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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 36, Section 1933
of the Construction Safety Orders
TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 141, Section 5541
of the General Industry Safety Orders
TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 141, Section 5543
of the General Industry Safety Orders
TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 143, Section 5559
of the General Industry Safety Orders
TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 145, Section 5600
of the General Industry Safety Orders
TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 159, Section 6170
of the General Industry Safety Orders

Fire Control, Update of References to NFPA 13 Standard, Installation of Sprinkler Systems

SUMMARY

The current rulemaking proposal is based on an email dated February 13, 2012, from Raymond Bizal, Southwest Regional Director, National Fire Protection Agency (NFPA), to the Occupational Safety and Health Standards Board (Board) staff suggesting an update to various sections in Title 8, which refer to NFPA 13 "Standard for the Installation of Sprinkler Systems". NFPA 13 has undergone several revisions since the various editions referenced throughout Title 8. The latest version of the standard is the 2013 edition, available as of October 2012. Some of the referenced versions date back as far as 1974, while another reference is to a version that has never existed. The references to NFPA 13 are informational only, referring employers to the standard as a guide for information on sprinkler installation. Because there have been several substantial changes to NFPA 13 since 1974, Mr. Bizal recommended updating the references to NFPA 13-2010, the latest version available at the time of his email.

According to Mr. Bizal's research, NFPA 13 has undergone 15 technical revision cycles, each published as a new edition, since 1974. The 1991 edition incorporated an entire rewrite of the standard. In 1994, substantive changes were made to numerous terms, definitions, and descriptions. In 1996, changes to requirements pertaining to the application, placement, location, spacing, and use of various types of sprinklers. Extended coverage and fast response sprinkler

technology were also discussed. Among other changes, the 1999 edition changed the scope of NFPA to address all sprinkler system applications. Information from NFPA 24, 40, 231, 231C, 231D, 231E, and 231F were included in or referenced by the standard. The 2002 edition updated information on Early Suppression Fast Response sprinklers and the 2007 edition updated information on requirements for the installation and design of seismic bracing for fire sprinkler systems. In 2010, the standard updated information related to rack storage and warehouse protection.

In preparation for implementing this change, Kevin Reinertson, California State Fire Marshal, was contacted for input. He suggested referencing the California Fire Code (CFC), California Code of Regulations, Title 24, Part 9, Section 903.3, "Installation Requirements" for Automatic Sprinkler Systems, instead of NFPA 13 because it not only contains information on the installation of sprinkler systems, but also additional information on fire safety. The CFC, which is available online, free of charge, is also updated regularly to include information from the latest version of NFPA 13.

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:

- 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 standards, in that the proposed changes allow for multiple methods of compliance to achieve federal equivalency. Instead of specifically referring to an outdated NFPA 13 standard, the proposal will allow sprinkler installation in accordance with modern technologies and best practices, which will improve safety.

- 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: (1) 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, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

- Is the least burdensome effective alternative. After discussing the proposed changes with the Office of the State Fire Marshal and the Division of Occupational Safety and Health,

the text of the current proposal was agreed upon as being the least burdensome effective alternative.

Automatic fire sprinkler systems are referred to in several Title 8 sections covering fire control for specific applications. Some of the references include the word "approved", which is defined in the regulations as referring "to products, materials, devices, systems, or installations that have been approved, listed, labeled, or certified as conforming to applicable governmental or other nationally recognized standards, or applicable scientific principles." (See Construction Safety Orders, Section 1505 or General Industry Safety Orders (GISO), Section 3206. "Approvals"). Using this definition of "approved" allows for compliance using a variety of methods, including NFPA 13 and the CFC. Not all references to fire sprinkler systems in Title 8 include the word "approved"; however, according to the Office of the State Fire Marshal, all sprinklers and other fire control systems installed in California must be installed in compliance with CFC or an equivalent approved manner. Therefore, the proposed rulemaking will ensure that the word "approved" is used for all references to sprinklers or other fire protection systems and equipment in order to clarify the requirement and make the regulations more uniform throughout Title 8. Where appropriate, a note, referring the public to the CFC for more information, will be added.

Any references to Title 24 in the text are proposed for deletion. Prior to September 30, 2002, the Board was mandated by Health and Safety Code Section 18943(b) to submit Title 8 building standards to the California Building Standards Commission for their approval and adoption into Title 24, the California Building Code. Assembly Bill 3000 (Stats. 2002. c. 1124) repealed Labor Code Section 142.6 and Health and Safety Code Section 18943(b), thus, exempting the Board from the building standard requirements contained in those statutes. Keeping the Title 24 cross-references could result in confusion, and updating them is unnecessary.

