particular chemical. Any shift from the “one study rule” would require numerous studies to identify hazards and would jeopardize worker health and safety.

Response: The Board thanks UAW Local 5810 for this comment, and notes that the proposal has retained source lists and the “one study rule.”

The Board thanks UAW 5810 and Dr. Sweeney for the comments and participation in the Board’s rulemaking process.

Jelger Kalmijn, President, University Professional and Technical Employees (UPTE), CWA Local 9119, by letter dated October 16, 2013.

Comment #JK1: UPTE represents 12,000 research and health care professionals at the University of California, Lawrence Berkeley and Lawrence Livermore national labs who encounter a wide range of hazards involving research with chemicals and nanotechnology. UPTE supports the proposed GHS related changes to the HCS; these are at least as effective as federal HCS 2012. GHS principles are important to UPTE, especially the principle that the existing level of protection should not be reduced as a result of harmonization of the classification and labeling systems. UPTE supports retaining the four protections now in the California standard:

- Floor lists (the Director’s list, IARC, NTP, TLVs, HESIS alerts) without which “weight of evidence” can be misused.
- The “one study” rule, which is consistent with a public health approach.
- Three months for manufacturers to update data sheets is reasonable given modern technology.
- Requiring those classifying substances to keep written records of their procedures so they are available to workers, their representatives, and others.

Response: The Board thanks UPTE for their comment, and notes that these protections are included in the proposed regulation.

Comment #JK2: Four other RTK principles are important to our members:

- Maintain California’s lead in protecting workers; our RTK rules were hard-fought.
- Harmonize up to the best protections, not down to diluted ones.
- HCS regulations need to protect the public, not the chemical industry. All information needs to be available so workers and employers can make informed decisions about the chemicals we work with.
- Hazard information must come from reputable, reliable sources.

Though supporting the proposals under consideration, UPTE would like the Board to improve the HCS. As soon as this rule-making process is over, we urge these further changes:

- Update the Director’s list and others referred to (e.g., for lab workers).
- Add additional lists such as Prop 65 and those included in the Safer Consumer Products Regulations.

- Lower SDS disclosure cutoffs to 0.1% for reproductive toxins, respiratory sensitizers and mutagens. As mentioned above, timing of exposure matters greatly for reproductive health.
- Eliminate thresholds for listing of endocrine disrupters.
- Immediate updates of data sheets and labels when new information is available.

Response: As the commenter states, these suggestions are beyond the scope of the current rulemaking. See response to comment #SK4 for further discussion, including cut-off concentrations in proposed Appendix A.

The Board thanks UPTE and Mr. Kalmijn for the comments and participation in the Board's rulemaking process.

Anthony Robbins, MD, MPA, Professor of Public Health, Tufts University School of Medicine, by letter dated October 16, 2013.

Comment #AR1: Dr. Robbins supports the proposed changes to California's RTK regulation for a special reason: maintaining California's leadership in protecting workers. He looks to California for leadership in how to protect workers. The nation still needs leadership from California; please maintain that role.

Response: The Board thanks Dr. Robbins for his comments and participation in the Board's rulemaking process.

Eula Bingham, PhD, University of Cincinnati, by letter dated October 17, 2013.

Comment #EB1: Dr. Bingham has a 50 year career working to protect the health and safety of workers that lead her to write to support the proposed changes to California's RTK regulation. Selected by President Carter to be Assistant Secretary of Labor for Occupational Safety and Health in 1977 (federal OSHA director), Dr. Bingham worked to make RTK a priority standard for educating workers. She could always count on California to be a leading voice for this essential human right. What the Board does in California today will protect the state's workers and will be a great influence on all American workers in the future.

Response: The Board thanks Dr. Bingham for her comments and participation in the Board's rulemaking process.

Judith Kirton-Darling, European Trade Union Confederation (ETUC) Confederal Secretary, by email dated October 17, 2013.

Comment #JKD1: The ETUC, representing 60 million European workers, supports the proposed changes to California's HCS that integrate many things from the GHS. The ETUC has been monitoring how others implement GHS, desiring to support all efforts to harmonize up, not down, in line with the GHS agreement's first principle. In Europe, the ETUC was involved in negotiations on two important chemical regulations, REACH and CLP which will have huge

benefits for workers and the companies manufacturing or using them. REACH and CLP require testing and registration of chemicals before marketing is permitted. The information from the testing and registration process ends up on GHS SDS and labels. An important part of European GHS is the harmonized classification list of carcinogenic, toxic for reproduction or respiratory sensitizing chemicals (CMR). The European Chemical Agency's (ECHA) guidance document points out that harmonization provides increased protection while providing legal clarity to chemical suppliers and users, including both businesses and workers. Unlike the US GHS, a chemical's classification as CMR effectively bans its use in mixtures, requiring the utilization of less toxic chemical substitutes—similar to the California Safer Consumer Products Regulation. Though this European process leads to political debate about harmonized classifications, these kinds of lists reduce the length of debate and ensure consistent classifications and reliable data sheets and labels. It is important to use a range of lists to focus on chemicals truly of concern and reflect the results of scientific and political debates among a variety of authoritative bodies.

The one-study criteria retained in the California proposal serves a similar purpose of providing consistency, and it is entirely consistent with the GHS as practiced in Europe and elsewhere.

ECHA requires data sheets be updated for new information as soon as possible. Three months is more than enough time, given suppliers and manufacturers are already meeting this criterion in Europe and elsewhere.

Rather than potential off-ramps or loopholes like the proposed exceptions, the experience with GHS in the European Union, it is important to have consistent and clear requirements about what classifiers need to do. Otherwise classifiers may use their discretion to avoid having to name their products' real health hazards.

Response: The Board thanks the commenter for describing the European experience. In regards to the exceptions to subsections (d)(3) and (d)(4), see response to comment #SK2.

The Board thanks ETUC and Ms. Darling for the comments and participation in the Board's rulemaking process.

Kathleen Burns, PhD, Director, Sciencecorps, Lexington MA; Martha D. Arguello, Executive Director, Physicians for Social Responsibility Los Angeles; Eric Uram, Executive Director, Safe Minds, Huntington Beach; Michael Harbut, MD, MPH, FCCP, Professor (Clinical) Internal Medicine at Wayne State University, Detroit MI; Barbara Warren, Executive Director, Citizen's Environmental Coalition, Albany NY; Judy Braiman, President, Empire State Consumer Project, Rochester NY; Katie Huffling, MS, RN, CNM, Director of Programs, Alliance of Nurses for Healthy Environments, Mount Rainier MD; Angel De Fazio, President/Executive Director, National Toxic Encephalopathy Foundation, Las Vegas, NV; Lin Kaatz Chary, PhD, MPH, Gary IN; Kristen Welker-Hood, ScD, RN, Environmental Health Consulting, Columbia MD; Carol Westinghouse, President, Informed Green Solutions; Erin Switalski, Executive Director, Women's Voices for the Earth by email on October 17, 2013, and referenced below as Sciencecorps et al.

