

**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 2, Definitions, Section 1504;

Article 36, Fire Protection and Prevention, New Section 1929,
Sections 1930 – 1932, 1934 – 1936.

Subchapter 7, General Industry Safety Orders (GISO).

Group 16. Control of Hazardous Substances

Article 107, Dusts, Fumes, Mists, Vapors and Gases, Section 5154;
Article 109, Hazardous Substances and Processes, Sections 5191, 5194.

Subchapter 7, General Industry Safety Orders.

Group 20. Flammable Liquids, Gases and Vapors

Article 134, Definitions, Section 5415;

Article 135, General, Section 5417;

Article 137, Spray Coating Operations, Sections 5449, 5451;

Article 141, Container and Portable Tank Storage,

Sections 5531 – 5535, 5537, 5538, 5541 – 5543;

Article 142, Industrial Plants, Sections 5545 – 5547, 5549;

Article 143, Processing Plants, Sections 5555, 5556, 5558, 5560;

Article 144, Service Stations, Sections 5566, 5568 – 5570, 5573 – 5580;

Article 145, Tank Storage, Sections 5583, 5585.1, 5589, 5590, 5592-5602;

Article 146, Piping, Valves and Fittings, Section 5606-5608;

Article 147, Bulk Plants, Sections 5616 – 5622, and 5624.

Federal Final Rule, Globally Harmonized System - Update to Hazard Communication (Safety)**MODIFICATIONS AND RESPONSE 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 substantive, non-substantive and/or sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

Section 1930(a).

Section 1930(a) as currently proposed would have inadvertently omitted Class IIIB liquids which are currently addressed by California standards. As a result of stakeholder comments, this section, including Table A, has been modified to reinstate Class IIIB liquids [liquids with a

flashpoint greater than 199.4 °F (93 °C) (formerly designated Class IIIB Combustible liquids)]. Existing Table A has also been modified to be consistent with federal 29 CFR 1910.106(d), Table H-12. The purpose and necessity for these modifications is to retain existing state provisions where they are more protective than federal standards.

Section 1930(b).

This new section, added to be commensurate with federal standards, would have been silent on Class IIIB liquids which are currently covered by state standards. Therefore it has been modified to include liquids formerly designated as Class IIIB Combustible liquids. The purpose and necessity for this modification is to retain existing state provisions covering Class IIIB liquids.

Section 1931.

The title of this section, which was proposed to be modified to “Inside Storage of Flammable Liquids,” will be returned to its pre-modified state; i.e. “Inside Storage” as a result of a Division comment which noted that the modifier “of flammable liquids” would limit the scope of the section to less than currently exists. An incidental, however substantive, modification of subsection (a) is proposed to replace an obsolete reference to the 1984 edition of NFPA 30 with the current 2012 edition. Incidental modifications of subsections (c), (d) and (f) are also proposed to correct California differences with federal standards related to the GHS-Safety rulemaking. Subsection (g) has been amended to clarify inclusion of Class IIIB liquids and to clarify requirements for spray coating operations. The purpose and necessity for these modifications is to update an obsolete reference to NFPA 30 and to retain existing state provisions covering Class IIIB liquids.

Section 1936.

This section currently contains obsolete references to Class I liquids. These references are proposed to be updated to GHS Categories for flammable liquids. The purpose and necessity for these modifications is for consistent terminology.

Section 5194(c). Definition of “Combustible Liquid.”

The definition of “Combustible Liquid” was originally proposed to be deleted per the federal GHS rulemaking; however, commenters pointed-out that combustible liquids can be fuel for fires, and may create a flammable atmosphere under certain conditions, such as when heated. Furthermore, a number of other California safety orders make reference to this definition. The purpose and necessity for this modification is to retain the definition of “Combustible Liquid” for consistency with other safety orders, and to maintain safeguards currently available in California standards.

Section 5415. Definition of “Flammable Aerosol.”

A modification was originally proposed that would have limited application of the definition of “Flammable Aerosol” to Article 141 and would have eliminated existing applicability to other sections within Group 20 (Flammable Liquids, Gases and Vapors) such as Article 137, Spray Coating Operations. This would have been less protective than currently exists. The Board therefore proposes to replace “Article 141” with “Group 20.” The purpose and necessity for this modification is to retain the original scope of application.

Section 5417. Flammable Liquids--General.

Subsections (b) and (d), not part of the original proposal, were found to contain obsolete flammable liquid classifications. It is proposed to replace these obsolete categories with the current GHS classification. The purpose and necessity of this change is for clarity and consistency.

