

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SECOND NOTICE OF PROPOSED MODIFICATIONS TO
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 135, General, Section 5417;
Article 137, Spray Coating Operations, Sections 5449, 5451;
Article 141, Container and Portable Tank Storage,
Sections 5531 – 5535, 5537, 5538, 5541 – 5543;
Article 142, Industrial Plants, Sections 5545 – 5547, 5549;
Article 143, Processing Plants, Sections 5555, 5556, 5558, 5560;
Article 144, Service Stations, Sections 5566, 5568 – 5570, 5573 – 5580;
Article 145, Tank Storage, Sections 5583, 5585.1, 5589, 5590, 5592-5602;
Article 146, Piping, Valves and Fittings, Section 5606-5608;
Article 147, Bulk Plants, Sections 5616 – 5622, and 5624.

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

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standards in which further modifications are being proposed.

On August 15, 2013, the Standards Board held a Public Hearing to consider revisions of Title 8, Section 1504; New Section 1929, Sections 1930 – 1932, and 1934 – 1936 of the Construction Safety Orders and Sections 5154, 5191, 5194 5415, 5417, 5449, 5451, 5531 – 5535, 5537, 5538, 5541 – 5543, 5545 – 5547, 5549, 5555, 5556, 5558, 5560, 5566, 5568 – 5570, 5573 – 5580, 5583, 5585.1, 5589, 5590, 5592-5602, 5606-5608, 5616 – 5622, and 5624, of the General Industry Safety Orders. The Standards Board received written comments on the proposed

revisions. The standards were modified as a result of these comments, and on October 31, 2013, a 15-Day Notice of Proposed Modifications was issued.

In response to a comment on the proposed modifications, a further modification is now proposed. Page 14 of 55 has been modified and is attached for your information.

A copy of the standard with the further modification clearly indicated is attached for your information. In addition, a summary of all comments regarding this proposal and responses is included.

Any written comments on this modification must be received by 5:00 p.m. on February 13, 2014, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833 or submitted by fax to (916) 274-5743 or e-mailed to oshsb@dir.ca.gov. This proposal will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Marley Hart, at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Original signed by

Date: January 28, 2013

Marley Hart, Executive Officer

PROPOSED FURTHER MODIFICATIONS

(Further modifications are indicated in **bold**, **double underline** wording for new language and **bold, ~~double strikeout~~** for deleted language.)

PROPOSED MODIFICATIONS

(Modifications are indicated in **bold**, **underline** wording for new language and **bold, ~~strikeout~~** for deleted language.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Attachment No. 1
Page 14 of 55

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Method of Test for Flashpoint by Pensky-Martens Closed Tester (ASTM D-93-08), which is hereby incorporated by reference, or an equivalent method as defined by Section 5194, Appendix B – Physical Hazard Criteria, shall be used except that the methods specified in Note 1 to section 1.1 of ASTM D-93-08 may be used for the respective materials specified in the Note.

~~or a flash point of 200° F. (93.4° C) or higher shall be determined in accordance with the Standard Method of Test for Flash Point by the Pensky Martens Closed Tester, ASTM D-93-73.~~

(C) For a liquid that is a mixture of compounds that have different volatilities and flash points, its flash point shall be determined by using the procedure specified above on the liquid in the form it is shipped. If the flash point, as determined by this test, is 100° F. (37.8° C) or higher, an additional flash point determination shall be run on a sample of the liquid evaporated to 90 percent of its original volume, and the lower value of the two tests shall be considered the flash point of the material.

(D) Organic peroxides, which undergo auto-accelerating thermal decomposition, are excluded from any of the flash point determination methods above.

Liquefied Hydrogen System...

Liquid. Any material which has a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM Test for Penetration for Bituminous Materials, D-5-73. ~~When not otherwise identified, the term "liquid" shall include both flammable and combustible liquids.~~

Liquid, Combustible. A liquid having a flash point greater than 199.4°F (93°C) (formerly designated Class IIIB Combustible liquids).