Comment #KB1: Impacting 18 million workers, RTK is an important component of California's health and safety system. Sciencecorps et al supports the proposed changes to California's HCS. Worker, medical providers, and their employers need comprehensive information on workplace chemical hazards. This information must be from accurate sources. Exceptions proposed in sections (d)(3) and (4) make it easy to ignore reputable hazard evidence. Evidence from a full range of credible sources, including a single well-conducted study, should be included in a chemical's classification.

Sciencecorp et al supports the detailed comments submitted by Worksafe regarding specific actions the Board should take to retain and improve California's HCS.

Response: See response to comments #SK2 and responses to Dorothy Wigmore.

The Board thanks Sciencecorps et al and Dr. Burns for the comments and participation in the Board's rulemaking process.

Ken Smith, CHP CIH RRPT, Lab Safety Manager, University of California Office of the President (UCOP) by email received October 17, 2013.

Comment #KS1: The proposal has an error on page 21 where in section 5194(b)(3) it makes a reference to section 5194(f)(1)(4). The current language of subsection (f)(4) was moved to (f)(9) so the proposal should be amended to reference section 5194(f)(9). Additionally a second sentence should be added to state that such excepted laboratories are subject to section 5191 to clarify and be consistent with the federal regulations.

Response: The Board concurs with UCOP regarding the reference to subsection (f)(9) and has made that modification to the proposal. However, the Board declines to add the second sentence as unnecessary, since the scope of Section 5191 is clearly stated in that section.

The Board thanks UCOP and Mr. Smith for his comments and participation in the Board's rulemaking process.

Michael Wright, Director of Health, Safety and Environment, United Steelworkers Union (USW) by letter received via email October 17, 2013, with attachment of letter dated April 8, 2013.

Comment #MW1: USW represents 23,000 California workers and 800,000 nationally, including many who make and use chemicals. USW strongly supports the proposed changes to the California RTK except for two sections of the proposal that greatly concern the USW – the exceptions to d(3) and d(4) which allow a manufacturer to avoid classification based upon the physical state, volume or concentration of a chemical. These exceptions changed a hazard-based classification system to one based on risk. It is impossible to foresee all ways a chemical may be used or misused in the workplace, so a classification based on foreseen risk may be incorrect. For example, an unintended reaction, release, formulation or storage mistake or simple evaporation may increase concentration. A core GHS principle is that it is based on intrinsic hazard properties of chemicals, not risk. USW urges the elimination of the exceptions.

Response: The clause that created an exception for the physical state, volume or concentration of a chemical was removed from subsection (d)(3).

Comment #MW2: The slight differences of the California proposal from the federal standard make the California more effective than the federal standard. The California proposal does not weaken protections now afforded to California workers. Mr. Wright was a member of the GHS international Coordinating Group, and the differences are consistent with the flexibility permitted in GHS. He also chaired the Workers Group in the UN International Labor Organization 2-year discussion at which the GHS idea first emerged. Nothing in GHS bars California from retaining “one positive well-conducted study” as California’s interpretation of the GHS “weight of evidence” approach. Floor lists, a three-month deadline for updates and a requirement for classifiers to keep written records are similarly consistent with GHS principles.

In the April, 2013 letter, USW emphasized the point that proposed California differences from federal HCS 2012 were consistent with the GHS by quoting many specific principles from the GHS agreement, including those that:

- call for not lessening existing protections when harmonizing
- support use of a single positive study in the “weight of evidence” approach. Detailed reference to the importance of a single study is made regarding the historic DBCP case in Lathrop, CA
- support the inclusion on the SDS of other relevant adverse health information even when not required by GHS classification criteria.

In the April letter USW called for retention of floor lists and the three month time limit for updating labels with new information as also compliant with GHS principles. USW also stated that GHS does not prohibit a state from requiring chemical testing, citing the example of Europe’s REACH as a GHS compliant system that does require testing.

Response: The proposal includes retention of the floor lists, and a requirement to disclose on the SDS chemicals, and the associated health hazard, for which there is “one positive study,” but which the SDS preparer determines does not require classification. See response to comment #PS4 regarding testing.

The Board thanks USW and Mr. Wright for the comments and participation in the Board’s rulemaking process.

Mitch Seaman, Legislative Advocate, California Labor Federation (CLF) by letter received via email October 17, 2013.

Comment #MS1: The CLF supports the proposed changes to California’s HCS. Worker, medical providers, and employers need comprehensive information on workplace chemical hazards. This information must be from accurate sources. Source lists and one study rule needs to be retained as more protective. However, exceptions proposed in sections (d)(3) and (4) are less protective and are not needed.

Response: See response to comment #SK2.

The Board thanks the CLF and Mr. Seaman for the comments and participation in the Board's rulemaking process.

Rocco Davis, Vice President, Laborers' International Union of North America's Pacific Southwest Region (LIUNA) by letter received via email October 17, 2013.

Comment #RD1: LIUNA supports the proposed changes to California's HCS. Workers, medical providers, and employers need comprehensive information on workplace chemical hazards. This information must be from accurate sources. Source floor lists, the one study rule, and 3 month labeling updates needs to be retained as more protective. Written records of classifications should also be required. However, exceptions proposed in sections (d)(3) and (4) are less protective and are not needed.

Response: The Board has retained requirements for source lists, and the one study rule. See responses to comments #SK2 and #BV2. In this notice, the Board proposes adopting the federal six month maximum time period to update labels in order to be consistent with federal regulations. For further discussion regarding the six month period, see response to comment #BV1.

The Board thanks LIUNA and Mr. Davis for the comments and participation in the Board's rulemaking process.

Kelly Green, Regulatory Policy Specialist, California Nurses Association (CNA) by letter received via email October 17, 2013.

Comment #KG1: CNA, representing 86,000 RNs in California, supports the proposed changes to California's HCS. Worker, medical providers, and employers need comprehensive information on workplace chemical hazards. This information must be from accurate sources. Nurses, often required to handle toxic agents, can be exposed to harmful substances without their knowledge. Source floor lists and the one study rule needs to be retained as more protective.

Response: The Board proposes to retain the floor lists in subsection (d)(3) and (d)(4), and to incorporate the one-study rule in subsection (d)(2).

The Board thanks CNA and Ms. Green for the comments and participation in the Board's rulemaking process.

Scott McAllister, MPH, CIH and Linda Morse, MD, FACOEM, Principals, M&M Occupational Safety & Health Services by letter received via email October 17, 2013.

Comment#SM1: M&M support any proposal that can enhance the capabilities of workers to protect themselves from chemical hazards in the workplace. M&M urge this proposal be accepted in its entirety.

Response: The Board thanks Mr. McAllister and Dr. Morse for their comments and participation in the Board's rulemaking process.

David Levine, CEO, American Sustainable Business Council (ASBC) by letter received via email October 17, 2013.

Comment #DL1: ASBC is a coalition of hundreds of thousands of business organizations and individual businesses. ASBC supports the proposed changes to California's HCS. Employers including ASBC members that purchase and use chemicals responsibly need comprehensive information on workplace chemical hazards. This information must be from accurate sources. Recent polls indicate a large majority of businesses support strong regulation of chemicals. Protection should not be decreased as a result of harmonization, so the one study rule needs to be retained as more protective. However, exceptions proposed in sections (d)(3) and (4) are less protective and are not needed. If exceptions are kept, we need clear directions about where required information must go on the data sheet and how to communicate this information.