Section 5451. Flammable and Combustible Liquids.

The title of this section, initially proposed to be changed to “Flammable Liquids and Liquids with a Flashpoint Greater Than 199.4 °F (93 °C) (formerly designated Class IIIB Combustible liquids) – Storage and Handling,” is now proposed to be returned to its original (pre-rulemaking) state; i.e., “Flammable and Combustible Liquids – Storage and Handling.” The purpose and necessity for this change is to simplify the title. “Combustible” is already defined in Section 5415.

Section 5451(c).

The federal verbiage for this section uses the phrase "should ordinarily not exceed." The term “ordinarily” is ambiguous. The Board therefore proposes to delete “should ordinarily” and replace it with “shall not.” The purpose and necessity for this modification is to clarify storage requirements.

Section 5532. Design, Construction, and Capacity of Containers. Table FL-2.

A deletion is proposed to delete text that was inadvertently transferred from the existing table to the proposed table.

Section 5535. Storage in Inside Storage Rooms.

This section, not previously proposed for modification, has been added in order to change obsolete Classes to GHS Categories. An obsolete cross-reference to Title 24 is also proposed for deletion. The purpose and necessity for this amendment, modification and deletion is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5537. Assembly Occupancies, Buildings Containing More Than Three Dwelling Units and Hotels.

This section, not previously proposed for modification, has been added in order to change obsolete Classes to GHS Categories. An obsolete cross-reference to Title 24 is also proposed for deletion. The purpose and necessity of this amendment, modification and deletion is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5538. Office, Educational and Institutional Occupancies.

This section, not previously proposed for modification, has been added in order to change obsolete Classes to GHS Categories. An obsolete cross-reference to Title 24 is also proposed for deletion. The purpose and necessity of this amendment, modification and deletion is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5541. Flammable and Combustible Liquid Warehouses or Storage Buildings.

The section title was initially proposed to delete the phrase “and Combustible.” A commenter noted that this modification could reduce the coverage of the existing state standard [it would not include flammable liquids or liquids with a flashpoint greater than 199.4°F (93°C) (formerly designated Class IIIB Combustible liquids)]. The Board therefore proposes to reinstate the original text of the section title. The purpose and necessity for this modification is to retain the existing level of protection afforded by this section.

Section 5543. Fire Control.

Subsection (a)(2) fire extinguisher size was increased from 10-B to 20-B (size 10-B is no longer commercially available). It is proposed to modify subsection (a)(1) likewise. The purpose and necessity for this modification is to require consistent fire control measures.

Section 5545. General, subsection (f).

It is proposed to update flammable and combustible classifications to GHS categories. The purpose and necessity for this modification is for consistency and clarity. An obsolete cross-reference to Title 24 is also proposed for deletion.

§5549. Sources of Ignition, subsection (b).

The term “in electric contact” is being replaced with “electrically interconnected.” The purpose and necessity for this change is for consistency with other parts of GISO Group 20 [e.g., Section 5619(j)] and with federal terminology in 29 CFR 1910.106(e)(6)(ii).

Section 5555. Location.

Subsection (b), not previously proposed for modification, has been added to change an obsolete Class reference to the corresponding GHS Category. An obsolete cross-reference to Title 24 is also proposed for deletion. The purpose and necessity for this amendment, modification and deletion is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5556. Construction.

Subsection (d), not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5577. Dispensing into Portable Containers.

An error in conversion to GHS categories was discovered and is proposed for correction. The purpose and necessity for this modification is to correct an error.

Section 5578. Attendance or Supervision of Dispensing.

An error in conversion to GHS categories was discovered and is proposed for correction. The purpose and necessity for this modification is to correct an error.

Section 5580. Sources of Ignition.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5583. Materials.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section §5585.1. Liquid Level Indicator, Temperature Regulator, Class IIIB Liquids.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5589. Installation of Outside Aboveground Tanks.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5590. Spacing (Shell-to-Shell) Between Aboveground Tanks.

Subsections (b) and (e), not previously proposed for modification, have been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5593. Emergency Relief Venting for Fire Exposure for Aboveground Tanks.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5594. Vent Piping for Aboveground Tanks.

Subsection (d) not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5595. Drainage, Dikes and Walls for Aboveground Tanks.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this

modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5596. Tank Openings Other Than Vents for Aboveground Tanks.

Subsection (d) not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5600. Installation of Tanks Inside of Buildings.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5601. Tank Openings Other Than Vents for Tanks Inside Buildings.

