

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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

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

PUBLIC MEETING: On **May 19, 2005**, at 10:00 a.m.
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California 95814

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

PUBLIC HEARING: On **May 19, 2005**, following the Public Meeting
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California 95814

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

BUSINESS MEETING: On **May 19, 2005**, following the Public Hearing
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California 95814

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

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

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

STEVEN L. RANK, Chairman

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

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Boiler and Fired Pressure Vessel Safety Orders; Construction Safety Orders; General Industry Safety Orders; and Ship Building, Ship Repairing and Ship Breaking Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **May 19, 2005**.

1. TITLE 8: **BOILER AND FIRED PRESSURE VESSEL SAFTY ORDERS**
Chapter 4, Subchapter 2, Article 5, Section 770
Boiler Inspections

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
Sections 1529 and 1535
GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 109
Sections 5190 and 5210
SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING
SAFETY ORDERS
Chapter 4, Subchapter 18, Article 4
Section 8358
Exposure and Control Method Notification Requirements for
Asbestos, Methylenedianiline, Vinyl Chloride, and Cotton Dust

A description of the proposed changes are as follows:

1. TITLE 8: **BOILER AND FIRED PRESSURE VESSEL SAFTY ORDERS**
Chapter 4, Subchapter 2, Article 5, Section 770
Boiler Inspections

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

In 1988, California Labor Code Section 7682 was amended to lengthen extensions granted by the Division of Occupational Safety and Health (Division) for fired boiler inspections. Prior to the amendment, existing law required the Division to inspect each installed fired boiler internally and externally at least every year, except that the Division could grant extensions for internal inspections to a maximum interval of 24 months where operating experience and design of the boiler demonstrated to the satisfaction of the Division that equivalent safety would be maintained. The Labor Code amendment allowed the Division to increase the length of time between the required internal inspections for fired boilers to 36 months. The inspection interval for other classes of boilers remained unchanged, requiring the Division to establish the inspection interval such that the safety of people working in the vicinity of the boiler was ensured.

Since 1988, the Division's Pressure Vessel Unit has received numerous requests, particularly from the petroleum refining industry, to extend the boiler internal inspection intervals to those allowed by the Labor Code. These requests have resulted in a number of variance applications that have been granted or are currently pending by the Standards Board. Over the last 15 years, the petroleum refinery industry has been implementing the latest advanced inspection and operational control technology in order to operate their facilities for longer intervals between plant shutdowns. The ability to operate their boilers at intervals of 36 months for a fired boiler and 72 months for an unfired boiler allows the refineries to align the boiler internal inspections with their facility shutdowns. The refining industry has stated that a plant shutdown costs \$1,000,000 per day for each day of non-production. Preventing facility shutdowns due to internal boiler inspections can save money for both the refinery and the citizens of California through cheaper gas prices.

Of the 436 boilers that have been granted an internal inspection interval extension, 387 are located at petroleum refineries, and 49 are located at conventional utility power plants. These types of facilities are capable of demonstrating the ability to provide the superior maintenance and operating experience necessary to provide the equivalent boiler safety required by the Labor Code when the Division grants these extensions. These internal inspection interval extensions are not typically requested by nor granted for the smaller scale boiler operators as they have the ability to shutdown their boilers annually and do not have the means to provide the superior maintenance (i.e. water treatment, non-destructive examination) necessary to ensure equivalent safety to that provided by annual internal inspections.

The purpose of this proposed rulemaking action is to ensure consistency between Title 8, fired boiler inspection requirements, and existing Labor Code provisions. Additionally, the proposal would amend the maximum interval for internal inspections of unfired boilers that the Division may grant from 36 months to 72 months. Petroleum companies, chemical plants, public utilities or other industries would still be required to individually apply for these inspection extensions, and the Division would continue to

review these applications and make the determination as to whether or not to grant such extensions. Any extension requests granted would be subject to a strict review of the facility's superior maintenance and inspection techniques. Boilers that do not meet this standard will be required to continue with annual internal inspection intervals.

This proposed rulemaking action also contains non-substantive, editorial, reformatting of subsections, and grammatical revisions. 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 following actions are proposed:

Section 770. Boilers Subject to Annual Inspection.

Section 770(a) requires all boilers, except those exempted in Section 771, to be inspected internally and externally every year, except as provided in subsection (b). Existing Section 770(b) outlines the types of boilers and conditions that would extend the annual inspection of boilers to 24 months, or 36 months for unfired boilers. It is proposed to amend these inspection interval extensions to 36 months and 72 months, respectively. It is also proposed to add clarifying language specifying that unfired boilers are typically called process steam generators. The proposed amendments are necessary to align Title 8 standards with the provisions of Labor Code Section 7682. The proposed amendments will have the effect of allowing companies to operate their boilers for longer periods of time between shutdowns by enabling them to align their boiler internal inspections with their facility shutdowns while ensuring that equivalent workplace safety requirements are maintained.