Response: See response to comment #SK2.

The Board thanks the ASBC and Mr. Levine for the comments and participation in the Board's rulemaking process.

Mark Catlin, Occupational Health and Safety Director, Service Employees International Union (SEIU) by letter received via email October 17, 2013.

Comment #MC1: SEIU represents 700,000 California workers and supports the proposed GHS related changes to the HCS; these are at least as effective as federal HCS 2012. GHS principles are important, especially the principle that the existing level of protection should not be reduced as a result of harmonization of the classification and labeling systems. SEIU supports retaining the four protections now in the California standard:

- Floor lists (the Director's list, IARC, NTP, TLVs, HESIS alerts) without which "weight of evidence" can be misused.
- The "one study" rule, which is consistent with a public health approach.
- Three months for manufacturers to update data sheets is reasonable given modern technology.
- Requiring those classifying substances to keep written records of their procedures so they are available to workers, their representatives, and others.

Response: The Board thanks the Mr. Catlin for this comment, and notes that these provisions are incorporated into the proposal.

Comment #MC2: Though supporting the proposals under consideration, SEIU would like the Board to improve the HCS. As soon as this rule-making process is over, we urge these further changes:

- Update the Director's list and others referred to (e.g., for lab workers).
- Add additional lists such as Prop 65 and those included in the Safer Consumer Products Regulations.
- Lower SDS disclosure cutoffs to 0.1% for reproductive toxins, respiratory sensitizers and mutagens. As mentioned above, timing of exposure matters greatly for reproductive health.
- Eliminate thresholds for listing of endocrine disrupters.
- Immediate updates of data sheets and labels when new information is available.

Response: As the commenter states, these suggestions are beyond the scope of the current rulemaking. Regarding the cutoff concentrations for mixtures, see response to comment #SK4.

The Board thanks the SEIU and Mr. Catlin for the comments and participation in the Board's rulemaking process.

Linda Delp, PhD, MPH, Director, UCLA Labor Occupational Safety & Health Program (LOSH) by letter received via email October 17, 2013, including a May 10, 2013, letter sent by LOSH to Mike Horowitz, a DOSH staff person for the GHS advisory committee.

Comment #LD1: LOSH is a university-based program providing health and safety education (especially in Spanish) for labor unions, worker organizations, small businesses and others with limited access to health and safety resources. Occupational illness from chemical exposure disables hundreds of thousands and kills tens of thousands of workers annually in the US. In 1981, in the wake of worker sterility caused by DBCP, California adopted its HCS which became a model for such standards nationally and the first line of defense for workers exposed to chemical hazards. Cal/OSHA must maintain its status as a leader in worker protection. The foundational principle of Section 5194—informing and protecting workers—should not be weakened by adopting the federal HCS.

LOSH recommends incorporating GHS into California HCS, in particular the GHS principles of 1) not reducing the existing level of protection when harmonizing classification and labeling; 2) addressing comprehension of chemical hazard information of the target audience. Protective elements of HCS must not be weakened. LOSH supports the many elements of GHS that improve communication of hazards.

- Retaining source lists in Section 5194(d)(3) and (4). Reliance on classification systems of authoritative bodies like NTP and IARC leads to greater consistency and clarity in chemical hazard communication.
- Retaining "one positive study" in Section 5194(d)(2) and the definition of "health hazard" proposed by Cal/OSHA.

Response: The provisions noted by the commenter are included in the proposal.

Comment #LD2: LOSH supports that the proposal retain testing requirements. The federal HCS 2012 statement that no testing is required would make California HCS less protective as currently manufacturers and importers must determine what is in a mixture. Mixtures should be tested for physical and health hazards and all ingredients listed.

Response: The Board included the federal statement only to the extent that the standard does not require toxicological or epidemiological testing. The Board believes that some testing, such as determination of ingredients in mixtures, or determination of flash point and other physical characteristics, may be required to comply with this standard. The Board believes that if toxicological or epidemiological testing for health effects is to be required, such a regulation would be outside the scope of the current rulemaking.

Comment #LD3: The standard should require declaration of any level of reproductive toxins, mutagens and carcinogens, not only at the arbitrary limit of 0.1%.

Response: See response to comment #SK4.

Comment #LD4: The standard should keep the 3 month time limit for updating SDS and labels to support greater consistency in hazard communication.

Response: The proposal retains the 3 month time limit to update SDS after the entity preparing the SDS becomes aware of new significant information. This notice proposes to incorporate the six-month time limit for update of labels to be consistent with the federal requirement. See comment #BV1 for additional discussion of the label requirement.

Comment #LD5: The proposal should retain the phrases “hazard determination” and “evaluate” rather than switching to “hazard classification” and “classify,” as the revised terminology weakens manufacturer responsibility for hazard evaluation and assessment.

Response: Although the proposal has retitled subsection (d) as Hazard Classification, to be consistent with the federal regulation, subsection (d)(1) also states that “Manufacturers and importers shall *evaluate* chemicals ~~substances~~ produced in their workplaces or imported by them to *determine* if they are hazardous and classify the chemicals in accordance with this section.[emphasis added]” The Board believes that the use of the term “classification” requires manufacturers and importers to take all actions required by the previous hazard communications standard, and provides more specific requirements regarding how those hazards are to be assessed. This assessment, referred to as “classification,” determines whether a chemical meets specific thresholds for individual health effects. When chemicals are classified, specific requirements regarding labels and SDS are triggered. California’s proposed regulation retains the requirement that “one positive study” (as described in subsection (d)(2)) requires disclosure on the SDS, and therefore continues the requirement to address hazards that may not be classified.

Comment #LD6: The proposal should specify additional details regarding training requirements, including the timing of refresher training, the appropriate training language and training effectiveness evaluation.

Response: The issues raised by the commenter are not within the scope of the current proposal. The Board agrees that issues such as language access and effectiveness of training are important components of hazard communication, some of which are addressed in the current regulation or through enforcement activities by the Division (see comment #CAP7).

The Board thanks Dr. Delp and LOSH for the recommendations, comments and participation in the Board's rulemaking process.

Frances Schreiber, National Lawyers Guild Labor & Employment Committee (NLG L&EC) by letter received via email October 17, 2013.

Comment #FS1: NLG L&EC strongly supports most of the proposed changes to the California RTK regulation but just as strongly objects to some of the exceptions. Today comprised of nearly 1000 attorneys, NLG L&EC has supported labor struggles since the 1930's. The RTK regulation is a key part of California's health and safety law, vital to workers, their employers and to workers' health care providers. California's Labor Code (143.2 and 144.6) requires that federal standards to be adopted "shall be as effective as the state standard or portion thereof" and that for toxic materials and harmful physical agents, the Board is to adopt standards that assure to the extent feasible that no employee will suffer material impairment from exposure to these hazards. California judicial law in *Carmona v. Division of Industrial Safety* specifies that health and safety regulations are to be given a broad interpretation in order to achieve safe working environments.