<u>Section 1933. Fire Control.</u>

Section 1933 contains five subsections (a-e) that address the allowable distance that fire control devices, such as portable fire extinguishers and small hoses, may be located from storage areas for flammable or combustible liquids. It also covers the installation of fire sprinkler systems and mandates that a portable fire extinguisher be available on any vehicle that transports or dispenses flammable or combustible liquids.

Existing subsection (d) requires that "When sprinklers are provided, they shall be installed in an approved manner." This subsection also states that "The Standard for the Installation of Sprinkler Systems, NFPA 13-1984, provides information on the installation of sprinkler systems." The latter part of the standard is provided for informational purposes to direct the public to a resource for help in complying with the first sentence in this subsection.

The proposed amendments in subsection (d) are necessary to change the reference from the NFPA 13-1984 document to the CFC, Section 903.3, which covers the installation of fire sprinklers, and will include this reference as a note. Referencing the CFC instead of the NFPA will be beneficial to the regulated public because the CFC is available for free online, contains information on fire code topics in addition to fire sprinklers, and is regularly updated to include

references to the latest consensus standards, including NFPA 13. No changes will be made to the regulatory requirements of subsection (d).

Section 5541. Flammable and Combustible Liquid Warehouses or Storage Buildings.

Section 5541 covers the amounts of flammable and combustible liquids that may be stored in an area of a warehouse or storage building. Distances between storage piles and adjacent buildings are covered as well as height of storage and aisle width. Two tables in the section provide for the number of gallons of flammable and combustible liquids that may be stored in a location, depending on whether or not the location is protected by sprinklers or an equivalent fire protection system. Beneath each table is a footnote defining protected storage as storage which is protected by "a sprinkler or equivalent fire protection system installed in accordance with the applicable NFPA standard."

The proposed amendment will replace the words "accordance with the applicable NFPA Standard" with the phrase "an approved manner." The footnote will read "[Protected storage means] a sprinkler or equivalent fire protection system installed in an approved manner."

Section 5543. Fire Control.

Section 5543 addresses fire safety measures that must be in place for locations where flammable or combustible liquids are stored. Subsection (b) requires that "When sprinklers are provided, they shall be installed in an approved manner." This subsection also states that "The Standard for the Installation of Sprinkler Systems, NFPA 13-1974, provides information on the installation of sprinkler systems." The latter part of the standard is provided for informational purposes to direct the public to a resource for help in complying with the first sentence in this subsection.

The proposed amendments will delete the reference to the NFPA 13-1974 document in subsection (b) and include a new note that references CFC, Section 903.3, which covers the installation of fire sprinklers. Referencing the CFC instead of the NFPA will be beneficial to the regulated public because the CFC is available for free online, contains information on fire code topics in addition to fire sprinklers, and is regularly updated to include references to the latest consensus standards, including NFPA 13. No changes will be made to the regulatory requirements of subsection (b).

Section 5559. Fire Control.

Section 5559 addresses fire safety measures that must be in place where flammable or combustible liquids are processed. Subsection (b) states that approved automatic fire sprinkler systems, or the equivalent, shall be installed when required by regulation. This subsection also states that the installed system shall comply with the applicable NFPA standard.

The proposed amendments are necessary to reword this subsection so that it reads similar to other sections on fire protection within Title 8. Additionally, it will add a new note referring the public to the CFC for more information. No changes will be made to the regulatory requirements of subsection (b).

Section 5600. Installation of Tanks Inside of Buildings.

Section 5600 addresses the location and emergency venting of tanks located inside of buildings. It contains an exception which allows for sprinklers "designed in accordance with…NFPA 13-1974 [to] be accepted as equivalent to approved water spray systems for purposes of calculating the required air flow rates for emergency [venting]."

The proposed amendments will add the phrase "installed in an approved manner" to the existing regulatory text, similar to other sections on fire protection within Title 8. Instead of stating that a sprinkler system "may be accepted as equivalent to approved water spray systems", the word "shall" will be used in place of "may", which is necessary to clarify the requirement which allows a NFPA 13-1974 sprinkler system to be used in lieu of an approved water spray system. It will also remove the reference to the NFPA 13-1974 document. Using the word "shall" does not change the intent of the original regulation, but it does clarify the requirements necessary for compliance.

Referencing the CFC instead of the NFPA will be beneficial to the regulated public because the CFC is available for free online, contains information on fire code topics in addition to fire sprinklers, and is regularly updated to include references to the latest consensus standards, including NFPA 13.

