

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 109, Appendix A to
Section 5189 of the General Industry Safety Orders (GISO)

Process Safety Management of Acutely Hazardous Materials Listing of Sulfur Dioxide**SUMMARY**

29 Code of Federal Regulations (CFR) Section 1910.119 contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals whose releases may result in toxic, fire or explosion hazards. Appendix A to Section 1910.119 lists highly hazardous chemicals, toxics and reactives which present a potential for a catastrophic event at or above a listed threshold quantity.

On February 24, 1992, Federal OSHA published a Final Rule for Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents. The Final Rule, published in 57, Fed. Reg., 6356, February 24, 1992, modifies the proposed rule, published in 55, Fed. Reg., 29150, July 17, 1990. In the notice of the final rule, federal OSHA indicated on page 6365 that it had, among several other amendments to the originally proposed rule, modified the entry in Appendix A for sulfur dioxide by eliminating the word "liquid" from its description of that chemical. The reasoning provided in the final rule notice for this amendment to the entry in Appendix A for sulfur dioxide was that "the health hazards are the same regardless of its state." However, this amendment to the final rule apparently intended by federal OSHA was overlooked and to date, this correction has not been made. In an interpretive letter dated April 29, 1997, federal OSHA indicated that it was "planning to correct this entry in the near future."

Title 8 of the California Code of Regulations, General Industry Safety Orders (GISO), Section 5189 is the state's counterpart to 29 CFR Section 1910.119. Section 5189 addresses the prevention of catastrophic releases of toxic, reactive, flammable and explosive chemicals and applies to employers who utilize a process involving a particular chemical or chemicals at or above a threshold quantity listed in Appendix A, or which involves a flammable liquid or gas as defined in subsection (c) of the regulation.

Currently, Appendix A of Section 5189 includes sulfur dioxide as a covered substance only in its liquid state with a threshold quantity of 1,000 pounds. However, sulfur dioxide is used as a gas in various industrial processes, and exists normally as a gas at the temperatures found in most indoor workplaces intended for human occupancy. The liquid and gaseous forms of sulfur dioxide present both serious health and safety hazards. This rulemaking action proposes to delete the term “liquid” from the sulfur dioxide entry in Appendix A to ensure that it is not limited to only its liquid state.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Appendix A to Section 5189—List of Acutely Hazardous Chemicals, Toxics and Reactives (Mandatory)

Appendix A to Section 5189 contains a listing of substances which present a potential for a catastrophic event at or above a specified threshold quantity (TQ). A revision is proposed to delete the term “liquid” from the chemical sulfur dioxide listed in the Appendix so as not to limit this substance to only its liquid state. This amendment is necessary to ensure that both the gaseous and liquid forms of sulfur dioxide are included in the threshold quantity for any workplace process that utilizes this chemical.

DOCUMENTS RELIED UPON

1. Federal OSHA, 29 CFR Part 1910, Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents; Final Rule (57 Fed. Reg., 6356-6417, February 24, 1992).
2. Letter from John B. Miles, Jr., Director, Directorate of Compliance Programs, Occupational Safety and Health Administration, U.S. Department of Labor, dated April 29, 1997.

These documents are available for review during normal business hours at the Standards Board Office located at 2520 Venture Oaks Drive, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

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.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

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

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

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation 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 regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendment to this regulation 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.

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 or would be as effective and less burdensome to affected private persons than the proposed action.