

State of California  
Department of Industrial Relations  
**M e m o r a n d u m**

To : ALL STANDARDS BOARD MEMBERS

Date : January 6, 2010

From : **Occupational Safety and Health Standards Board**  
Martin Tamayo, Associate Safety Engineer-Standards

Subject : **Acetylene (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 7, Articles 76, 81, 85, Sections 4650, 4797, and 4823 of the General Industry Safety Orders.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt this proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations revising national consensus standards referenced in the Federal Acetylene Standard on August 11, 2009, as 29 Code of Federal Regulations, Section 1910.102. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 74, No. 153, pages 40441-40447, August 11, 2009, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulations except for minor editorial and format differences.

This rulemaking updates the General Industry Safety Orders so that they reflect the updated references in Federal OSHA's final rule to the National Fire Protection Association (NFPA) 51A standard for acetylene charging plants and the Compressed Gas Association (CGA) G-1 and 1.2 standards.

Current wording in Sections 4650(t), 4823 and 4797(a) is deleted, because the deleted wording either conflicts with (i.e. is not at least as effective as 29CFR 1910.102), or is repetitive of the provisions to be added to Title 8 as a result of this rulemaking.

The proposed regulations are substantially the same as the final rule promulgated by Federal OSHA. Therefore, 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 when adopting standards substantially the same as a federal standard; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written comments and of 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 and 2) solicit comments on the proposed effective date. The responses to comments will be available in a 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 regulations 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

1. 74 Fed. Reg. 40441-40447 (August 11, 2009).
2. Compressed Gas Association, Inc., CGA G-1.2-2006, Acetylene Metering and Piping, Third Edition.

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.

#### DOCUMENTS INCORPORATED BY REFERENCE

1. Compressed Gas Association, Inc., CGA G-1-2003 Acetylene, Eleventh Edition.
2. National Fire Protection Association (NFPA) 51A Standard for Acetylene Cylinder Charging Plants, 2001 Edition.
3. National Fire Protection Association (NFPA) 51A Standard for Acetylene Cylinder Charging Plants, 2006 Edition.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of 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.

#### 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 Register, Vol. 74 No. 153, August 11, 2009, concluded that the revisions will not impose additional costs on employers because the updated references represent the usual and customary practice of employers in the industry. OSHA certifies that it will not have significant impact on

a substantial number of small entities. Consequently, the Board has determined that no significant statewide adverse economic or cost impact is anticipated.

#### 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, these 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 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, no economic impact is anticipated.

#### 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.

Attachments