Subsections (d), (g) and (h) have been added, in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity for these modifications is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5602. Supports, Foundations and Anchorage for All Tank Locations.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity of this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5607. Materials for Piping, Valves and Fittings.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity of this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5608. Pipe Joints.

This section, not previously proposed for modification, has been added in order to change obsolete Class references to corresponding GHS Categories. The purpose and necessity of this modification is to provide clarity and consistent terminology for flammable and combustible liquids.

Section 5620. Wharves.

Modifications have been made to subsections (d)(5) to correct an error in the original proposal and (7) to change obsolete Class references (previously overlooked) to corresponding GHS Categories. The purpose and necessity of these modifications is to provide clarity and consistent terminology for flammable and combustible liquids.

Summary of, and Response to, Oral and Written Comments:

I. Written Comments

Deborah Gold, Deputy Chief, Division of Occupational Safety and Health, by letter dated August 14, 2013.

The Division expressed concerns, particularly in regards to proposed changes that would affect the safe storage and handling of flammable and combustible materials. They are listed below.

Comment No. 1:

Section 1930(a), Flammable and Combustible Liquids: Currently, this standard regulates the storage of flammable and combustible liquids, and includes limitations on the sizes and types of individual containers, based upon the fire hazard involved. The modifications proposed would eliminate the requirement that containers of Class IIIB combustible liquids (liquids with a flash point greater than 199.4 degrees F) be approved, and meet the requirements of this section. No reason is given for limiting the scope of this section or removing the specific requirements applicable to containers of flammable and combustible liquids (Table A). Class IIIB combustible liquids contribute to available fuel in the case of fire, and improper storage can create a significant safety hazard. The commenter recommended: (a) modifying the first sentence to read: "for storage and handling of flammable or combustible liquids," and (b) retain coverage of 60 gal of combustibles in 1930(a)(2)(A) [Table A should be revised rather than deleted – similar to revision of Table FL-2 in section 5532].

Response:

The Board accepts this comment. The first sentence of 1930(a) has been modified to include liquids with a flashpoint greater than 199.4 °F (93 °C) (formerly designated Class IIIB Combustible liquids). Table A has been revised and reinstated. Section 1930(a)(2)(A) has been renumbered to 1930(a)(4)(A) and revised to include liquids with a flashpoint greater than 199.4°F (93 °C) (formerly designated Class IIIB Combustible liquids).

Comment No. 2:

Section 1930(b). For consistency with the rest of the Fire Protection Safety Order, specifically Section 1932(b), the commenter recommended changing (b) to read: “Flammable or combustible” to address Class IIIB liquids. The retention of existing limits on combustible materials (former class IIIB liquids) is necessary because it limits the amount of fuel available to a fire.

Response:

The Board accepts this comment. Section 1930(b) has been modified to include liquids formerly designated at Class IIIB Combustible liquids.

Comment No. 3:

Section 1931, Inside Storage. Currently, this section applies to inside storage of flammable and combustible liquids. Although the federal GHS includes within the definition of flammable liquids, materials that were previously classified as combustible Class II or IIIA liquids, liquids

defined as Class IIIB are not addressed in the GHS. Existing language limits the amount of flammable and combustible liquids that can be stored. The proposed language would not include Class IIIB in the scope of this section. As noted above, Class IIIB liquids provide fuel for fires, and their storage is properly addressed in current language. Additionally, Section 1931(b) retained the word "combustible" because the state language is more protective. The commenter recommended either striking "of Flammable Liquids" from the title or expanding the title to include "Combustible Liquids."

Response:

Comment accepted: "of Flammable Liquids" has been removed from the title of Section 1931.

Comment No. 4:

Section 1931(g).

- (a) The limitation on quantity should apply to combustible (Class IIIB) liquids as well as those liquids classified as "flammable" under GHS, since the Class IIIB liquids are a fire hazard.
- (b) For consistency with the rest of the Fire Protection Safety Order, the words "or combustible" should be added.
- (c) This section restates one of the existing requirements limiting storage near spraying operations currently in GISO Section 5451. This subsection should be amended to reference those requirements, which also provide definite limits for storage, therefore limiting the fire load near spray operations.
- (d) Also, this section introduces the phrase, "ordinarily not exceed," with no definition regarding what is "ordinary." This may create ambiguity, and the commenter recommended removing the word "ordinarily."

Response:

Comments accepted as follows:

- (a) and (b): Section 1931(g) has been revised to include "liquids with a flashpoint greater than 199.4 °F (93 °C) (formerly designated Class IIIB Combustible liquids)."
- (c) A cross-reference to GISO Section 5451 has been added for spray coating operations.
- (d) "Ordinarily" has been stricken.

