

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 107, Section 5148
of the General Industry Safety Orders

*Prohibition of Smoking in the Workplace***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.

Summary and Response to Oral and Written Comments:**I. Written Comments**

Dileep G. Bal, M.D., Chief, Cancer Control Branch, Department of Health Services, by letter dated January 8, 2004.

Comment:

Dr. Bal stated support for the amendment to Section 5148 authorizing the Division of Occupational Safety and Health (Division) to cite employers after three violations of Labor Code (LC) Section 6404.5, which prohibits smoking in most enclosed workplaces. Dr. Bal believes that chronic non-compliance is the exception and not the rule. However, it is critical that the Division be provided with the authority to enforce LC Section 6404.5. Dr. Bal added that the extra level of enforcement would ultimately lead to compliance and, the desired end result, employee protection from second hand smoke.

Response:

The Board thanks Dr. Bal for support of the proposed rulemaking and participation in the Board's rulemaking process.

Dian Kiser, Ph.D., Co-Director BREATH – The California Smoke-Free Bars, Workplaces and Communities Program, by letter dated January 9, 2004.

Comment:

Ms. Kiser urged the Occupational Safety and Health Standards Board (OSHSB) to proceed with the permanent amendment of Section 5148 that will enunciate the authority of the Division to enforce the California Smoke-free Workplace Act. Ms. Kiser believes this action will have two immediate and positive results; it will allow the Division to fulfill the mandate of LC Section 6309 to investigate employee complaints of unsafe working conditions as they relate to smoking in enclosed workplaces and it will clarify for all affected employers that the Division is authorized to enforce LC Section 6404.5. Ms. Kiser commends and supports the action being taken by the OSHSB to confirm its vital role in the enforcement of this important public health law.

Response:

The Board thanks Ms. Kiser for her support and participation in the Board's rulemaking process.

II. Oral Comments

There were no oral comments received at the January 15, 2004 Public Hearing in Glendale, California.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by 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 adopted action.