

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

To : ALL STANDARDS BOARD MEMBERS

Date : August 14, 2012

From : **Division of Occupational Safety and Health**  
Ellen Widess, Chief

Subject : **Federal Final Rule, Globally Harmonized System update to Hazard Communication (Health Standards)**

The following information is provided in regard to the proposed revisions to the California Code of Regulations, Title 8, Division 1, Chapter 4, as follows:

Subchapter 4, Construction Safety Orders -

Article 4, Sections 1529, 1532, 1532.1, Appendix B to 1532.1, 1532.2 and 1535;

Subchapter 7, General Industry Safety Orders -

Article 107, Section 5150;

Article 109, Sections 5189, 5190, 5191, 5192, 5194, Appendices A through G of 5194, 5198, and Appendix B to 5198;

Article 110, Sections 5200, 5201, 5202, Appendix A to 5202, 5206, 5207, 5208, 5209, 5210, 5211, 5212, 5213, 5214, 5217, 5218 and 5220;

Subchapter 18, Ship Building, Ship Repairing and Ship Breaking Safety Orders –

Article 4, Sections 8358 and 8359.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the 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 on March 26, 2012, addressing Globally Harmonized System (GHS) updates of the Hazard Communication Standard (HCS) and related sections. The changes impact 29 CFR, Parts 1910 (general industry), 1915 (shipyards), and 1926 (construction). The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 77, No. 58, pages 17574-17896, March 26, 2012, 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 editorial and format differences.

The proposed regulations address updated requirements for hazard communication as it pertains to updating HCS warning labels, signs and safety data sheets, which are to be consistent with the

United Nations GHS classification, and labeling of chemicals to inform workers and other downstream users of manufactured and imported chemical products. The proposed standards also update hazard communication standards for welding, brazing and cutting.

The proposed regulations are substantially the same as the federal standards; 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. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written comments and oral comments at the public hearing is to (1) identify any issues unique to California related to this proposal which should be addressed in a subsequent rulemaking and (2) solicit comments on the proposed effective date. The responses to comments will be available in the rulemaking file on this matter and will be limited to the above areas.

The federal final rule includes changes to the following sections which, due to significant differences with state standards (i.e., state standards may be more protective), cannot be adopted as part of the state's expedited rulemaking process under Labor Code section 142.3(a)(3). Federal changes to the following sections are proposed to be considered and potentially adopted in whole, or in part, separately using the state's normal public notice and comment period procedures in order to assure that more protective state standards are preserved and to afford stakeholders with an opportunity to evaluate and comment on the proposed changes.

- 1910.106, Flammable and combustible liquids,
- 1910.107, Spray finishing using flammable and combustible materials,
- 1910.119 Process safety management of highly hazardous chemicals,
- 1910.123 Dipping and coating operations: Coverage and definitions,
- 1910.124 General requirements for dipping and coating operations,
- 1910.125 Additional requirements for dipping and coating operations that use flammable liquids or liquids with flashpoints greater than 199.4  $\geq$ F (93  $\geq$ C), 1926.152 Flammable liquids,
- 1926.155 Definitions applicable to Part 1926, Subpart F, Fire Protection and Prevention.

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

Federal Register, Vol. 77, No. 58, Pages 17574-17896 (March 26, 2012).

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.

#### 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

According to Section H of the Final Economic Analysis and Voluntary Regulatory Flexibility Analysis of the Final Rule (page 17653), Federal OSHA has determined that the economic impact of the final rule is most likely to consist of a very small increase in prices for affected hazardous chemicals, of about 0.001 percent on average. Chemical manufacturing companies, all of whom must incur the costs of compliance unless they are already doing so, should be able to pass through costs to customers. The additional costs of a one-time revision to safety data sheets and labeling criteria and one-time investments in printing technology are extremely small in relation to the value of the corresponding products, and there are generally no economic substitutes, or alternatives, that would not be subject to the same requirements. It is unlikely that a price increase of this magnitude would significantly alter the types or amounts of goods and services demanded by the public or any other affected customers or intermediaries. If the compliance costs of the final rule can be substantially recouped with a minimal increase in prices, there would be little or no effect on profits. California will be commensurate with federal OSHA regarding these costs.

### 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 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 significant economic impact is anticipated because it is unlikely that a price increase of this magnitude would significantly alter the types or amounts of goods and services demanded by the public or any other affected customers or intermediaries.

Therefore, the proposed regulations will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

Attachments