

Memorandum

To : ALL STANDARDS BOARD MEMBERS

Date : April 12, 2024

From : **Occupational Safety and Health Standards Board**
Amalia Neidhardt, Principal Safety Engineer, OSHSB

Subject : Appendix A to section 5144: Fit Testing Procedures (Mandatory) (Horcher)

At the March 21, 2024, Public Hearing, the Occupational Safety and Standards Board considered revisions to California Code of Regulations, title 8, General Industry Safety Orders, section 5144, Appendix A, Fit Testing Procedures (Mandatory) (Horcher). This standard is substantially the same as the federal standard.

Labor Code section 142.3(a)(3) exempts the Board from providing a comment period when adopting a standard substantially the same as a federal standard. However, as indicated in the Notice (Informative Digest), the Board still provided a comment period for the purpose of identifying only issues related to the following three areas: 1) any clear and compelling reasons for California to deviate from the federal standards; 2) any issues unique to California related to this proposal which should be addressed in this rulemaking and/or subsequent rulemaking; and 3) solicit comments on the proposed effective date.

Federal OSHA reviewed the current title 8, section 5144, Appendix A and found two minor grammatical errors in sections that were not included in the proposed revisions.

The two grammatical changes are as follows:

Section 5144, Appendix A, Part I, section B.4.(b)(4)

The word “not” in the second sentence will be deleted. The rationale for this change is to conform state verbiage to federal verbiage.

Section 5144, Appendix A, Part I, section C.2.(a)(6)

The word “to” in the last sentence will be replaced with “so”. The rationale for this change is to conform state verbiage to federal verbiage.

The proposed modifications are necessary to ensure that California standards are at least as effective as federal OSHA for fit testing procedures by including language that is verbatim of 29 CFR 1910.134, Appendix A.

SUMMARY OF WRITTEN AND ORAL COMMENTS

I. Written Comments

Matthew Kuzemchak, Area Director, Federal OSHA, by letter dated February 8, 2024.

Comment:

Matthew Kuzemchak pointed out there were two minor grammatical errors in the current version of section 5144, Appendix A that needed to be corrected.

Response:

The Board concurs with Matthew Kuzemchak comment as clarified above and modified the proposal in section 5144, Appendix A, Part 1, subsections B.4.(b)(4) and C.2.(a)(6) to correct the grammatical errors so the regulation is consistent with the federal standard.

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Informative Digest.