Section 6170. Automatic Sprinkler Systems.

Section 6170 details the requirements for all automatic sprinkler systems installed under the GISO. Subsection (a)(3) states that when required sprinklers are provided, they must meet the design requirements of NFPA 13-1978.

The proposed amendments will clarify that all sprinklers, required or not, need to be installed in an approved manner, as defined in GISO, Section 3206 "Approvals". It will remove the outdated references to NFPA 13-1978 in subsection (a)(3) and in the existing note following subsection (c)(2)(A), and provide a new note following subsection (a)(3) directing the public to the CFC, Section 903.3, which provides information on the installation of fire sprinklers. Referencing the CFC instead of the NFPA will be beneficial to the regulated public because the CFC is available for free online, contains information on fire code topics in addition to fire sprinklers, and is regularly updated to include references to the latest consensus standards, including NFPA 13.

REFERENCE TO COMPARABLE FEDERAL REGULATION

Federal Construction Regulations.

Federal construction safety regulation 29 CFR 1926.152 "Flammable Liquids" states that "When sprinklers are provided, they shall be installed in accordance with the Standard for the Installation of Sprinkler Systems, NFPA 13-1969." [see 29 CFR 1926.152(d)(3)]. The corresponding Title 8 standard states in part that "When sprinklers are provided, they shall be

installed in an approved manner." [See CCR, T8, §1933(d)]. According to the definition of "approved" in CCR, T8, §1505, "Approvals", the term "[Approved] shall refer to products, materials, devices, systems, or installations that have been approved, listed, labeled, or certified as conforming to applicable governmental or other nationally recognized standards, or applicable scientific principles." Federal construction regulations also provide a definition for "approved:" "Approved" means sanctioned, endorsed, accredited, certified, or accepted as satisfactory by a duly constituted and nationally recognized authority or agency (see 29 CFR 1926.32(c))." Using either definition, requiring installation in an "approved" manner is equivalent to requiring installation in accordance with the requirements of NFPA 13 or CFC Section 903.3. The proposed change only affects the part of the regulation directing the public to resources for additional information; therefore, the regulatory elements are unchanged.

Federal General Industry Regulations.

Federal regulation 29 CFR 1910.106 "Flammable Liquids" has language which corresponds to the updates proposed by the current rulemaking. 29 CFR 1910.106(d)(7)(ii), which covers fire control in relation to flammable liquids, states that "When sprinklers are provided, they shall be installed in accordance with 1910.159 [Automatic Sprinkler Systems]." Additionally, 29 CFR 1910.106(h)(6)(ii)(d), which relates to processing plants that use flammable liquids, states that "Processing plants shall be protected by an approved automatic sprinkler system or equivalent extinguishing system."

Federal general industry regulations do not provide a definition for "approved" as the federal construction regulations do, but the definition from the construction regulations is similar to California's Title 8 definitions. The meaning of the word "approved" is consistent in both federal and California regulations and approved equipment and processes provide equivalent safety.

Federal regulation 29 CFR 1910.159 "Automatic Sprinkler Systems" applies to all systems installed to meet a particular OSHA regulation. The regulation describes inspection, testing, installation, equipment, and performance requirements associated with sprinkler systems. The federal regulation allows an exemption to the requirements of 1910.159 when sprinklers systems are installed in workplaces, which are not required by OSHA to have a sprinkler system. California building codes do not allow for such an exemption. According to the Office of the State Fire Marshal, all sprinkler systems installed in buildings or structures in California are required to be installed according to the CFC in effect at the time of installation. The CFC is based on the latest consensus standard information available and is updated regularly. Therefore, the California requirements for automatic sprinkler systems are at least as protective as the corresponding federal regulations.

DOCUMENTS RELIED UPON

1. A transmission from Ray Bizal, received on February 13, 2012, with the subject "NFPA References in California Title 8" (including attachment).

2. California Code of Regulations, Title 24, Part 9, Section 903.3, "Installation Requirements" for Automatic Sprinkler Systems.

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 proposed changes provide employers with more options for compliance with federal, state, and local regulations when installing fire sprinkler systems. Instead of specifically referring to an outdated NFPA 13 standard, the changes will allow sprinkler installation in accordance with modern technologies and best practices, which will improve safety. The changes also refer the public to the California Fire Code, which reduces costs by providing free and up-to-date information.

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.

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 standards 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 these standards 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.)

The proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees. Moreover, the proposed standards 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 standards 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 AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendments will not affect small businesses because the change is for informational purposes only.

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.