

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



Attachment No. 2

INITIAL 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 137, Spray Coating Operations, Sections 5449, 5451;
Article 141, Container and Portable Tank Storage, Sections 5531 – 5534, 5541 – 5543;
Article 142, Industrial Plants, Sections 5545 – 5547, 5549;
Article 143, Processing Plants, Sections 5556, 5558, 5560;
Article 144, Service Stations, Sections 5566, 5568 – 5570, 5573 – 5579;
Article 145, Tank Storage, Sections 5590, 5592, 5594, 5596 – 5599, 5601;
Article 146, Piping, Valves and Fittings, Section 5606;
Article 147, Bulk Plants, Sections 5616 – 5622, and 5624.

Federal Final Rule, Globally Harmonized System - Update to Hazard Communication (Safety)

SUMMARY

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

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations on March 26, 2012, addressing Globally Harmonized System (GHS) updates of the Hazard Communication Standard (HCS) and related sections. The changes impact 29 CFR, Parts 1910 (general industry), 1915 (shipyards) and 1926 (construction). The Board is

relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 77, No. 58, pages 17574-17896, March 26, 2012, as the justification for the Board's proposed rulemaking action.

Except as noted below, the Board proposes to adopt regulations which are effectively the same as the federal regulations except where existing state standards are deemed more protective than the federal promulgation.

This proposed rulemaking action also contains non-substantive, editorial, reformatting of subsections, grammatical revisions and deletion of obsolete Title 24 cross-references. These non-substantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the proposed modifications and amendments are as follows. The purpose and necessity for these changes is to make state standards consistent with federal GHS standards while retaining more protective provisions of CCR Title 8 where they exist.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

The proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is "the only agency in the state authorized to adopt occupational safety and health standards." When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal standards where state standards are more protective; however, it is at least as effective as the federal standard. Textual differences are noted in the side-by-side.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts.
- Is the least burdensome effective alternative. This rulemaking proposal is the result of the work of a federal advisory committee.

CSO Section 1504: Definitions of "Combustible Liquid," "Flammable Liquid," and classifications for flammable and combustible liquids are modified. New definitions added for "Fire Area" and "Flash point of the liquid."

CSO Sections 1929 – 1932, 1934 – 1936: Revise scope of application and criteria for handling, storage and use of flammable and combustible liquids.

GISO Section 5154: Additional federal requirements for dipping and coating operations that use flammable liquids or liquids with flashpoints greater than 199.4 ≥F (93 ≥C).

GISO Sections 5191 and 5194: Delete definitions for “Combustible Liquid,” “Flammable,” and “Flashpoint.”

GISO Section 5415: Modify definitions for “Combustible Liquid,” “Flammable Aerosol,” “Flammable Liquid,” “Flash point,” “Liquid,” “Liquid, Combustible,” and “Liquid, Flammable.” Update reference standards for flash point testing with latest editions of ASTM D-56 and ASTM D-93 which have been adopted by federal OSHA.

GISO Sections 5449 and 5451: Change references to “flammable or combustible liquids” to “flammable liquids or liquids with a flashpoint greater than 199.4°F (93°C) (formerly designated Class IIIB Combustible liquids).” Other minor changes for consistency with federal standards.

GISO Sections 5531 – 5534 and 5541 – 5543: Change terminology from classes to GHS categories, a few modifications in requirements for containers, portable tanks and storage for flammable liquids and liquids with flashpoints greater than 199.4 °F (93 °C) [formerly designated Class IIIB combustible].

GISO Sections 5545 – 5547, 5549: Changes in terminology from classes to GHS categories for flammable and combustible liquids for those portions of industrial plants where the use and handling of flammable or combustible liquids is only incidental to the principal business, such as automobile assembly, construction of electronic equipment, furniture manufacturing or other similar activities.

GISO Sections 5556, 5558, and 5560: Changes in terminology from classes to GHS categories for flammable and combustible liquids in processing plants and requirements for tank vehicle and tank car loading and unloading, including sources of ignition.

GISO Sections 5566, 5568 – 5570, 5573 – 5579: Changes in terminology from classes to GHS categories for storing and handling flammable and combustible liquids at automotive and marine service stations. Modification of Table FL-9 Electrical Equipment Classified Areas – Service Stations.

GISO Sections 5590, 5592, 5594, 5596 – 5599, 5601: Changes in terminology from classes to GHS categories for tank storage. Other modifications for consistency with federal standards.

GISO Section 5606: Minor modifications due to differences in federal and state terminology.

GISO Sections 5616 – 5622, and 5624: Changes in terminology from classes to GHS categories for storing and handling flammable and combustible liquids at bulk plants. Section 5619

bonding requirements at loading and unloading facilities modified to blend most protective provisions of federal and state.

DOCUMENTS RELIED UPON

Federal Register, Vol. 77, No. 58, March 26, 2012, Pages 17574-17896.

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

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

These proposed amendments and modifications are the result of a federal final rule promulgated by OSHA on March 26, 2012, addressing GHS updates of the HCS and related sections. The Board proposes to adopt regulations which are similar to the federal regulations except for editorial and format differences and where existing state standards are more protective. No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Economic Impact Analysis

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal consists of a Global Harmonization Standard that all states and UN member nations are adopting; thus, it will not affect the ability of California businesses to compete with businesses in other states. Estimated costs of compliance are presented in the preamble for the federal final rule, Fed.Reg., Vol. 77, No. 58, dated March 26, 2012, pages 17625-17649 and pages 17661-17674. The federal preamble lists the number and type of businesses impacted and estimated costs.

Cost Impact on Private Persons or Businesses

Cost impacts that a representative private person or business entity would necessarily incur in reasonable compliance with the proposed action cannot be accurately determined as they are part of a system of global harmonization which businesses throughout the United States and worldwide are adopting. Thus while there may be costs associated with compliance, there will also be costs associated with non-compliance; i.e. lost business due to incompatibility with international standards adopted by a vast majority of businesses and entities throughout the United States and throughout the world. Estimated costs of compliance are presented in the preamble for the federal final rule, Fed.Reg., Vol. 77, No. 58, dated March 26, 2012, pages 17625-17649 and pages 17661-17674. The federal preamble lists the number and type of businesses impacted and estimated costs. Note, however, that the federal preamble includes costs of compliance both with safety and health standards of the Global Harmonization Standard. This subject rulemaking only pertains to the safety aspects, which are less significant than the health aspects of the proposed global standard which are the subject of a separate rulemaking.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

Benefits of the Regulation:

- When completely phased-in, the GHS is anticipated to result in hundreds of millions of dollars in annual savings in the U.S.
- The proposed modifications will improve the quality and consistency of information provided to employers and employees regarding hazards and associated protective measures for flammable and combustible liquids.
- Standardized safety data sheets will enable employees exposed to workplace chemicals to more quickly obtain and more easily understand information about the hazards associated with those chemicals. The standardized format will also enable critical information to be accessed more easily and quickly during emergencies. This can reduce the risk of injury, illness, and death to exposed employees and to rescue personnel and can also reduce property damage.
- With the exception of a different treatment for Class IIIB combustible liquids (where California is more protective), the proposed rulemaking will harmonize California with global standards for flammable and combustible liquids which should help maintain California's competitiveness and improve exports and imports.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, 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.