

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 110, Section 5214 and Appendix A
to Section 5214 of the General Industry Safety Orders

Inorganic Arsenic**SUMMARY**

Section 5214 of the General Industry Safety Orders establishes requirements for the control of employee exposure to inorganic arsenic. The Division of Occupational Safety and Health (Division) has noted inconsistencies in this section with other sections contained in Title 8, with comparable federal standards, and with exposure limits established by the National Institute for Occupational Safety and Health (NIOSH). This rulemaking action proposes to correct these inconsistencies, as follows, to ensure harmony amongst existing Title 8 regulations and to be at least as effective as federal counterpart regulations and nationally recognized exposure limits.

This proposed rulemaking action contains numerous nonsubstantive, editorial, reformatting and grammatical revisions. These nonsubstantive revisions are not all discussed in this Initial Statement of Reasons. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 5214(h)(3). Respirator Selection.**

Subsection (h)(3)(A) contains a table that specifies the type of respiratory protection required for specified concentrations of airborne inorganic arsenic. The proposal changes the specifications in number 4 of the table for the type of respirator required for exposure to concentrations of airborne inorganic arsenic not greater than 0.5 milligrams (of compounds with no significant vapor pressure) per cubic meter from a half-mask air-purifying respirator with high efficiency particulate filter to one with a full facepiece. This change is necessary to be at least as effective as the federal standard, subsection (h) of Table 1 under 29 Code of Federal Regulations (CFR) 1910.1018, for the same exposure concentration.

The proposal also changes the concentration levels of airborne inorganic arsenic in existing numbers 7, 8, and 10 of the table from 10 milligrams (of compounds with no significant vapor pressure) per cubic meter, 10 milligrams of arsenic trichloride (and all compounds with significant vapor pressure) per cubic meter, and firefighting or any unknown, or known concentration greater than 20 milligrams per cubic meter, to 5 milligrams per cubic meter, respectively. The National Institute for Occupational Safety and Health (NIOSH) has determined that 5 milligrams per cubic meter of inorganic arsenic is “immediately dangerous to life or health” (IDLH). The concentrations specified in existing numbers 7 and 8 of the table are modified to refer to non-IDLH levels, while the concentration specified in number 10 is modified to reflect all IDLH levels. Since exposure levels of 5 milligrams per cubic meter is the nationally recognized threshold, it is proposed to delete number 9 of the table, which specified airborne inorganic arsenic levels not greater than 20 milligrams per cubic meter. The existing required respirator for number 9 is proposed as an alternative respirator type for number 8, and existing number 10 is proposed for renumbering as new number 9.

It is also proposed to revise the respirator type required in proposed new number 9 of the table to “any full facepiece pressure-demand self-contained breathing apparatus certified by NIOSH for a minimum service life of thirty minutes.” to be consistent with federal and nationally recognized standards. The changes to the table in Section 5214(h)(3)(A) are necessary to make it consistent with, and as effective as, federal respiratory protection requirements contained in 29 CFR 1910.134, existing Title 8 respiratory protection requirements contained in Section 5144, and nationally recognized standards.

Section 5214(i). Protective Clothing and Equipment.

Subsection (i)(1) outlines the types of protective clothing and equipment required for possible exposure to inorganic arsenic. Subsection (i)(1)(C) specifies the use of face shields or vented goggles, when necessary to prevent eye irritation, which comply with the requirements of Article 10, Personal Safety Devices and Safeguards. Section 3382(d) of Article 10 requires that eye and face protection purchased after January 12, 1995 be designed, constructed, tested and used in accordance with American National Standard, Practice for Occupational and Educational Eye and Face Protection, Z87.1-1989. Section 3382(d) also requires that eye and face protection purchased on or before January 12, 1995 be designed, constructed and used in accordance with American National Standard (ANSI) Z87.1-1968. 29 CFR 1910.133(b)(1) and (2) contain similar requirements. The ANSI standards referenced in both Title 8 and the federal counterpart regulations permit the use of face shields only as a supplement to primary or basic eye protective devices. Also, only indirectly ventilated goggles are permitted for splash exposures by the 1989 ANSI standard. For these reasons, the proposal removes the specific mention of face shields or ventilated goggles to make this subsection both internally consistent and consistent with, and as effective as, its federal counterpart regulation.

Section 5214(j). Housekeeping.

Subsection (j)(5) requires a written housekeeping and maintenance plan which lists appropriate frequencies for carrying out housekeeping operations and for cleaning and maintaining dust

collection equipment. The proposal revises this requirement to include ventilation equipment. This change is necessary in order to make this section consistent with 5214(j)(6), which requires the employer to periodically clean and test the effectiveness of ventilation and dust collection systems.

Subsection 5214(j)(6) requires the periodic cleaning of dust collection and ventilation equipment and checks of their effectiveness to be carried out to maintain the effectiveness of the system and a notation kept of the last check of effectiveness and cleaning or maintenance. The proposal deletes the requirement pertaining to the notation and adds the requirement that the design, construction, operation, maintenance, testing, and record keeping for ventilation and dust collection systems shall comply with the general mechanical ventilation system requirements contained in Section 5143. This change is necessary to clarify that the general ventilation system requirements contained in 5143 also apply to specific systems used to prevent exposure to inorganic arsenic.

Section 5214. Appendix A — Inorganic Arsenic Substance Information Sheet

Appendix A to Section 5214 contains various information that employers are required to train employees in with regard to inorganic arsenic exposure, e.g., substance identification, health hazard data, protective clothing and equipment, signs and labels, training and notification, etc., pursuant to subsection (m). The proposal deletes the reference to face shields and ventilated goggles in Appendix A, consistent with the proposed changes to subsection (i)(1)(C), and provides an example of eye protection equipment that is consistent with Article 10. The proposal is necessary to ensure consistency amongst all related Title 8 regulations.

DOCUMENTS RELIED UPON

1. National Institute for Occupational Safety and Health. Documentation for Immediately Dangerous to Life or Health Concentrations (IDLHs). Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), 1995.
2. American National Standards Institute. ANSI Z87.1-1968, American National Standard practice for occupational and educational eye and face protection. American National Standards Institute Inc., New York: 1968.
3. American National Standards Institute. ANSI Z87.1-1989, American National Standard practice for occupational and educational eye and face protection. American National Standards Institute Inc., New York: 1989.

These documents are 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.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No significant costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

Insignificant to no overall costs are anticipated to be associated with adoption of these amendments.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

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 amendments 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.)

These 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.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - 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.

ASSESSMENT

The adoption of the proposed amendments to these regulations 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.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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 proposed action.