The bulk of GHS changes proposed for adoption meet these legal requirements, but the exceptions in Section 5194(d)(3) and (4) do not, so California must:

- Continue to use lists from reputable and reliable sources like IARC, NTP, ACGIH TLVs, the Director's List and HESIS for classification of chemicals.
- Continue to consider a good study showing a positive (hazardous) effect as sufficient to mandate a chemical's listing on the SDS.

NLG L&EC urges the Board to ensure the final language retains the strength of the current regulation. In addition, it must be clear that SDS preparers are required to keep written records on how a chemical classification is determined—especially if the chemical is not being classified as a health hazard. A RTK regulation that provides information for public good rather than allowing information to be hidden for private profit is needed. California does not need another DBCP incident, asbestos epidemic or asthma outbreak.

Response: The proposal has included the use of floor lists, and a requirement to disclose a chemical for which there is "one positive study." It has retained language in subsection (d)(6) requiring SDS preparers to have written hazard determination procedures. In addition, if a SDS preparer determines that a chemical on one of the reference lists need not be classified, the

preparer must document the basis for that determination. See response to comment #SK2 for more explanation.

The Board thanks NLG L&EC and Ms. Schreiber for the comments and participation in the Board's rulemaking process.

Dorothy Wigmore, M.S., Occupational Health Specialist, Worksafe, by letter received via email October 17, 2013, with attachment of a May 10, 2013, letter to the advisory committee.

Comment #DW1: Worksafe supports the proposed changes as "at least as effective as" federal HCS 2012 although with concerns and questions about exceptions to Section 5194(d)(3) and (4).

Worksafe emphasizes the first GHS principle was an agreement that protections would not be reduced by the harmonization process. Worksafe supports the use of floor lists to classify chemicals (Director's list, IARC, NTP, TLVs, HESIS alerts). These lists already incorporate the "weight of evidence" approach. These science-based lists from authoritative agencies make it easier for classifiers and users alike. Mandatory Appendix D of HCS 2012 requires classifiers to note in section 11 of the SDS a chemical's carcinogenicity presence on any of three lists. Worksafe has provided hyperlinks to several documents detailing the experiences of other countries that are using such source lists in their GHS implementation. However, Worksafe questions why the exceptions in Section 5194(d)(3) and (4) are needed. If a chemical is on a source list that the agency names as authoritative and reliable, it should be a non-rebuttable presumption that the chemical meets classification criteria for the hazards that placed them on those lists. This approach is consistent with the new Safer Consumer Products Regulation [CA Department of Toxic Substances Control, Title 22 CCR] which names 23 lists as authoritative starting points for substitution of toxic substances. Hazard traits for inclusion on these lists are similar to GHS classification categories. Worksafe cannot support exceptions that reduce protections of the current standard. Proposed wording of the exceptions is inconsistent with the GHS approach, as classifiers cannot predict the uses to which a chemical may be put. If exceptions are kept, where on SDS and labels does the information go? Where information must go, and how it is to be communicated to workers must be clearly stated.

Response: See response to comment #SK2.

Comment #DW2: Worksafe also supports the following provisions:

- Retention of the "one study" rule. Worksafe notes many specific businesses and associations that have adopted green chemistry policies in which single studies inform pertinent decisions on chemical purchases.
- The three-month deadline for updates of data sheets (for now): With modern technology, this is more than reasonable and even shorter time limits are the practice in the European Union, Australia and Canada.
- Requiring classifiers to keep written records of their procedures.
- Keep the proposed changes to section 5194(d)(2), but require the information to be placed in the health and physical hazards sections of the SDS, not in sections that can be missed or misunderstood.

Response: See responses to comments #SK2 and #KA1.

Comment #DW3: Additional changes are needed in the HCS, including:

- Updating the Director's list.
- Adding other authoritative lists such as Prop 65 and the 23 lists of the Safer Consumer Products Regulation.
- Lowering disclosure cutoff to 0.1% for reproductive toxins, mutagens and respiratory sensitizers.
- No cutoff for endocrine disrupters, consistent with California green chemistry regulations
- Immediate updates for SDS and labels when new information is available.
- Include in an appendix the guidance from federal OSHA in 29CFR 1990.143-145, *Identification, Classification and Regulation of Carcinogens*, so carcinogens not on source lists can be properly classified.
- Additional specific changes to Appendix A.

Response: See response to comments #SK2 and #SK4. In response to the suggestion to include guidance regarding carcinogens, the proposal includes non-mandatory federal Appendix F. Adoption of an additional appendix is beyond the scope of the current rulemaking. Similarly Appendix A is proposed to be identical to the federal rule, and amendment of Appendix A is beyond the scope of this rulemaking.

Comment #DW4: Additional training requirements should be proposed, including a requirement that SDS and labels be available in Spanish where this is a common workplace language.

Response: See response to comment #LD6.

Comment #DW5: Worksafe believes testing for physical and health hazards should be required, with all ingredients listed, including contaminants. Classifiers should also be required to list on the SDS which acute and chronic tests listed in the GHS international agreement were not done in each hazard category. Ultimately, chemicals should be declared on the SDS at their lowest feasible detection level, or at minimum a cut-off of 0.01%.

Response: This suggestion is beyond the scope of the current rulemaking. See response to comment #PS4.

The Board thanks Worksafe and Ms. Wigmore for the comments and participation in the Board's rulemaking process.

David Shiraiishi, MPH, Area Director, US Department of Labor, Occupational Safety and Health Administration, Oakland Area Office (OSHA) by letter dated December 2, 2013.

Comment #DS1: OSHA is concerned that some provisions of the proposal are confusing and that in some areas is less protective than the Federal standard. The following address the sections of

the proposed regulatory text that are most concerning and provides our recommendations to address these issues:

- Recommend revising Section 5192 to reflect the health hazard definition in 29 CFR 1910.120. The health hazard definition in Section 5192 is based on "... statistically significant evidence, based on at least one study conducted in accordance with established scientific principles ...". The health hazard definition in 29 CFR 1910.120, the comparable Federal standard has a lower bar and states: "health hazard means a chemical or a pathogen where acute or chronic health effects may occur in exposed employees." Recommend that the health hazard definition in Section 5192 reads the same as 29 CFR 1910.120. More chemicals or pathogens will be classified as a health hazard under the Federal definition making the state's proposed regulation less protective.
- Section 5194(d)(3) currently states that chemicals included on any of the four chemical lists provided by this section are presumed to have met the total weight of evidence as described in Appendix A. Because chemical lists generally do not provide the chemical's hazard class and/or hazard categories, classification using the criteria found in Appendix A must still be performed. Recommend revising this regulatory text to clarify that a chemical's presence on any of these lists triggers classification. Recommend rewording Section 5194(d)(3) to: Manufacturers, importers, or employers classifying chemicals shall consider any chemical listed on the following sources to be a hazardous chemical and shall be required to classify the listed chemical using the criteria as described in Appendix A. Section 5194, hazardous chemical definition includes the List of Hazardous Substances prepared by the Director pursuant to Labor Code section 6382. For the record, Federal OSHA anticipates that all of the substances listed as of October 2013 would already be covered under the Federal rule through application of the criteria.
- Recommend striking out the phrase in Section 5194(d)(3) exemption: "is present in a physical state, volume, or concentration that will not cause any adverse or chronic risk to human health."
- Recommend revising Section 5194(d)(3)(D) to read: Chemicals specifically identified and regulated under Title 8, Article 107, Dusts, Fumes, Mists, Vapors and Gases, and Article 109, Hazardous Substances and Processes.
- Section 5194(d)(5), currently retains the mixture cut-off rules found in California's Hazard Information and Training Statute, Cal Labor Code § 6382 (1%, except 2% for impurities and 0.1% for carcinogens). These rules are both inconsistent with the Federal standard, and less protective for all impurities, as well as for respiratory sensitizers, reproductive toxins, and germ cell mutagens. This approach will result in different information for workers on mixtures in California, with the potential for differing labels, recommend revising this regulatory text to clarify that in most cases the cut-off concentrations in Appendix A are the primary concentration cut-off values. Recommend rewording Section 5194(d)(5) to read: Chemical manufacturers, importers, or employers are also required to list any hazardous chemical on the SDS known to be present in