Comment No. 5:

Sections 1931(c), (d), and (f) and 1932(a) should be updated to change the terminology of Class I or II liquids to reflect the GHS categories in order to be consistent with other proposed changes to these orders.

Response:

Changes have been made to Section 1931(c), (d), and (f) based on existing (pre-GHS) federal verbiage which addresses the commenters concerns. With respect to Section 1932(a): Table B appears to be based on NFPA 30 (circa 1987). The federal verbiage is formatted differently, and further study is necessary to determine where state verbiage is more protective. Since Section 1932(a) is not within the scope of GHS-Safety, the Board proposes to update this section as a separate rulemaking; thus no changes to Section 1932(a) are proposed at this time.

Comment No. 6:

Section 1936, Service and Refueling Areas. Replace references to Class I and Class II with GHS categories.

Response:

Comment accepted. Section 1936(b) has been modified with GHS categories.

Comment No. 7:

Section 5194, Definitions, Combustible liquid. Retain the definition of combustible liquid because fire hazards associated with Class IIIB liquids must still be controlled, although those hazards are not classified in Appendix B. Combustible liquids are fuel for fires, and may create a flammable atmosphere under certain conditions, such as when heated. Because the definitions in this section are referenced in a number of other safety orders, it is important to retain this definition for consistency with other safety orders. Recommend retaining definition of combustible liquid as a liquid with a flashpoint greater than 199.4 degrees F.

Response:

Comment accepted. A modified definition for “Combustible liquid” has been restored to Section 5194(c).

Comment No. 8:

Section 5415. Definitions, Flammable Aerosol. The modification of the definition is less protective than the existing standard as it limits its applicability to Article 141 and would eliminate applicability to other safety orders such as Article 137, Spray Coating Operations (Example Sections 5449 or 5460). The commenter recommended keeping existing language “for the purposes of these regulations.”

Response:

Comment accepted, to the extent that the scope of application of the original definition was to Group 20, Flammable Liquids, Gases and Vapors. The definition of “Flammable Aerosol” has been modified to capture the original scope.

Comment No. 9:

Section 5417. Flammable Liquids – General. Update subsections (b) and (d) to have Class I terminology to be consistent with GHS categories.

Response:

Comment accepted. Sections 5417(b) and (d), modified with GHS categories, have been added to the rulemaking proposal.

Comment No. 10:

Section 5451. Flammable and Combustible Liquids. Section 5415 defines, for this Group, combustible liquid, and there is no need to restate the definition each time. The term combustible should be used.

Response:

Comment accepted. Title of Section 5451 has been changed back to “Flammable and Combustible Liquids – Storage and Handling.”

Comment No. 11:

Section 5451(c). This section uses the phrase "ordinarily not exceed." This phrase may create ambiguity as to what constitutes “ordinarily.” The commenter recommended keeping the existing verbiage but updating existing Class terminology with GHS categories.

Response:

Existing state verbiage for Section 5451(c) would actually allow greater quantities of flammable and combustible liquids to be stored in the vicinity of spraying operations than permitted by federal verbiage. However, the Board agrees that “ordinarily” could be problematic, and therefore proposes to delete that term.

Comment No. 12:

Sections 5530, 5535, 5537 and 5538 subsections (a)(1) through (a)(3) have not been updated with GHS terminology. Commenter recommends that these sections should be updated to reflect GHS categories for consistency with other proposed changes to these orders.

Response:

Section 5530 is part of a separate rulemaking. Sections 5535, 5537 and 5538 will be amended to reflect GHS categories for consistency with other proposed changes to these orders.

Comment No. 13:

Section 5541. ~~Flammable and Combustible~~ Liquid Warehouses or Storage Buildings. The modification of the title is less protective than the existing regulation and not consistent with the other modifications that have taken place where the words "and combustible" are retained or are replaced with "Liquids with a Flashpoint Greater than 199.4°F." The title should be amended to reflect that this section still applies to liquids with a flash point greater than 199.4°F.

Response:

Comment accepted. Section 5541 title will be returned to original text.

Comment No. 14:

Section 5543. Fire Control, subsections (a)(1) and (a)(2). In Section 5543(a)(2) the fire extinguisher type is being moved to the next NFPA size (20-B). Commenter recommends that Section 5543(a)(1) be updated likewise.

Response:

Comment accepted; change made.

Comment No. 15:

Section 5545. General. Subsection (f) was overlooked in the GHS category update. Recommend it be included for consistency.