~~at or above 100 F. (37.8° C). They shall be subdivided as follows:-~~

~~(A) Class II Liquids shall include those having flash points at or above 100 F (37.8° C) and below 140 F (60° C).~~

~~(B) Class IIIA Liquids shall include those having flash points at or above 140 F (60° C) and below 200 F (93.4° C).~~

~~(C) Class IIIB Liquids shall include those having flash points at or above 200 F (93.4° C).~~

Liquid, Flammable. Any liquid having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 °F (37.8 °C) and having a flashpoint at or below 199.4 °F (93 °C). Flammable liquids are divided into four categories as follows:

(A) Category 1 shall include liquids having flashpoints below 73.4 °F (23 °C) and having a boiling point at or below 95 °F (35 °C).

(B) Category 2 shall include liquids having flashpoints below 73.4 °F (23 °C) **and having a boiling point above 95 °F (35 °C).**

(C) Category 3 shall include liquids having flashpoints at or above 73.4 °F (23 °C) and at or below 140 °F (60 °C). When a Category 3 liquid with a flashpoint at or above 100 °F (37.8 °C) is heated for use to within 30 °F (16.7 °C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint below 100 °F (37.8 °C).

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY OF, AND RESPONSE TO, WRITTEN AND ORAL COMMENTS

I. Written Comments

Brett S. Henrikson, Senior Counsel, Environmental Health & Safety, The Regents of the University of California, by letter dated November 20, 2013.

Comment No. 1:

The Regents are of the opinion that although the Board's 15-Day Notice did respond to some of their concerns regarding harmonization related to GHS changes in terminology, the Board's response to their original comments dated August 15, 2013, did not go far enough. The Regents continue to request that the Board use the proposed GHS changes as an opportunity to update other Title 8 standards for flammable materials to ensure consistency with standards promulgated by other state agencies, including, but not limited to, the State Fire Marshal.

Response:

The August 15, 2013, comments were responded to fully in the responses to Nicole L. Craig's August 15, 2013, letter.

Comment No. 2:

The commenter stated that existing Section 5538 uses "archaic" occupancy classifications that are no longer used in National Fire Protection Agency standard NFPA 30-2012 which is proposed for adoption as part of the 15-Day Notice. They requested the Board to update occupancy terminology to the more modern "Business Group B," "Educational Group E" and "Institutional Group I" occupancies. The commenter also noted that Section 3207 does not currently define "Educational Occupancy." They state that these changes would improve consistency between Cal/OSHA and the California Fire and Building Codes.

Response:

Section 5538 was added to the proposal in response to public comments requesting consistent use of GHS flammability classifications. Modification of Section 5538 was not specifically required by federal standards, but the modifications were sufficiently related to the federal modifications to be included in the 15-Day Notice. Board staff is of the opinion that introducing occupancy terminology modifications into the proposal would be a further expansion that is not sufficiently related to the scope of this proposal. The Board therefore declines to address it as part of this rulemaking; however, the occupancy classification issue could be taken-up as part of a separate (future) rulemaking.

Comment No. 3:

The commenter requested deletion of Section 5538(a)(1) which in their opinion contains obsolete limitations on storage container size. They noted that NFPA 30-2012, which has been incorporated by reference, has removed the container size limitation and replaced it with a table permitting larger container sizes for less flammable materials and certain container types. They stated that similar tables are contained in Section 1930, Table A, and Section 5532, Table FL-2.

They opine that deletion of Section 5538(a)(1) would further align Title 8 standards with the California Fire Codes and federal OSHA standards.

Response:

NFPA 30 was modified to the 2012 edition incidentally as part of the first 15-day modifications in order to more closely align Title 8 with contemporary standards. However, deletion of the storage container size limitations of Section 5538(a)(1) is not sufficiently related to the scope of this proposal, and could lead to further comments, thus delaying adoption of this portion of the federal GHS standard. The Board therefore declines to make this change as part of this rulemaking.

The Board thanks Mr. Henrikson and the UC Regents for their participation in the rulemaking process.

Mr. David Y. Shiraishi, MPH, Area Director, Region IX, OSHA U. S. Department of Labor, by letter dated January 15, 2014.

Comment:

Federal OSHA stated that the definition of Category 2 flammable liquids, Section 5415, is not commensurate with the federal definition. Specifically a sentence was omitted which should read “and a boiling point above 95 F (35 C).” The remaining sections of the GHS (Safety) proposed occupational safety and health standard appear to be commensurate with the federal standard.

Response:

The Board agrees with the suggested modification, and the proposal will be further modified accordingly.

The Board acknowledges Region’s IX’s comment and thanks Mr. Shiraishi for his participation in the Board’s rulemaking process.