a mixture, where the chemical is: (a) either (1) One percent or more of the mixture or product or (2) Two percent of the mixture or product if the hazardous chemical exists as an impurity in the mixture and (b) the concentration of the chemical in the mixture is below the cut-off concentration specified in Appendix A.

- Section 5194(d)(5), exception 2 requires all the non-classified ingredients of a mixture to be listed on the safety data sheet (SDS). Federal OSHA recommends revising (d)(5), exception 2 to include criteria similar to that found in Section 5194(d)(2). The language in (d)(2) requires the identity and health effect of chemicals that do not meet criteria in Appendix A for classification to be included on the safety data sheet in cases where (A) There is statistically significant evidence of a hazardous effect; and, (B) The evidence is based on at least one positive study conducted in accordance with established scientific principles.

Response: The changes recommended by federal OSHA have been incorporated into this Notice. The re-wording of subsection (d)(5)(B) eliminates the necessity for those exceptions, so they have been deleted.

Comment #DS2: States may not regulate out-of-state employers under their OSH Act state plans, and it is unclear from the proposed text whether California intends to apply the revisions to out-of-state manufacturers and importers. This might be confusing to stakeholders, particularly manufacturers which make products both inside and outside of California. The commenter recommends that it be clearly explained in the proposed regulation that the requirements of 5194(d) apply only to products manufactured in the state (or imported from outside the U.S. by a California-based importer) and sold to in-state employers.

Response: California's jurisdiction extends to employees in California, and California does not have jurisdiction over out-of-state manufacturers. Federal OSHA has clearly stated the jurisdiction of OSHA State Plans in the Supplement to California State Plan; Approval, published in the Federal Register of June 6, 1997, 62:31159-31181. To include a specific jurisdictional statement in this regulation is therefore unnecessary and would introduce confusion as to whether other standards don't have similar jurisdiction. This concern can be addressed through the underlying documentation, as well as in the federal OSHA regulation 29 CFR 1910.1200(a)(2).

Comment #DS3: California Code § 6392, states SDSs that are in compliance with the Federal standards are also considered to be in compliance with the State requirements. Federal OSHA supports maintaining the current practice for all SDSs developed and used within the State.

Response: California Labor Code Section 6392 states "Provision of a federal Material Safety Data Sheet or equivalent shall constitute prima facie proof of compliance with Section 6390." As noted in the Supplement to California State Plan; Approval, published in the Federal Register of June 6, 1997, 62:31159-31181, California's safety data sheet requirements have differed from the federal requirements from the beginning of the federal standard. California's jurisdiction over SDS will be exercised in accordance with this law. The Division notes that the documentation

requirements in the exceptions to subsection (d)(3) and (d)(4) will help the Division, and potentially federal OSHA in determining whether an SDS is in compliance with the federal regulation.

The Board thanks OSHA and Mr. Shiraishi for the comments and participation in the Board's rulemaking process.

## II. Oral Comments

Oral comments received at the October 17, 2013, Public Hearing in Sacramento, California.

### Daniel Leacox, Greenberg Traurig, representing the Styrene Information Research Center.

Comment: Mr. Leacox stated that most of the proposal conforms to the federal standard, but there are some differences and compromise language that the Division used that is different from the federal standard and the temporary standard, and there are concerns regarding those differences. He said that he discussed his concerns in the written comments that he submitted. He also said that the 3-month timeline for updating labels included in the proposal is infeasible when a chemical's classification changes based on new hazard information because there are several steps to go through in response to a classification change. According to Mr. Leacox the 3 month timeline in existing regulation is not currently enforced.

Mr. Leacox later stated that the timeline provision in question only pertains to revising the label, not the safety data sheets. He also stated that the labels have a lot more timeline issues than the data sheets because many things have to happen within that time limit.

Response: See responses to written comments #BV1, #BV2, and #BV3, and #GC1.

The Board thanks Mr. Leacox for his comments and participation in the Board's rulemaking process.

### Elizabeth Treanor, Phylmar Regulatory Roundtable.

Comment: Ms. Treanor stated that her organization opposes this proposal. She said that harmonization with the federal rule will be protective for all employees, and that different categorization criteria between states will result in multiple safety data sheets and will create confusion for employers.

Response: See the responses to the similar written comments from Mr. Ventura (#BV2, #BV3, and #BV4) and the responses to Mr. Shiraishi of federal OSHA concerning equivalency of this proposal to federal HCS 2012.

The Board thanks Ms. Treanor for her comments and participation in the Board's rulemaking process.

Catherine Porter, CHANGE and the California Healthy Nail Salon Collaborative.

Comment: Ms. Porter stated that her organization supports the inclusion of certain provisions that differ from the federal standard, including the reference to source lists in Section 5194(d)(3) and (d)(4). However, it strongly opposes the inclusion of the exceptions to including those source lists. She said that including those exceptions will create a hole where arbitrary and individual decision can be made by manufacturers instead of by authoritative bodies who have studied this. She also said that her organization opposes not including the one positive study language in the definition of a health hazard because it will be a step backward in protecting workers.

Response: See the response to the similar written comments from Ms. Porter.

The Board thanks Ms. Porter for her comments and participation in the Board's rulemaking process.

Marti Smith, California Nurses Association.

Comment: Ms. Smith stated that her organization supports the proposal. She stated that the right to know rule in the hazard communication system allows workers to access the data necessary to protect themselves and others through data sheets. She said that the one study rule allows employers and workers to make informed decisions about potentially hazardous materials. She also said that the language in the proposal protects the standards that mandate that the level of protection should not be reduced as a result of harmonizing the labeling and classification systems.

Response: The Board thanks Ms. Smith for her comments and participation in the Board's rulemaking process.

Mitch Seaman, California Labor Federation.

Comment: Mr. Seaman stated that this proposal is fundamental to protecting California workers because it protects the standard and aligns California with the GHS. He said that his organization does have some concerns, and that they will be sending in a letter stating those concerns by the close of business today. He also stated that the current deadline of 90 days is plenty of time to comply with updating labels.

Response: See the response to the similar written comments from Mr. Seaman. Regarding updating labels, see response to comment #BV1.

The Board thanks Mr. Seaman for his comments and participation in the Board's rulemaking process.