Response:

Comment accepted; change made.

Comment No. 16:

Section 5556. Construction, subsection (d) - Correction or amendments need to also apply to Section 5556(d) so that Class I and Class II terminology is updated with GHS categories for consistency.

Response:

Comment accepted; change made.

Comment No. 17:

Sections 5580, 5583 (b)(3) and (b)(4) and 5585.1 should be updated to include GHS terminology to be consistent with other proposed amendments.

Response:

Comment accepted; changes made.

Comment No. 18:

Section 5590. Spacing (Shell-to-Shell) Between Aboveground Tanks, subsection (b), amend terminology to be consistent with GHS categories

Response:

Comment accepted; changes made.

Comment No. 19:

Section 5594. Vent Piping for Aboveground Tanks, subsection (d), amend Section 5594(d) to update terminology to GHS categories.

Response:

Comment accepted; changes made.

Comment No. 20:

Section 5596. Tank Openings Other Than Vents for Aboveground Tanks, amend subsection (d) to update terminology to GHS categories.

Response:

Comment accepted; changes made.

Comment No. 21:

Sections 5595, 5602, 5607 and 5624 need to be amended to update terminology with GHS categories.

Response:

Comment accepted; changes made to Sections 5595, 5602 and 5607. No additional changes to Section 5624 were necessary.

Comment No. 22:

Section 5601. Tank Openings Other Than Vents for Tanks Inside Buildings, subsections (d), (g) and (h): Amendments needed to update terminology with GHS categories.

Response:

Comment accepted; changes made.

Comment No. 23:

Section 5620. Wharves, subsection (d)(7), amend to update terminology with GHS categories.

Response:

Comment accepted; changes made to subsections (d)(5) and (d)(7).

The Board thanks Ms. Gold and the Division of Occupational Safety and Health for their participation in the rulemaking process.

David Shiraishi, MPH, Area Director, U.S. Department of Labor, OSHA, by letter dated August 15, 2013.

Comment:

The rulemaking proposal appears to be commensurate with federal standards with the exception of state counterparts for federal sections 29 CFR 1910.106(e)(7)(i)(c) and 1926.152(i)(5). OSHA review of the state proposal for GHS – Safety will be completed upon receipt of state counterparts for those federal sections.

Response:

The state counterpart for 29 CFR 1910.106(e)(7)(i)(c) was deferred to future rulemaking because it was considered to be too complex to be included for a streamlined adoption of GHS-Safety. Board staff is currently working on this project as a separate rulemaking and the actual state counterpart rulemaking will likely be titled “Electrical Equipment in Hazardous (Classified) Locations” and will be in GISO Article 140. It will be noticed for a future hearing (date to be determined).

The state counterpart for federal 29 CFR 1926.152(i)(5), was another section that was more involved and was thus deferred from the streamlined adoption of GHS-Safety. The Board was unable to adopt the federal changes verbatim as part of the GHS-Safety rulemaking since the federal verbiage is a construction standard (Part 1926) and comparable state provisions reside in the California General Industry Safety Orders [Section 5605 is the state counterpart for federal 29 CFR 1926.152(i)(5)]. State standards will be amended to be at least as effective as the federal standard in a separate (non-Horcher) rulemaking which has been prepared and is currently

undergoing review. It will be noticed for a future Public Hearing (date to be determined), as “Tank Storage Subject to Flooding,” GISO Section 5605.

The Board thanks Mr. Shiraishi and OSHA for their participation in the rulemaking process.

Dorothy Wigmore, MS, Occupational Health Specialist, Worksafe, by letter dated August 15, 2013.

Comment No. 1:

Worksafe would like to see information that is useful to workers and their employers retained, e.g. Table A, or added as needed (e.g. how to reconcile GHS with the NFPA Fire Code).

Response:

Comment accepted. Table A has been restored and updated for GHS categories.

Comment No. 2:

Not everything that federal OSHA has done in relation to GHS safety issues is appropriate, necessary or well-done, for example, combustible class IIIB materials, and the Board should not duplicate these errors or inappropriate requirements or processes.

Response:

Comment accepted. Coverage of Class IIIB liquids has been restored.

Comment No. 3:

Consistency: The proposal should be reviewed for internal consistency, especially around anything to do with combustible liquids. Where references to combustibles have been deleted, they should be reinstated.

Response:

Comment accepted. See response to Wigmore Comment No. 2 above.

Comment No. 4:

Consistency: Section 5549 uses the term “electrical contact” while Section 5619(j) replaces the term “in electrical contact” which is still in the first modified section with “electrically interconnected.”