An amendment is proposed to add new subsection (b)(4), which states that for boilers and process steam generators where metallurgical damage may occur, the Division may categorize the boiler or process steam generator as "unfired" upon acceptance of a risk engineering analysis submitted by the owner of the boiler. The risk engineering analysis shall include the design basis for categorizing the boiler as unfired, the potential consequences to the boiler and to the safety of the person(s) responsible for attending the boiler, and a discussion of protective devices and specific procedures to prevent the consequences. The proposed new subsection will provide the regulated public with a means to re-classify boilers that are subject to metallurgical damage as "unfired," based on the Division's review of the engineering analysis and final determination, so that the boiler may be operated for a maximum of seventy-two (72) months between internal inspections.

COST ESTIMATES OF PROPOSED ACTION

Cost or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. Although some state agencies may have boilers regulated by Section 770, the Division is not aware of any that would meet the specific requirements applicable to the proposed inspection interval extensions.

Impact on Housing Costs

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

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendments would enable affected businesses that meet the specific application requirements to align their boiler internal inspections with their facility shutdowns while ensuring that equivalent workplace safety requirements are maintained, providing potentially significant operating cost savings.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. (See also "Impact on Businesses.")

Cost 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." Moreover, no savings to local agencies or school districts as a result of the proposal is anticipated. Although local agencies or school districts may have boilers regulated by Section 770, the Division is not aware of any that would meet the specific requirements applicable to the proposed inspection interval extensions.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

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

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

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in

any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

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

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. Internal inspection interval extensions are not typically requested by nor granted for the smaller scale boiler operators as they have the ability to shutdown their boilers annually, and do not have the means to provide the superior maintenance (i.e. water treatment, non-destructive examination) necessary to ensure equivalent safety provided by annual internal inspections.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8:
 - CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
Sections 1529 and 1535
 - GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 109
Sections 5190 and 5210
 - SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS**
Chapter 4, Subchapter 18, Article 4
Section 8358
 - Exposure and Control Method Notification Requirements for Asbestos, Methylenedianiline, Vinyl Chloride, and Cotton Dust**

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

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

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated standards addressing exposure and control method notification requirements for Asbestos, Methylenedianiline, Vinyl Chloride and Cotton Dust on January 5, 2005, contained in a final rule for standards improvement project phase II. The Standards Board is relying on the explanation of the provisions of the federal standard in Federal Register, Volume 70, No. 3, pages 1111-1144, January 5, 2005, as the justification for the Standards Board's proposed rulemaking action. The Standards Board proposes to adopt standards that are substantially the same as the federal standards except for editorial and format differences.

Among other changes, the OSHA final rule revises the exposure and control method notification requirements to ensure affected employees are notified of exposure monitoring results within 5 days for Asbestos and Methylenedianiline, and within 15 days for Vinyl Chloride and Cotton Dust. For Asbestos, the requirement for notifying OSHA by submitting alternative control methods to OSHA's office in Washington DC is also deleted as no longer necessary. The other changes made in the final rule are not addressed in this proposal since the counterpart state standards were already substantially the same or more protective than the OSHA final rule.

The proposed standards are substantially the same as the final rule promulgated by federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting a standard substantially the same as a federal standard; however, the Standards Board is still providing a comment period and will convene a public hearing. The reasons for the written and oral comments at the public hearing are to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

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

COST ESTIMATES OF PROPOSED ACTION

OSHA did not identify any significant costs associated with revising the exposure notification requirements for Asbestos, Methylenedianiline, Vinyl Chloride and Cotton Dust. In the federal preamble, OSHA concludes that the rulemaking action imposes no additional costs on employers.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard 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 employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

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

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the

proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than May 13, 2005. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on May 19, 2005, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

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

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

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

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

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

STEVEN L. RANK, Chairman

TITLE 8

BOILER AND FIRED PRESSURE VESSEL SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 2, ARTICLE 5

SECTION 770

BOILER INSPECTIONS

TITLE 8

CONSTRUCTION SAFETY ORDERS
CHAPTER 4, SUBCHAPTER 4, ARTICLE 4
SECTIONS 1529 AND 1535

GENERAL INDUSTRY SAFETY ORDERS
CHAPTER 4, SUBCHAPTER 7, ARTICLE 109
SECTIONS 5190 AND 5210

SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING
SAFETY ORDERS
CHAPTER 4, SUBCHAPTER 18, ARTICLE 4
SECTION 8358

EXPOSURE AND CONTROL METHOD NOTIFICATION REQUIREMENTS
FOR ASBESTOS, METHYLENEDIANILINE, VINYL CHLORIDE AND
COTTON DUST