Dr. Julia Quint, representing San Francisco Physicians for Social Responsibility.

Comment: Dr. Quint supports the parts of the proposal that retain protections of the current hazard communication standard, especially regarding source lists to classify chemicals. She stated that Appendix A is very complicated and does not have a description for the term “expert judgment.” She said that scientific information underlying classifications should be robust and determinations of classifications should be made by qualified individuals, and source lists do that.

Response: See the response to the similar written comments from Dr. Quint.

The Board thanks Dr. Quint for her comments and participation in the Board’s rulemaking process.

Anke Schennink, UAW Local 5810.

Comment: Ms. Schennink stated that her organization supports the proposal as long as it is as effective as the federal standard and protects the current standard regarding the one positive study provision. She said that the right to know provision provides access to necessary documentation and data to protect workers. She stated that they support the incorporation of the GHS classification and labeling system for chemicals.

Response: The Board appreciates Ms. Schennink’s support of the proposal.

The Board thanks Ms. Schennink for her comments and participation in the Board’s rulemaking process.

Anne Katten, California Rural Legal Assistance Foundation.

Comment: Ms. Katten stated that her organization supports the proposal, but is concerned about the exceptions in 5194(d) because they may result in hazards not being listed on safety data sheets. She said that if source lists are used, there is no need for these exceptions. She stated that if the exceptions are retained, it is important to have the listing for the chemicals as it is currently required when the manufacturer has decided not to classify them in accordance with the source lists. She recommended including manufacturer contact information on safety data sheets so that individuals may contact the manufacturer if they have questions regarding the basis of a chemical’s classification.

Response: See the response to the similar written comments from Ms. Katten. The Board notes that proposed Appendix D requires: (d) Name, address, and telephone number of the chemical manufacturer, importer, or other responsible party.

The Board thanks Ms. Katten for her comments and participation in the Board’s rulemaking process.

Joan Lichterman, UPTE-CWA 9119 and Communications Workers of America – District 9.

Comment: Ms. Lichterman supports the changes to the right to know regulation, especially the retention of the following provisions currently in the California standard:

- Floor lists for classifying chemicals
- One study rule
- 90-day time limit to update data sheets
- Retention of written records by those who are classifying substances

She recommended that the following changes be made to the GHS standard upon conclusion of the rulemaking process:

- Updating the Director's list
- Including additional authoritative lists
- Implementing an across-the-board cutoff of 1/10 of a percent for disclosure of all reproductive toxins, respiratory sensitizers, and mutagens
- Listing any endocrine disruptors
- Requiring immediate updates to labels and data sheets when new information is available

Response: The Board appreciates Ms. Lichterman's support of the proposal. See response to written comment #SK4 regarding the recommendations for future rulemaking.

The Board thanks Ms. Lichterman for her comments and participation in the Board's rulemaking process.

Dorothy Wigmore, Worksafe.

Comment: Ms. Wigmore stated that the level of protection for workers and the public should not be reduced as a result of harmonizing the classification and labeling systems, and that downstream users want transparency so that they can make informed decisions. She said that she supports the provisions regarding one positive study, using source lists, and the 90-day timeline, but she opposes the exceptions listed in (d)(3)(4). She stated that these exceptions offer a loophole to get around classifying chemicals and getting the hazard information out to workers and others.

Response: See the response to the similar written comments from Ms. Wigmore.

The Board thanks Ms. Wigmore for her comments and participation in the Board's rulemaking process.

Questions and comments from the Board Members:

Comment: Mr. Hank McDermott, Board Member, thanked everyone for participating in this process and giving their comments. He stated that this proposal will be effective in protecting employees, but it has to be understandable by those who will be implementing it, especially those who will be preparing the data sheets. He said that it would be helpful for them that when the standard is written, the differences between the California and federal standards be noted.

This will eliminate confusion for SDS preparers and clarify what needs to be done to comply in California. He also stated that it might be helpful to have a deadline by when containers must have the new label on them, and a shorter deadline by which the new label information needs to be online. This might provide a solution for products that are in the chain of commerce for long periods of time.

Mr. McDermott stated that the current version of the Labor Code states that MSDS's that meet the federal requirements meet the requirements of the labor code, which is separate from what is happening in this case. He asked if the Labor Code could be updated, and if it cannot be updated, which of these would be the rule in this case if someone was trying to meet the Labor Code.

Response to Mr. McDermott: In regards to potential ways to address feasibility issues in labeling, this notice includes a proposal to conform to the federal six-month deadline for updates, the distribution of hazardous chemicals, and the wording of proposed subsection (f)(11) in the proposal. A number of issues would need to be addressed if California wants to retain a 3-month deadline for label updates, while federal OSHA enforces a six month deadline. Due to the federal and Labor Code mandates to adopt a regulation at least as effective as the federal OSHA GHS update, it is now proposed that California adopt the federal deadline. Further modification of subsection (f)(11) could be considered at a later date by the Board.

In regards to Labor Code Section 6382, the provision that Mr. McDermott's comment alludes to, see response to comment #DS3.

Comment: Ms. Stock stated that she does not see why the exceptions are needed and asked for further explanation regarding the need for them. She also stated that the placement and visibility of the one positive study on the safety data sheet is important for disclosure benefit, and she would like to see this discussed further so that its placement on the safety data sheet will help it meet its intent.

Response: Regarding Ms. Stock's statements about the exceptions, the federal regulation clearly requires the manufacturer or importer to evaluate and classify hazards based on "weight of evidence." While the source lists represent authoritative determinations, the exceptions provide a mechanism by which the manufacturer and importer can exercise this responsibility. Also, not all of the referenced lists document the health effects upon which the listing is based. The exceptions, by requiring disclosure of the chemical and the listing on the SDS, as well as the requirement to document the basis for not classifying the chemical, will provide a mechanism by which employees and the Division can identify listed chemicals not classified, and can dispute the failure to classify. The Division believes that this system will encourage manufacturers and importers to rely on determinations by authoritative bodies or to develop sufficient evidence to dispute that determination.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM  
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further substantive modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on January 23, 2014. Non-substantive editorial modifications changing “consider” to “treat,” the related change of “to be” to “as” and deleting the word “chemical” before the term “manufacturer” have been made in response to comments in order to restore consistent use of the terms within section 5194.

Summary and Response to Written Comments:

Patrice Sutton, MPH, Director, Community Outreach and Translation, University of California, San Francisco, Program on Reproductive Health and the Environment (UCSF/PRHE), by letter dated February 7, 2014.

Comment #PS1: UCSF/PRHE supports retaining essential parts of the California RTK to provide critical protections for workplace chemical exposures. However, there is still some language about using one positive study, source lists and exceptions that undermine the health protective intentions. In subsections 5194(d)(3) and (d)(4) manufacturers have a way to avoid using lists and Appendix A that will require Cal/OSHA and downstream users extra time and resources if they wish to be certain about a product’s ingredients and hazards. Despite this concern UCSF/PRHE urges the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these three important changes:

- specify that information related to exceptions and one positive study must be “up front” on data sheets, where users expect to find chemical names and hazards;
- ensure that documentation for exceptions is available to any user, on request, and to workers’ representatives in particular (not just to people in the workplace where the classification is done); and
- fix the inconsistent language recommended by federal OSHA in subsections (d)(3) to (5) (e.g., “treat” vs. “consider,” “chemical” before “manufacturer”).

