

**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, Article 109, Section 5189, Appendix A-Mandatory, Section 5192(a)(3), and Section 5198(j)(2)(D)(2) of the General Industry Safety Orders (GISO) and Subchapter 4, Section 1532.1(j)(2)(D)(2) of the Construction Safety Orders (CSO).

**Federal OSHA Amendments and Technical Corrections****SUMMARY**

On December 27, 2011, Federal OSHA in Federal Register, Vol. 76, No. 248 pages 80735-80741 promulgated technical corrections and amendments to 16 OSHA standards addressing process safety management, permit-required confined spaces, medical services and first aid, servicing multi-piece and single piece rim wheels, mechanical power presses, pulp paper and paperboard mills, sawmills, grain handling facilities, commercial diving operations, carcinogens, lead, bloodborne pathogens and air contaminants.

OSHA stated it is correcting typographical errors in, and making nonsubstantive technical amendments to, the aforementioned 16 standards. The Federal Standard became effective December 27, 2011. The Board is mandated under the Labor Code Section 142.3(a)(2) to adopt standards at least as effective as the federal standards for all issues for which federal standards have been promulgated under Section 6 of the Occupational Safety and Health Act of 1970. Board staff identified four amendments that need to be made to ensure California standards are editorially and technically correct. Two of the proposed amendments are nonsubstantive (e.g. typographical in nature). The other two pertain to California's GISO and CSO lead standards and affect existing employer action thresholds for employee notification of lead exposure and temporary medical removal with medical removal protection benefits.

**SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

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

This proposed rulemaking action:

- Has no alternative that would be more effective; as effective and less burdensome, or more cost effective since the content of the proposal is determined by the wording of corresponding Federal regulations.
- 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 mirrors the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- 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.
- Has no substantial difference from an existing Federal regulation or statute.

Section 5189. Process Safety Management (PSM) of Acutely Hazardous Materials, Appendix A to Section 5189 – List of Acutely Hazardous Chemicals, Toxics and Reactives (Mandatory)

Mandatory Appendix A consists of a list of acutely hazardous chemicals, toxics and reactives with chemical name, chemical abstract service number (CAS) and threshold quantity (TQ) in pounds (the amount necessary to trigger employer action under the process safety management (PSM) standard). These substances under the PSM standard are believed to present a potential for a catastrophic event at or above the TQ. A revision is proposed, consistent with the federal standard, to correct CAS number for Oleum from 8014-94-7 to 8014-95-7. The proposed amendment is necessary to prevent any confusion on the part of the employer consulting Appendix A as to the correct identifying CAS number for Oleum.

Section 5192. Hazardous Waste Operations and Emergency Response.

This standard addresses various requirements to ensure the safety and health of workers who conduct uncontrolled hazardous waste site clean-up operations, corrective actions related to clean-up operations, voluntary clean-up operations, and hazardous waste operations involving treatment storage and disposal facilities and who respond to hazardous material spills (hazardous substance clean-up operations). Section 5192(a)(3) contains various definitions to clarify the meaning and application of the standards contained therein. The term “hazardous substance” is defined as any substance that is designated or listed in subsections (A) through (D) among which, (A) states any substance that is defined under Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or under Sections 25316 and 25317 of the California Health and Safety Code.

An amendment is proposed to correct the CERCLA Section reference from 101(14) to 103(14). The proposed amendment is necessary to clarify to the employer seeking to understand the

definition of hazardous material under Section 5192, the correct CERCLA section number for accurate reference purposes.

Section 5198. Lead.

This section contains various standards pertaining to the control of lead exposure. Subsection (j)(2)(D)(2) addresses employee notification of exposure to lead as established by blood lead levels and the employer's duty to notify the employee that the standard requires temporary medical removal with medical removal benefits when the employee numerical blood lead levels exceed the numerical criterion for medical removal established in subsection (k)(1).

An amendment is proposed to change the wording in subsection (D)(2) to delete the word "exceeds" for replacement by "is at or above." The proposed amendment is necessary to make the State standard at least as effective as the corresponding Federal standard.

Section 1532.1 Lead.

This section contains various standards pertaining to the control of lead exposure in the construction industry. Subsection (j)(2)(D)(2) addresses employee notification of exposure to lead as established by blood lead levels and the employer's duty to notify the employee that the standard requires temporary medical removal with medical removal benefits when the employee numerical blood lead levels exceed the numerical criterion for medical removal established in subsection (k)(1)(A).

An amendment is proposed to change the wording in (D)(2) to delete the word "exceeds" for replacement by "is at or above." The proposed amendment is necessary to clarify to make the State standard at least as effective as the corresponding Federal standard.

DOCUMENTS RELIED UPON

Federal Register, Vol.76, No. 248, December 27, 2011, Corrections and Technical Amendments to 16 OSHA Standards, pages 80735-80741

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.

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

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 proposed amendments are technical corrections without regulatory effect, correcting typographical errors to Sections 5189 and 5192 references to CAS and CERCLA section numbers. The proposed amendments to the general industry and construction lead standards thresholds for employee notification and medical removal benefits are not expected to result in any significant added cost to what is essentially an administrative element of the employer's lead medical monitoring/surveillance program in terms of a significant increase in the number of employees who require such notification.

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.

### 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, 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.)

The 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 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 because two of the proposed amendments are typographical in nature and the other two amendments pertain to California’s existing lead standards for employee notification of lead exposure.

### 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.