Response:

Comment accepted. Section 5549(b) has been modified.

Comment No. 5:

Recognize that GHS and NFPA Fire Code are not consistent and determine the best way to ensure workers and employers know how to navigate between the two.

Response:

Differences between GHS and NFPA standards and classifications are well known. NFPA and OSHA are aware of and are working with stakeholders on this matter. This request is beyond the scope of this proposed rulemaking.

Comment No. 6:

Avoid problematic items in the federal HazComm revisions, and check amendments, etc. to the GHS system, changes in the works and federal OSHA's efforts to deal with inconsistencies and conflicts between the two.

Response:

These matters are outside the scope of the present rulemaking. The Board monitors federal rulemakings and will update the standard when changes are made, or when Division requests for changes or modifications are received.

The Board thanks Ms. Wigmore and Worksafe for their participation in the rulemaking process.

Nicole L. Craig, Counsel, The Regents of the University of California, by letter dated August 15, 2013.

The Regents, through its campuses, is responsible for thousands of laboratory and research facilities throughout the state. As a result, the Regents is very attentive to proposed changes to the GISO that might impact or alter regulatory requirements for the handling and storage of liquids classified as hazardous based on combustibility and/or flammability.

Comment No. 1:

The Regents support efforts to simplify and harmonize requirements for handling flammable materials to the extent that safety is not compromised. However, the Regents believe that the Board has not gone far enough, and that this full scale revision is an opportunity for the Board, working with the regulated community, to revisit all Title 8 regulations regarding flammable materials in order to clarify them to improve application and compliance.

Response:

The scope of this rulemaking is limited to responding to changes made to flammable and combustible liquids standards by federal OSHA.

Comment No. 2:

Section 5191, in Group 16, defines "laboratory;" however, it is unclear whether this definition also applies to "laboratory" within Group 20. Clarification is requested.

Response:

Section 5161 is outside the scope of this rulemaking proposal. Furthermore, this is also a question of interpretation, which is outside the scope of this rulemaking. (See response to Craig Comment No. 1, above).

Comment No. 3:

The proposal fails to clarify which laboratories are subject to Section 5191 and fails to reconcile the definition of laboratory in Section 5191 with the differing definition of laboratory in Section 5161.

Response:

See response to Craig Comment No. 1 above.

Comment No. 4:

The proposal is not clear which of the many definitions contained in Title 8 apply to entities in Section 5538.

Response:

This is a question of interpretation, which is outside the scope of this rulemaking. (See response to Craig Comment No. 1, above).

Comment No. 5:

The definitions of laboratory found in Section 5161 and 5191 appear to address different types of laboratories, with one definition implying that the regulations only apply to laboratories that are part of a manufacturing facility.

Response:

This is a question of interpretation, which is outside the scope of this rulemaking. (See response to Craig Comment No. 1, above).

Comment No. 6:

It is essential for the regulations to be internally consistent. It is also important for parallel regulatory programs administered by other state agencies be considered when amending Title 8. For example, Section 5538 (which is not proposed to be amended by the proposed rulemaking) outlines requirements for storage of flammable liquids in laboratories. The California Fire Code (Title 24, Part 9) also provides regulations for the storage of flammable liquids. Although it appears that these two regulatory programs are compatible, the Fire Code provides additional requirements for the storage of certain regulated liquids. It is unclear whether the Fire Code or the Title 8 would control should there be a conflict between the two. The Fire Code is enforced by the State Fire Marshal, and this agency has state police powers, allowing the agency to make arrests in furtherance of its regulatory mission.

Response:

Section 5538 is proposed to be modified as part of this 15-Day Notice to convert obsolete flammable and combustible liquid classifications to GHS categories. Other than differences between National Fire Protection Agency (NFPA) classifications and GHS categories, the Board is not aware of any other inconsistencies between the Fire Code and Title 8. However, the Division has indicated they will work with the State Fire Marshal and the local authority having jurisdiction if any conflicts are discovered.

Comment No. 7:

For example, Section 5538 refers to occupancy terms such as: “Office Occupancy,” “Educational Occupancy” and “Institutional Occupancy.” Section 3207 only defines “Office” and “Institutional Occupancy,” but fails to define “Educational Occupancy.” In addition, as used, these terms are outdated and originate from the 1973 version of NFPA 30 guidance document. Current California statutes use more modern terms such as “Group B,” “Group L” and “Group H” occupancy when describing laboratory construction. We recommend that as part of the GHS adoption that occupancy definitions in Title 8 be harmonized with the California Fire and Building Code.