We also urge the Board to request immediate follow-up actions that fully consider and respond to the previous comments from worker and public health advocates. We also request that the Board ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal before you. California’s workers and employers deserve nothing less.

Response: The Board appreciates the support of moving forward with adoption of the proposal without further delay of an additional 15-day notice. The Board declines to make further modifications regarding one positive study, source lists, or make the further changes suggested by the commenter in Section 5194 at this time, due to the need to meet federal and Labor Code mandates, and the complexity of integrating the federal hazard communication standard, the existing California standard, the California Labor Code, and other California laws. With regard to the first two bulleted comments, those issues are outside the scope of the 15-day notice and do not need further response. However, see related responses to 45-day comments #SK2 and #SK3.

Regarding the third comment about the use of terminology, the Board agrees that the term “consider” has the same meaning in this context as “treat.” Similarly, in this section the term “manufacturer” is used to mean the manufacturer of the chemical, or the “chemical manufacturer.” The Board agrees these changes are editorial in nature and has further modified the proposal to restore the terms “treat” as it means the same as “consider” along with deleting the word “chemical” in front of “manufacturer” since that is what is used in subsection (d)(4) and the rest of section 5194.

The Board thanks UCSF/PRHE and Ms. Sutton for the comments and participation in the Board’s rulemaking process.

Dorothy Wigmore, M.S., Occupational Health Specialist, Worksafe, by letter dated February 10, 2014, with attachments.

Comment #DW1: Worksafe supports retaining essential parts of the California RTK although the regulation needs to be improved and updated. It is appreciated that the language about one positive study and floor lists was retained. However, the exceptions added as a 15-day modification seriously undermined those requirements. The new exception language will require Cal/OSHA and downstream users extra time and resources if they wish to be certain about a product’s ingredients and hazards. An example of how weight of evidence will give different hazard information based on the local requirements was provided. Attached to the comment letter is an example of this differing information provided by Chevron SDSs for Styrene in different countries worldwide along with how more information was provided before the 2012 federal revision. Despite these concerns, Worksafe urges the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these three important changes:

- Specify where information about chemical names and hazards should go on data sheets, if the information must be provided based on exceptions and one positive study requirements. The information should be in sections 2 and 3 of the new sheets, where users expect to find this kind of information;
- Clarify and make consistent who is to get documentation about the classification of chemicals. Subsection 5194(d)(6) has more persons given access to documentation than the newly modified subsection (d)(5). Access language of subsection (d)(5) should be expanded to be consistent with subsection (d)(6) to ensure that documentation for exceptions is available to any user, on request, and to workers’ representatives and NIOSH in particular; and
- Fix the inconsistent language recommended by federal OSHA in subsections (d)(3) to (5). Use “treat” instead of “consider” and restore “total weight of evidence” in subsection (d)(3) similar to how those terms are used in (d)(4).

Response: See the response to similar 15-day comment #PS1. The 15-day notice removed only a clause from the exception to subsection (d)(3) and did not introduce any new exceptions to subsection (d)(4). Regarding the third comment about correcting inconsistent terms, the Board agrees that is editorial in nature and has further modified the proposal to restore the terms “treat”

as it means the same as “consider.” In regards to restoring the phrase “total weight of evidence” in subsection (d)(3), the Board does not agree that it further clarifies how the lists must be used presumptively to establish that a chemical is “hazardous” and requires classification in accordance with Appendix A.

The Board thanks Worksafe and Ms. Wigmore for the comments and participation in the Board’s rulemaking process.

Catherine Porter, JD, Policy Director, California Healthy Nail Salon Collaborative (Collaborative), by letter dated February 10, 2014.

Comment #CP1: The Collaborative continues to have the concerns raised in its 45-day comments not limited to retaining the exceptions as related to source lists. The exceptions retention will allow broad discretion by individuals not adequately trained and with financial interest concerns. However, given the deadlines, the Collaborative supports the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these two important changes:

- specifying that information related to exceptions and one positive study must be in the first 3 sections of the SDS where users expect to find chemical names and hazards;
- ensuring that documentation for exceptions is available to any user, on request, and to workers’ representatives in particular (not just to people in the workplace where the classification is done).

The Board should ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal before you. California’s workers and employers deserve nothing less.

Response: See the response to similar 15-day comment #PS1.

The Board thanks the Collaborative and Ms. Porter for the comments and participation in the Board’s rulemaking process.

Anne Katten, MPH, Pesticide and Work Safety Project, California Rural Legal Assistance Foundation (CRLAF), by letter dated February 10, 2014.

Comment #AK1: CRLAF states that the Board could and should have retained more of the unique aspects of our California HCS but urges the Board to adopt the proposal without further delay to meet the federal deadline. Once the proposal is adopted the Board should request immediate follow-up actions that fully consider and respond to the previous comments from worker and public health advocates. We also request that the Board ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal. Finally, CRLAF is concerned with the time delay in issuing the proposed changes and lack of seeing the response to 45-day comments in the 15-day notice.

Response: See the response to similar 15-day comment #PS1. The Board understands the concern about the time delay and deviation from its typical practice of including comments and responses in the 15-day notice. This delay and deviation was necessary to deal with the large complex proposal and the numerous comments it generated. However, the Board did fully consider all comments, provided a rationale statement for each modification in the 15-day notice and now provided the full summary of all comments and responses in this final statement.

The Board thanks CRLAF and Ms. Katten for the comments and participation in the Board's rulemaking process.

Jelger Kalmijn, President, University Professional and Technical Employees (UPTE), CWA Local 9119, by email dated February 10, 2014.

Comment #JK1: UPTE supports retaining essential parts of the California RTK to provide critical protections for workplace chemical exposures. However, there is still some language about using one positive study, source lists and exceptions that undermine the health protective intentions. In subsections 5194(d)(3) and (d)(4) manufacturers have a way to avoid using lists and Appendix A that will require Cal/OSHA and downstream users extra time and resources if they wish to be certain about a product's ingredients and hazards. Despite this concern UPTE urges the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these three important changes:

- specify that information related to exceptions and one positive study must be "up front" on data sheets, where users expect to find chemical names and hazards;
- ensure that documentation for exceptions is available to any user, on request, and to workers' representatives in particular (not just to people in the workplace where the classification is done); and
- fix the inconsistent language recommended by federal OSHA in subsections (d)(3) to (5) (e.g., "treat" vs. "consider," "chemical" before "manufacturer").

We also urge the Board to request immediate follow-up actions that fully consider and respond to the previous comments from worker and public health advocates. We also request that the Board ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal before you. California's workers and employers deserve nothing less. Finally, the time crunch we faced is problematic for Board members and the public. The omission of its typical comment summary from the 15-day notice while legal is not part of the fair process used by the Board.

Response: See the response to similar 15-day comments #PS1 and #AK1.

The Board thanks UPTE and Mr. Kalmijn for the comments and participation in the Board's rulemaking process.

David Campbell, Secretary-Treasurer, United Steelworkers Union Local 675 (USW) by letter dated February 10, 2014.

