

Memorandum

To : ALL STANDARDS BOARD MEMBERS

Date : July 14, 2011

From : **Occupational Safety and Health Standards Board**
Conrad E. Tolson, Senior Engineer - Standards

Subject : **General Conditions in Shipyard Employment, Federal Final Rule (Horcher)**

The following information is provided in regard to the proposed revisions to the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 18, Articles 1, 3, 4, 6, and 8, 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 the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates that the Board adopt standards at least as effective as federal standards addressing occupational safety and health issues.

On May 2, 2011, the U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) promulgated a final rule revising its standards on General Working Conditions in Shipyard Employment found primarily in federal 29 CFR Part 1915. The federal revisions update existing requirements to reflect advances in industry practices and technology, consolidate some general safety and health requirements into a single subpart, and provide protection from hazards not addressed by existing standards, including the control of hazardous energy.

The Board is relying on the explanation of the federal standards found in Federal Register, Volume 76, No. 84, pages 24576-24711, May 2, 2011, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards which are the same as the federal standards except for editorial and format differences, or where existing state standards provide a higher level of safety. The Board notes that federal OSHA's promulgation also will require minor and incidental modification of California Title 8 General Industry Safety Orders as indicated in the attached documentation.

Subjects addressed by the proposal include, but are not limited to, the following:

- Scope, application, definitions and effective dates.
- Housekeeping.
- Lighting.
- Utilities.
- Working alone.
- Vessel radar and communication systems.
- Lifeboats.
- Medical services and first aid.
- Sanitation.
- Control of hazardous energy (lockout/tagout).
- Safety color code for marking physical hazards.
- Accident prevention signs and tags.

- Retention of DOT markings, placards, and labels.
- Motor vehicle safety equipment, operation, and maintenance.
- Servicing of multi-piece and single-piece rim wheels.
- Ship's propulsion machinery.
- Electric circuits and distribution boards.

Because the proposed standards are substantially the same as the Federal OSHA final rule, 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 the written comments and the 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.
- (2) Solicit comments on the proposed effective date.

The responses to comments will be available in the 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. 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 Board's discretion.

DOCUMENTS RELIED UPON

- Federal Register, Vol. 76, No. 84, pp. 24576-24711, May 2, 2011.

This document is available for review online at the federal OSHA website:

<http://edocket.access.gpo.gov/2011/pdf/2011-9567.pdf>

- Agreement Under Section 18(e) of the Occupational Safety and Health Act of 1970, October 3, 1989.

These documents are also 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.

DOCUMENTS INCORPORATED BY REFERENCE

- ANSI/IESNA RP-7-01, Recommended Practice for Lighting Industrial Facilities, ANSI approved July 26, 2001.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. A copy of 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

Federal OSHA's estimate of compliance costs found at Federal Register, Vol. 76, No. 84, May 2, 2011, starting at page 24673.

Based on information found at page 24692, Table 26, the economic impact of the standard as a percentage of profits for the two major industry sectors, further broken down by size class, are summarized as follows:

Sector	Size Class¹	Compliance cost as % of profits
Shipyards ²	1-19	0.63%
	1-200	0.41%
	1-1000	0.58%
	All	0.33%
Commercial vessels ³	1-19	0.97%
	1-200	0.53%
	1-1000	0.48%
	All	0.39%

Source: OSHA Office of Regulatory Analysis

Federal OSHA estimates that if compliance costs of the final rule are completely passed on to consumers, prices will increase by 0.01 to 0.03 percent, a consequence they believe is unlikely to have an effect on the viability of the affected industries. Alternatively, with no price increase, OSHA estimates that profits will decrease 0.33 percent for shipyards and 0.39 percent for commercial-vessel industries, a decrease that, in their opinion, would have no effect on the economic viability of these industries. Therefore, OSHA has concluded that this rule is economically feasible.⁴ Furthermore, federal OSHA believes that the net monetized benefits of the final rule will exceed the cost of compliance. Federal OSHA also stated that they were unable to find a regional variation in the impacts of the final rule. If this is correct, then federal OSHA estimates should carry approximately the same economic impact on California industries.

Federal OSHA has also certified that the rule will not have a significant impact on a substantial number of small entities.

¹ Size class is number of employees

² The "shipyards" sector consists of ship-building, ship repair and ship-breaking.

³ The "commercial vessels" sector consists of commercial fishing, fish processing on-board vessels, tug and towing boats, and passenger vessels.

⁴ Federal Register, Vol. 76, No. 84, page 24693.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards 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 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 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, based on federal OSHA’s determination, no significant economic impact on small entities is anticipated.

ASSESSMENT

Based on federal analysis, the adoption of the proposed amendments to these standards 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