

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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ATTACHMENT NO. 2

**INITIAL STATEMENT OF REASONS**

## CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Group 16, Article 109,  
Section 5199(g)(3)(B), Exception 2 of the General Industry Safety Orders

**Aerosol Transmissible Diseases Respirator Exception****SUMMARY**

Pursuant to California Labor Code Section 142.3, the Occupational Safety and Health Standards Board (Board) may adopt, amend, or repeal occupational safety and health standards or orders. Section 142.3 permits the Board to prescribe, where appropriate, suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and provide for monitoring or measuring employee exposure for their protection.

Section 5199(g)(3)(B) requires the use of a respirator at least as effective as a powered air purifying respirator (PAPR) when employees perform high hazard procedures on patients who are suspected or confirmed to have an airborne infectious disease. Existing Exception 2 to subsection (g)(3)(B) permits the use of a P100 respirator instead of a PAPR by paramedics and other emergency medical personnel in field operations. This exception was created because it may be difficult to maintain a PAPR in field operations. The P100 was specified because under the regulations established by the National Institute for Occupational Safety and Health (NIOSH), it has the highest level of filtration (99.9 percent of test particles) and is resistant to being compromised by environmental conditions such as air contaminated with oily particulates.

The requirements of Section 5199(g)(3)(B) went into effect on September 1, 2010, 16 months after the adoption of the Aerosol Transmissible Diseases Standard. During that period, the respirator market had changed considerably. The Board received several variance applications to allow other types of respirators to be used under Exception 2 to Section 5199(g)(3)(B). The Board granted several of these variances to permit the use of N100 filtering facepiece respirators in environments for which these respirators are approved. The Board also required as a condition of these variances, that employers address in their respiratory protection program how employees will be protected in environments for which N-type materials are not approved and that employers provide training to employees so that they can determine whether an N100 respirator

will provide adequate protection. Petition No. 524, submitted by the Public Agency Safety Management Association, requested that Exception 2 of Section 5199(g)(3)(B) be amended to permit the use of N100 filtering facepiece respirators in non-oil environments. On November 17, 2011, the Board adopted a petition decision requesting the Division of Occupational Safety and Health (Division) to convene an advisory committee to consider the proposed change.

The Division convened an advisory meeting on March 7, 2012. During that meeting, participants stated that emergency medical responders rarely encounter a situation that causes an exposure to oil droplets while performing a high hazard procedure on an airborne infectious disease suspected or confirmed case. Also, firefighting personnel who perform emergency response stated that they will use self-contained breathing apparatus if such a situation should occur. A representative of a private emergency medical service stated that they have operational agreements with the fire departments of the jurisdictions in which they operate that can include obtaining the assistance of firefighters to move the patient out of the contaminated environment, prior to the emergency medical personnel performing a high hazard procedure. Participants further stated that a patient contaminated with oily material would be decontaminated before the high hazard procedure is performed. Supporters of the petition say that these practices eliminate the need for a P100 respirator, and the N100 respirator can be used because the patient will not be in an oily atmosphere.

Supporters of the petition have also stated that in general, the cost for the N type respirator is significantly lower than the P type. The Division, consistent with the previous variances granted by the Board and the requirements of Section 5144, also determined that this proposal needed to include enhanced training for the affected employees so that they could assess the emergency environment for the presence of oil aerosols, and to choose the alternative respirator provided by the employer, that is suitable for those conditions.

### SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to improve and provide worker safety at places of employment in California involved in operations that utilize respirators to protect employees exposed to aerosol transmissible diseases.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.

- Differs from existing federal regulations, in that federal OSHA does not have specific counterpart standard for aerosol transmissible diseases but does have a general respiratory protection standard for those employees who are required to wear a respirator. Further, the federal respirator standard does not specifically address the level of respiratory protection in this proposal.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts.
- Is the least burdensome effective alternative. The proposed expansion of the exception was developed by the Division with the assistance of an advisory committee of affected employer, employee and technical experts. The proposal will provide additional respirator alternatives while still adequately protecting employees. No alternative proposal has been suggested.

The proposal is intended to revise Exception 2 to subsection (g)(3)(B) of Section 5199 to allow the use the 2 additional 100 level filtering facepiece respirators (R100 and N100) constructed with filtration materials approved by NIOSH besides the P100 respirator in appropriate environments. R100 respirators are made of filter material that is more resistant to oil particulates, a specific contaminant of concern in emergency response, than the N100, but less resistant over time than P100 filters. The revision is necessary to allow employers more flexibility in selecting respirators that will be the most compatible with their methods of complying with the regulation. The requirement for the employer to train employees to conduct an adequate assessment of the conditions where the respirator will be used, is necessary to better assure that the employees will use the appropriate respiratory protection.

#### **DOCUMENTS RELIED UPON**

- 1) Petition No. 524, dated July 5, 2011, submitted by Bill Taylor, Public Agency Safety Management Association.
- 2) Division Evaluation of Petition No. 524, dated October 10, 2011.
- 3) Occupational Safety and Health Standards Board Decision dated November 17, 2011, in the matter of Petition No. 524.
- 4) Meeting Summary of the Aerosol Transmissible Diseases Advisory Meeting on March 7, 2012 with a list of Attendees.

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 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.

#### **Economic Impact Analysis**

The Board has made a 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. The proposal allows the use of alternative respiratory protection when appropriate. This provides an option for employers and does not add regulatory requirements and thus, will not have an economic impact.

Therefore, 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.

This regulatory proposal is intended to provide worker safety at places of employment in California.

**Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the proposal provides an alternative to the existing requirement.

**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 standard does 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, this standard does 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.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does 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.)

This proposed standard does 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 AND RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposal does not add regulatory requirements. However, the additional definitions provided will improve understanding of the requirements and simplify compliance for businesses of all sizes.

**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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.