Comment #DC1: USW supports retaining essential parts of the California RTK to provide critical protections for workplace chemical exposures. However, there is still some language about using one positive study, source lists and exceptions that undermine the health protective intentions. In subsections 5194(d)(3) and (d)(4) manufacturers have a way to avoid using lists and Appendix A that will require Cal/OSHA and downstream users extra time and resources if they wish to be certain about a product's ingredients and hazards. Despite this concern USW urges the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these three important changes:

- specify that information related to exceptions and one positive study must be “up front” on data sheets, where users expect to find chemical names and hazards;
- ensure that documentation for exceptions is available to any user, on request, and to workers' representatives in particular (not just to people in the workplace where the classification is done); and
- fix the inconsistent language recommended by federal OSHA in subsections (d)(3) to (5) (e.g., “treat” vs. “consider,” “chemical” before “manufacturer”).

We also urge the Board to request immediate follow-up actions that fully consider and respond to the previous comments from worker and public health advocates. We also request that the Board ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal before you. California's workers and employers deserve nothing less. Finally, the time crunch we faced is problematic for Board members and the public. The omission of its typical comment summary from the 15-day notice while legal is not part of the fair process used by the Board.

Response: See the response to similar 15-day comments #PS1 and #AK1.

The Board thanks USW and Mr. Campbell for the comments and participation in the Board's rulemaking process.

Mitch Seaman, Legislative Advocate, California Labor Federation (CLF) and Jeremy Smith, Deputy Legislative Director, CA State Building & Construction Trades Council by letter dated February 10, 2014.

Comment #MS1: The CLF supports retaining essential parts of the California RTK to provide critical protections for workplace chemical exposures. However, there is still some language about using one positive study, source lists and exceptions that undermine the health protective intentions of the standard. Despite this concern CLF urges the Board to adopt the proposal. Then the Board should enact improvements in the future.

Response: See the response to similar 15-day comment #PS1.

The Board thanks the CLF, Mr. Seaman and Mr. Smith for the comments and participation in the Board's rulemaking process.

Mark Catlin, Occupational Health and Safety Director, Service Employees International Union (SEIU) by letter dated February 10, 2014.

Comment #MC1: SEIU supports retaining essential parts of the California RTK to provide critical protections for workplace chemical exposures. However, there is still some language about using one positive study, source lists and exceptions that undermine the health protective intentions. In subsections 5194(d)(3) and (d)(4) manufacturers have a way to avoid using lists and Appendix A that will require Cal/OSHA and downstream users extra time and resources if they wish to be certain about a product's ingredients and hazards. Despite this concern SEIU urges the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these three important changes:

- specify that information related to exceptions and one positive study must be "up front" on data sheets, where users expect to find chemical names and hazards;
- ensure that documentation for exceptions is available to any user, on request, and to workers' representatives in particular (not just to people in the workplace where the classification is done); and
- fix the inconsistent language recommended by federal OSHA in subsections (d)(3) to (5) (e.g., "treat" vs. "consider," "chemical" before "manufacturer").

We also urge the Board to request immediate follow-up actions that fully consider and respond to the previous comments from worker and public health advocates. We also request that the Board ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal before you.

Response: See the response to similar 15-day comment #PS1.

The Board thanks the SEIU and Mr. Catlin for the comments and participation in the Board's rulemaking process.

Andria Ventura, Toxics Program Manager, Clean Water Action California (CWAC), by letter dated February 10, 2014.

Comment #AV1: CWAC supports retaining essential parts of the California RTK to provide critical protections for workplace chemical exposures. However, there is still some language about using one positive study, source lists and exceptions that undermine the health protective intentions. In subsections 5194(d)(3) and (d)(4) manufacturers have a way to avoid using lists and Appendix A that will require Cal/OSHA and downstream users extra time and resources if they wish to be certain about a product's ingredients and hazards. Despite this concern CWAC urges the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these three important changes:

- specify that information related to exceptions and one positive study must be “up front” on data sheets, where users expect to find chemical names and hazards;
- ensure that documentation for exceptions is available to any user, on request, and to workers’ representatives in particular (not just to people in the workplace where the classification is done); and
- fix the inconsistent language recommended by federal OSHA in subsections (d)(3) to (5) (e.g., “treat” vs. “consider,” “chemical” before “manufacturer”).

We also urge the Board to request immediate follow-up actions that fully consider and respond to the previous comments from worker and public health advocates. We also request that the Board ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal before you. California’s workers and employers deserve nothing less. Finally, the time crunch we faced is problematic for Board members and the public.

Response: See the response to similar 15-day comments #PS1 and #AK1.

The Board thanks CWAC and Ms. Ventura for the comments and participation in the Board’s rulemaking process.

Erik Emblem, Executive Administrator, Sheet Metal, Air, Rail and Transportation Workers (SMART) by letter dated February 10, 2014.

Comment #EE1: SMART supports retaining essential parts of the California RTK to provide critical protections for workplace chemical exposures. However, there is still some language about using one positive study, source lists and exceptions that undermine the health protective intentions. In subsections 5194(d)(3) and (d)(4) manufacturers have a way to avoid using lists and Appendix A that will require Cal/OSHA and downstream users extra time and resources if they wish to be certain about a product’s ingredients and hazards. Despite this concern SMART urges the Board to make what changes are possible and adopt the proposal without another 15-day notice or other delays. Then the Board should consider these three important changes:

- specify that information related to exceptions and one positive study must be “up front” on data sheets, where users expect to find chemical names and hazards;
- ensure that documentation for exceptions is available to any user, on request, and to workers’ representatives in particular (not just to people in the workplace where the classification is done); and
- fix the inconsistent language recommended by federal OSHA in subsections (d)(3) to (5) (e.g., “treat” vs. “consider,” “chemical” before “manufacturer”).

We also urge the Board to request immediate follow-up actions that fully consider and respond to the previous comments from worker and public health advocates. We also request that the Board ask Cal/OSHA to return within a few months with revised language that improves worker protection beyond what is in the proposal before you. California’s workers and employers

deserve nothing less. Finally, the time crunch we faced is problematic for Board members and the public. The omission of its typical comment summary from the 15-day notice while legal is not part of the fair process used by the Board.

Response: See the response to similar 15-day comment #PS1 and #AK1.

The Board thanks the SMART and Mr. Emblem for the comments and participation in the Board's rulemaking process.

David Shiraishi, MPH, Area Director, U.S. Department of Labor Occupational Safety and Health Administration by letter dated February 14, 2014.

Comment: OSHA's preliminary opinions based on its review of the proposed changes to California's standard find that the proposed occupational safety and health standard appear to be commensurate with the federal standard. OSHA will make its final decision on the state plan changes one California submits them for approval under 29 CFR 1953, taking into account the final text of the changes and any public comments OSHA receives on them.

Response: The Board thanks Federal OSHA and Mr. Shiraishi for the comments and participation in the Board's rulemaking process.

#### ADDITIONAL DOCUMENTS RELIED UPON

Federal Register Volume 62, June 6, 1997, Pages 31159-31181

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.

#### ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

#### DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

#### ALTERNATIVES CONSIDERED

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.