Response:

The recommended changes are outside the scope of this rulemaking proposal (see response to Craig Comment No. 1).

Comment No. 8:

Lastly, the GHS changes the definitions of different types of flammable materials, replacing the older “Class I Class II” nomenclature with “Categories 1-4.” Although the Board adopts these new definitions for some of the impacted Sections in Title 8, the old terminology remains for other Sections, such as Section 5538. The Board should either apply these new definitions throughout Title 8 or defer to the Fire Code on Sections that continue to use the old definitions since the Fire Code is updated more frequently.

Response:

A search was conducted and additional sections were found which contained the obsolete classification system. The 15-Day notice will contain a number of sections, including Section 5538, which are proposed to be updated to the new GHS category system.

The Board thanks Ms. Craig and The Regents of the University of California for their participation in the rulemaking process.

II. Oral Comments

Oral comments received at the August 15, 2013 Public Hearing in Sacramento, California.

Dan Leacox, Greenberg Traurig

Comment:

Mr. Leacox stated that the proposal retains usage of the terms “Class IIIB” and “combustible” while the federal rule no longer uses that terminology. He said that use of the old terminology could create conflicts and confusion and recommended consistently using the federal terminology; e.g., “a liquid having a flash point greater than 199.4°F” wherever Class IIIB liquids are addressed in the state standard.

Response:

Comment accepted. “Liquid, combustible,” has been defined as a liquid having a flash point greater than 199.4°F (93°C) (formerly designated Class IIIB Combustible liquids). References to Class IIIB combustible liquids (where they remained) have been changed to be consistent with this definition. The term “combustible” will only be used when it is clear from the context that it refers to liquids formerly designated at Class IIIB combustibles. The proposal has also been modified to clarify where liquids having a flash point greater than 199.4°F (93°C) are subject to regulation.

The Board thanks Mr. Leacox for his participation in the rulemaking process.

Mark Stone, Epic Insurance Brokers

Comment No. 1:

Mr. Stone noted that a table on page 3 of the draft proposal was proposed for deletion, and he felt it important that it be retained.

Response:

Comment accepted. Section 1930, Table A, Maximum Allowable Size of Containers and Portable Tanks has been reinstated.

Comment No. 2:

With respect to the table on page 17, he opined that it should be revised to include flash points and boiling points for each category listed to make it easier to understand the changes. He would also like to see this table added to the Construction Safety Orders as well.

Response:

With reference to Table FL-2 (page 17 of the proposal as noticed), flash point information was not required by the federal rulemaking proposal, nor was it provided in the existing (pre-rulemaking) version. Table FL-2 is in GISO Group 20, and definitions (including flash points) for Group 20, Flammable Liquids, Gases and Vapors, are in Section 5415.

The Board thanks Mr. Stone for his participation in the rulemaking process.

Elizabeth Treanor, Phylmar Regulatory Roundtable

Comment:

Ms. Treanor, echoing Mr. Leacox’s comments, requested that the proposal use the same terminology as the federal standards for combustibles.

Response:

Agreed. The only exception will be for liquids formerly designated Class IIIB combustibles which will now be designated as “liquids having a flash point greater than 199.4°F (93°C) (formerly designated Class IIIB Combustible liquids).” The term “combustible liquid” is only used where it is clear from the context that it is as defined above. This convention is necessary

to retain existing protections for the storage and handling of liquids formerly designated as Class IIIB because they can contribute to available fuel in the case of fire, and improper storage can create a safety hazard.

The Board thanks Ms. Treanor and Phylmar Regulatory Roundtable for their participation in the rulemaking process.

Dorothy Wigmore, Worksafe

Comment No. 1:

Ms. Wigmore expressed support for consistent use of terminology throughout the standard.

Response:

Comment accepted. The Board has reviewed the proposal, including related sections previously outside the original proposal, and has harmonized the terminology for flammable and combustible liquids throughout.

Comment No. 2:

She re-emphasized Worksafe's desire that proposed changes not diminish existing state standards where more protective.

Response:

Comment accepted. As modified, existing state standards, where more protective, are retained.

Comment No. 3:

Issues raised by the Division should be addressed so that they can properly enforce the standard.

Response:

Comment accepted. The Board has responded to the Division's written comments (see Summary and Response to Written Comments, above).

The Board thanks Ms. Wigmore and Worksafe for their participation in the rulemaking process.

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

As a result of a written comment to the proposed modifications contained in the 15-day Notice of Proposed Modifications mailed on October 31, 2013, the following sufficiently related modification has been made to the Informative Digest published in the California Regulatory Notice Register dated June 28, 2013.

