

State of California
Department of Industrial Relations
M e m o r a n d u m

To : ALL STANDARDS BOARD MEMBERS

Date : April 8, 2010

From : **Occupational Safety and Health Standards Board**
David Beales, Industrial Relations Counsel III (Specialist)

Subject: Employee Notification Regarding Chromium (IV) Exposure Determinations-HORCHER

The following information pertains to proposed revisions of the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 4, Article 4, Section 1532.2(d)(4)(A) of the Construction Safety Orders; Subchapter 7, Article 110, Section 5206(d)(4)(A) of the General Industry Safety Orders, and Subchapter 18, Article 4, Section 8359(d)(4)(A) of the Ship Building, Ship Repairing and Ship Breaking Safety Orders.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt this proposed rulemaking action pursuant to Labor Code Section 142.3, which permits the Board to follow certain procedures when adopting standards that are substantially the same as federal standards addressing occupational safety and health issues.

The United States Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations addressing subject matter of this rulemaking. The federal rules are set forth at 29 Code of Federal Regulations Sections 1910.1026(d)(4)(i), 1915.1026(d)(4)(i) and 1926.1126(d)(4)(i). The federal final rule was published in the Federal Register on March 17, 2010 (Fed. Reg., Vol. 75, No. 51, pp 12681-86).

All of the provisions in question, both the federal provision cited in the preceding paragraph and the portions of the California safety orders proposed for amendment, concern the notification of affected employees of certain matters regarding Chromium (VI) exposure. The federal provisions require that the affected employees receive notification of exposure determinations, while the California standards in their present form only require that affected employees be notified of exposure determinations that indicate “that the employee exposure exceeds the PEL.” This rulemaking would replace the PEL-specific notification wording with wording substantially the same as the wording of the federal regulations. Thus, this rulemaking will modify the California standards so that they are at least as effective as the federal standards.

The proposed modification will make the California standards substantially the same as the final rule promulgated by Federal OSHA. When the Board adopts a standard substantially the same as a federal standard, 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. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of receiving written comments during the comment period and oral comments at the public hearing

is to: 1) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and 2) 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 issues.

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

DOCUMENT RELIED UPON

Federal Register, Vol. 75, No. 51, March 17, 2010, pages 12681-86

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.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

COST ESTIMATES OF PROPOSED ACTION

At Federal Register, Vol. 75 No. 51, March 17, 2010, pages 12683-84, Federal OSHA concluded that this direct final rule does not impose significant additional costs on any private-or public-sector entity and certified that this direct final rule does not require significant additional expenditures to either public or private employers. Consequently, the Board has determined that no significant statewide adverse economic or cost impact is anticipated.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations 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 amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations 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.)

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

The proposed regulations 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 amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to the 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.

Attachments