Section 5415. Definitions.

A modification has been made to the definition of Liquid, Flammable to correct an error in the original proposal which omitted “and having a boiling point above 95 °F.” The purpose and necessity of this change will be to provide clarity and consistency.

Summary and Response to Written Comments:

Brett S. Henrikson, Senior Counsel, Environmental Health & Safety, The Regents of the University of California, by letter dated November 20, 2013.

Comment No. 1:

The Regents are of the opinion that although the Board’s 15-Day Notice did respond to some of their concerns regarding harmonization related to GHS changes in terminology, the Board’s response to their original comments dated August 15, 2013, did not go far enough. The Regents continue to request that the Board use the proposed GHS changes as an opportunity to update other Title 8 standards for flammable materials to ensure consistency with standards promulgated by other state agencies, including, but not limited to, the State Fire Marshal.

Response:

The August 15, 2013, comments were responded to fully in the responses to Nicole L. Craig’s August 15, 2013, letter.

Comment No. 2:

The commenter stated that existing Section 5538 uses “archaic” occupancy classifications that are no longer used in National Fire Protection Agency standard NFPA 30-2012 which is proposed for adoption as part of the 15-Day Notice. They requested the Board to update occupancy terminology to the more modern “Business Group B,” “Educational Group E” and “Institutional Group I” occupancies. The commenter also noted that Section 3207 does not currently define “Educational Occupancy.” They state that these changes would improve consistency between Cal/OSHA and the California Fire and Building Codes.

Response:

Section 5538 was added to the proposal in response to public comments requesting consistent use of GHS flammability classifications. Modification of Section 5538 was not specifically required by federal standards, but the modifications were sufficiently related to the federal modifications to be included in the 15-Day Notice. Board staff is of the opinion that introducing occupancy terminology modifications into the proposal would be a further expansion that is not sufficiently related to the scope of this proposal. The Board therefore declines to address it as part of this rulemaking; however, the occupancy classification issue could be taken-up as part of a separate (future) rulemaking.

Comment No. 3:

The commenter requested deletion of Section 5538(a)(1) which in their opinion contains obsolete limitations on storage container size. They noted that NFPA 30-2012, which has been incorporated by reference, has removed the container size limitation and replaced it with a table

permitting larger container sizes for less flammable materials and certain container types. They stated that similar tables are contained in Section 1930, Table A, and Section 5532, Table FL-2. They opine that deletion of Section 5538(a)(1) would further align Title 8 standards with the California Fire Codes and federal OSHA standards.

Response:

NFPA 30 was modified to the 2012 edition incidentally as part of the first 15-day modifications in order to more closely align Title 8 with contemporary standards. However, deletion of the storage container size limitations of Section 5538(a)(1) is not sufficiently related to the scope of this proposal, and could lead to further comments, thus delaying adoption of this portion of the federal GHS standard. The Board therefore declines to make this change as part of this rulemaking.

The Board thanks Mr. Henrikson and the UC Regents for their participation in the rulemaking process.

Mr. David Y. Shiraishi, MPH, Area Director, Region IX, OSHA U. S. Department of Labor, by letter dated January 15, 2014.

Comment:

Federal OSHA stated that the definition of Category 2 flammable liquids, Section 5415, is not commensurate with the federal definition. Specifically a sentence was omitted which should read “and a boiling point above 95 F (35 C).” The remaining sections of the GHS (Safety) proposed occupational safety and health standard appear to be commensurate with the federal standard.

Response:

The Board agrees with the suggested modification, and the proposal will be further modified accordingly.

The Board acknowledges Region’s IX’s comment and thanks Mr. Shiraishi for his participation in the Board’s rulemaking process.

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

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the second 15-day Notice of Proposed Modifications mailed on January 28, 2014.

Summary and Response to Written Comments:

Mr. David Y. Shiraishi, MPH, Area Director, Region IX, OSHA U. S. Department of Labor, by letter dated February 19, 2014.

Comment:

Federal OSHA stated that the proposed occupational safety and health standards appear to be commensurate with the federal standard.

Response:

The Board thanks Mr. Shiraishi for his comment and participation in the rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

NFPA 30, Flammable and Combustible Liquids Code, 2012 Edition, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-9101. [*Updated reference in CSO 1931(a)*]

This document is too cumbersome or impractical to publish in Title 8, and includes copyrighted material, therefore, it is proposed to incorporate the document by reference. Copies of this document are 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.

DETERMINATION OF MANDATE

These standards do 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 as 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.